

Summary and Overview:

Royal Commission into Violence, Abuse, Neglect, and Exploitation of people with Disability Final Report

REALISING THE RIGHTS OF PEOPLE WITH DISABILITY: THE ROYAL COMMISSION'S RECOMMENDATIONS, PEOPLE WITH LIVED EXPERIENCE AND THE MENTAL HEALTH COMMUNITY-MANAGED SECTOR

This report is produced by Mental Health Coordinating Council to examine the recommendations from the Royal Commission as they apply to people living with mental health conditions and the community-managed mental health sector in New South Wales



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To cite this document please reference as follows:

Mental Health Coordinating Council, 2023, *Realising the Rights of People with Disability. Summary and Overview: Royal Commission into Violence, Abuse, Neglect, and Exploitation of people with Disability Final Report.* Sydney, NSW.

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HIGHLIGHTS

What do the Royal Commission's recommendations mean for people with lived experience and the mental health community-managed sector?

The Royal Commission propose many recommendations for transformational reform which if implemented will ensure meaningful change for people with lived experience of psychosocial disability and the community-managed services mental health services that support them. We highlight a few key recommendations as follows:

- The Australian Government should commit to the enactment of an Australian Disability Rights Act (DRA). A DRA would translate human rights policies and practices into the values and standards to be upheld for people living with disability.
- Amendments to the *Disability Discrimination Act 1992 (Cth)* (DDA) must translate principles expressed and rights recognised in the UNCRPD into enforceable obligations under Australian domestic law. The DDA would also establish the office of the Disability Discrimination Commissioner.
- People with disability would have access to necessary information and diversity supports, as well as benefit from the adoption of a new supported decision-making framework underpinned by uniform national principles. State and territory guardianship and administration legislation would be reformed to recognise and encourage supported decision-making.
- Services would be supported to minimise intersectional inequality and expected to foster the development of an inclusive Australia where cultural safety, family, community, and connectedness are central to service delivery and engagement, especially important for First Nations people.
- The people most affected by any decision would be empowered to take up leadership positions, be respected and included in every aspect of political, social, economic, and cultural life. Self-determination through co-design and co-production would become integral to reform processes.
- Informal supports would be made available to support individual advocacy and build capacity for self-advocacy. The peer workforce would be particularly well resourced to meet the service delivery and advocacy support needs of people with disability.
- People would be assisted to overcome the barriers to health care and treatment and state and territory governments would fund, establish, and evaluate specialised health and mental health services for people with cognitive disability to provide specialist assessment and clinical services.
- Mainstream services would be reformed to remove barriers to people with disability accessing education, employment, and housing to improve outcomes and enable meaningful inclusion.
- Governments would increase supply of accessible and appropriate housing for people with disability; as well as increase tenancy and occupancy protections whilst improving regulatory oversight of supported accommodation and improve responses to homelessness.

Background

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) Final Report* is a historic milestone which brings together four years of work on the part of a dedicated group of people who conducted the Royal Commission Inquiry led by The Honourable Ronald Sackville AO KC, together with the years of unwavering advocacy on the part of people with disability, carers and their representative organisations. It also represents the beginning of a new era of systemic and legislative reform. As the Commissioner stated in the Inquiry's Terms of Reference, the Final Report "was to be a means by which Australia could be transformed into a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation."¹

Importantly the Commission also has a key role in ensuring that the 222 Recommendations provided over 12 volumes are endorsed and implemented to transform change, and that legal reform, as well as the related policies and practices are informed by new and amended legislation.

The Commission acknowledge a point repeatedly expressed during public hearings; in submissions, private sessions, and responses to issues papers, as well as at community engagements – there is "not much point to a lengthy Royal Commission if its recommendations do not lead to transformational change." The Commission stress that representative advocacy by people with disability and disability organisations, will have a crucial role to play in ensuring the recommendations are accepted and implemented, and ensuring that expansive amendments to laws, policies, and practices vital to the reform process will be actioned.

Over fifty years ago, the widely accepted medical model of disability was "declared by theorists, social planners and service providers as painfully inadequate."² They rejected the medical model of disability in favour of the social model. The rationale was and continues to view the medical model as managing impairments or differences as problems to be 'fixed' or changed by medical and other treatments and interventions, even when the impairment or difference does not cause distress, pain, or illness.

The medical model looks at what is 'wrong' with the person and not what the person needs or aspires to. It creates low expectations and leads to a loss of independence, autonomy and diminishes choice and control in people's own lives. Conversely, the social model focuses on the environment in which a person with disability lives, understanding people as being disabled by social barriers, including discriminatory attitudes, inaccessible physical environments and forms of communication, and failures to provide adjustments needed to enable people to participate in education, workplaces, and the wider community.

Internationally, the social model contributed to the drafting and adoption of the Convention on the Rights of Persons with Disabilities (CRPD), which entered into force on 3 May 2008 and was ratified by Australia in July 2008. Calls for a Royal Commission by the Senate Community Affairs References Committee in 2015, eventually led to the establishment of the Royal Commissions to Inquire into violence against, and abuse and neglect of, people with disability in 2019.³

The Commission made clear at the outset that people with disability were central to the work being undertaken and that every effort would be made to establish safe and accessible arrangements to enable people, their families, and carers to share their experiences. A trauma-informed approach was adopted to communicate with all those who wished to engage with the Commission, whether by giving evidence, making submissions, participating in private sessions or in other ways. Volume 2 of the Final Report explains in detail the steps implemented to ensure the physical, social, emotional, and cultural safety of everyone who wished to recount their experiences.

The Commission took evidence at 32 public hearings from 837 witnesses, of whom 209 were people with disability. Commissioners held private sessions with 1,785 participants, 61 per cent of whom were people with disability speaking about their own experiences. Of the 7,944 submissions received in various formats, 55 per cent were from people with disability and a further 29 per cent from family members of people with disability. Despite the disruptions caused by the COVID-19 pandemic, the Commission conducted over 700 community engagements.

Some of the most marginalised people in Australia were heard for the first time during the Disability Royal Commission. “People with disability and their supporters have given a lot to the Commission; and expectations are high for a comprehensive and considered response with tangible action from the Government.”⁴ The Commission’s final report together with the current NDIS review (due to report in October 2023) will add to the momentum arising from these activities.

Overview

An approach informed by human rights

In line with Australia’s obligations under the CRPD, the Commission committed to developing and implementing an approach informed by human rights. They set out to translate human rights into practical and sustainable policies and practices that change the values and standards the community expects to be upheld for people with disability. The recommendations in Volume 4, *Realising the human rights of people with disability*, propose a national Disability Rights Act and propose amendments to the current *Disability Discrimination Act 1992* (Cth)(DDA) to critically “address the challenge of translating principles expressed and rights recognised in the CRPD into enforceable obligations under Australian domestic law.”

As the CRPD exemplifies, people with disability have the right to be treated equally to people without disability. To think about equality from a human rights-based approach is to ask, what does a person need to live a life of dignity and respect and achieve inclusion?

Realising the human rights of people with disability examines Australia’s human rights obligations and illustrates how a more comprehensive and transformative legal framework is required to achieve equality and inclusion and advance the human rights of people with disability. It includes the Commission’s recommendations for enacting a Disability Rights Act and strengthening the DDA.

Moving towards an inclusive Australia for people with disability

Recommendations in the Commission’s Final Report are principally directed to the Australian Government, whilst some are directed to states and territories. Others are directed to non-government agencies, such as service providers and professional associations responsible for training of health practitioners and other professionals.

The Commission propose that whilst the Australian Government is primarily responsible for implementing their recommendations, it is not exclusively responsible and suggest that a: “co-ordinated strategy is required, involving governments and non-government agencies”. Moreover, they write that “responsibility for reforms is shared by the entire Australian community, since transformational reforms cannot occur without fundamental changes in community attitudes towards people with disability”.

Indeed, an inclusive Australia is one that treats disability as a part of human diversity and understands disability itself as a diverse category.⁵ Another key theme in the vision for an inclusive Australia was about people with disability having the support they need to exercise choice and maximise their independence. Meaningful inclusion empowers people with disability to be actively involved in and make the decisions that impact them.⁶ For generations, social systems have provided people with disability little opportunity to choose the course of their own lives and take risks. Unfortunately, social, and legal systems frequently continue to perceive people with disability as unable to make decisions and as needing protection from violence, abuse, neglect, and exploitation, as well as requiring protection from their own actions – a common experience particularly of people living with mental health conditions and cognitive disability. Like everyone else, people with disability need the opportunity to develop decision-making skills, including the chance to make mistakes and learn from them.⁷ The concept of dignity of risk means giving people the right to take risks they consider reasonable.

Choice, autonomy, and independence rely on access to necessary supports and reasonable accommodations, such as interpreters and information in easy English as well as availability of information and supports in languages other than English as well as access to supported decision-making which assists people with disability to build on their skills and capacity to become more independent. Despite obligations under international and domestic law, many people with disability in Australia are still unable to access information and communications on an equal basis to people without disability. This can mean not being able to understand information from government agencies and service providers and to communicate their views and preferences.

Enabling autonomy and access - choice and independence

Autonomy is a person's right and freedom to make decisions, control their life and exercise choice. Access means being able to use and interact with information, environments, services, and products in a way that suits a person's needs. The Report identifies reform across multiple settings to better enable the autonomy of, and access for, people with disability.

The vision for an inclusive Australia requires that people with disability have the support they need to exercise choice and maximise their independence. Inclusion empowers people with disability to be actively involved in and make the decisions that impact them.

Volume 6, *Enabling autonomy and access* examines and makes recommendations to address inaccessible information and communications; substitute decision-making; barriers to accessing disability advocacy; barriers to health care and treatment; use of restrictive practices; and more specifically identifies ways in which supported decision-making (SDM) is critical to maximising autonomy and independence. The Commission writes that SDM should be embedded in guardianship and administration law and practice, and other systems over time, to ensure substitute decision-making only happens as a last resort and when necessary, in the least restrictive manner.

To belong, be respected, valued and contribute

People with disability often face stigma and discrimination and are faced with disrespectful attitudes, and are treated as 'different', 'other' and 'less than'. Low expectations about what people with disability can do and achieve often shape their experiences across the lifespan across multiple contexts.

Evidence in multiple formats presented to the Commission pointed to the need to foster an inclusive community in Australia where people with disability know that they belong, are respected, valued and are encouraged to contribute.

Intersectionality

The multi-layered 'intersectional' experiences of many people with disability identified in the Royal Commission's terms of reference are addressed throughout the Final Report and focused particularly on the multi-layered experiences of *First Nations people with disability*. Three public hearings were exclusively concerned with issues of great significance to First Nations people with disability. Volume 9 brings together the evidence and information demonstrating how First Nations people with disability are disproportionately at risk of violence, abuse, neglect, and exploitation.

The Commission also examined the experiences of culturally and linguistically diverse people with disability across multiple volumes; and the analysis in Volume 8, *Criminal justice, and people with disability*, addresses the high levels of family, domestic and sexual violence experienced by women and girls with disability.

Cultural safety

Cultural safety is central to the development of an inclusive Australia. It is especially important for First Nations people with disability. This requires that family, community, and connectedness through culture are central to service delivery and engagement. This was described by one contributor as a 'culture of inclusion', which mitigates the impacts of intersectional inequality. It was also described as 'feeling heard, believed and understood, including in your own language; feeling confident to share your story; being able to seek service without fear of mistreatment, repercussions or misunderstanding of cultural needs; not having to defend your experience of systemic or cultural barriers or discrimination'.

Disability leadership

A striking theme throughout the hearings described in the Final Report is the insistence by people with disability that governments and organisations should do ‘nothing about us without us.’ This highlights the importance of their inclusion in every aspect of political, social, economic, and cultural life. The Commission heard that governments, disability service providers, businesses and community organisations often ignore the expertise of people with disability.

Organisations often assume people with disability do not have leadership capacity, knowledge, or skills. One advocate reminded the Commission that: “While the expertise of people with disability is often unrecognised, their leadership can influence all levels of an organisation”.⁸ Self-determination and co-design are integral to this process and the Commission recognised that it is critical to empower people with disability to take up leadership positions, especially in disability services, placing decision-making in the hands of people most affected by the decision.

Co-design and co-production

The Commission clearly identified the necessity to promote co-design (the term used to describe the sharing of decision-making power and responsibility). It is a process involving partnering with people with disability that demonstrates a commitment to sharing systems of power. Embedding this approach requires a shift in the mindset of decision-makers and governments. It also involves partnering and collaborating where relevant with family members and support workers. It draws particularly on the active involvement of representative organisations of people with disability. Co-design encompasses all aspects of service design, systems, policies, legislative reform, and research, and is also about identifying preferred solutions and developing best practice approaches and alternative models. Likewise, co-production (a related term where people with lived experience have the power to influence recommendations and design and are part of delivery and evaluation) is a necessary next step in the process. In co-design and co-production, people with lived expertise powerfully influence and ideally share decision-making and leadership roles in implementation and evaluation processes.

Differences of opinion amongst Commissioners

There are diverse views expressed in the Report and Commissioners came to different conclusions on some issues as to what it means to make Australia more inclusive. These reflect the range of views held by the disability community and others.

The Chair and Commissioner Ryan consider separation, based on disability for certain purposes need not and should not involve people with disability being isolated from their peers or from the general community. They do not see all separation based on disability, depending on the nature and purpose of the separation and the degree of interaction with the broader community, as warranting the term ‘segregated’. They consider that the separation of people with disability for a particular reason or purposes may be consistent with those people interacting with their peers and the broader community on a regular basis.

Others take the view that the deliberate and systemic separation of people based on disability constitutes segregation. From their perspective, segregation describes situations where people with disability live, learn, work, or socialise in environments designed specifically for people with disability, separate from people without disability. Some Commissioners consider segregating people based on disability to be incompatible with inclusion and believe it is unconscionable that segregation based on disability remains a policy default in Australia in the 21st century.

The Commission stressed that realising an inclusive society is the responsibility of the whole of Australia. They emphasised what they had heard from people with disabilities which was “the importance of all Australians hearing the voices of people with disability, learning from their experiences and expertise, and recognising their capacity to be leaders of change.”

The Final Report clearly demonstrated that people with disability are strong, creative, talented, and determined, and that they have fought long and hard to make Australia a more inclusive society where everyone can flourish. People with disability are a vital part of our diverse society. When that society is shaped to include them, they will thrive.

Mental health and psychosocial disability – human rights

What does the Royal Commission's Report recommendations mean for people with mental health conditions living with psychosocial disability?

MHCC recognise that most of the 222 recommendations to Government will affect some people living with disability because of mental health conditions in some way. However, what we have tried to do is identify the recommendations that if implemented will have most impact generally on people with mental health conditions living with psychosocial disability and the CMO services they access.

- Australia is party to the seven 'core' international human rights treaties, including the CRPD. However, existing measures do not give sufficient effect to Australia's obligations under the CRPD and people with disability are not adequately protected against violence, abuse, neglect, and exploitation.

The Commission makes the point that to translate the international human rights of people with disability into Australian domestic law, the Australian Government should commit to the enactment of an Australian Disability Rights Act (DRA). The DRA should clearly articulate the human rights of people with disability, create appropriate enforcement mechanisms, and provide access to effective remedies when rights are breached.

The Commonwealth public sector should be the primary duty-holder under the DRA, with a mechanism for other entities to opt in. Their duties would include: to consider and act consistently with disability rights; consult with people with disability; and promote disability equality and inclusion. The proposed DRA would take a preventative approach, so people with disability do not experience violence, abuse, neglect, and exploitation – or other breaches of their human rights – in the first place.

- In Volume 5, *Governing for inclusion*, the Commission recommend establishing a new National Disability Commission as an independent oversight body and be given statutory functions to support compliance with the DRA. They recommend the National Disability Commission be given capacity-building functions under the DRA, including conducting research, publishing guidelines, providing advice through voluntary compliance reviews, handling complaints and being able to intervene in appropriate court proceedings and powers to address non-compliance with the DRA, including conducting inquiries, entering into enforceable undertakings, issuing compliance notices and seeking injunctions to stop or prevent breaches of the DRA.

The Commission propose that the: "The best human rights outcomes are achieved when human rights are built into the everyday work of policy making, law making and service delivery, and harm is prevented from occurring in the first place. Providing accessible information, guidance and training about disability rights is an important part of making rights a reality."

- The Commission also recommended that the *Disability Discrimination Act 1992* (Cth) (the DDA) should be amended to promote equality more effectively, as well as enhance the rights of people with disability to live free from discrimination. The DDA applies nationally and operates concurrently with state and territory anti-discrimination laws, and reform would be complementary to the DRA.

The DDA also establishes the office of the Disability Discrimination Commissioner. The DDA prohibits unlawful discrimination in certain areas including employment; education; access to premises; provision of goods, services, and facilities; provision of accommodation; and administration of Commonwealth laws and programs. The DDA prohibits direct discrimination and indirect discrimination on the ground of disability in these areas and makes harassment of a person with disability and their associates unlawful in those contexts. It also includes an obligation to make 'reasonable adjustments' to avoid direct and indirect discrimination. The

Commission writes that the Act should ensure a “Positive duty to eliminate discrimination” and suggests positive action is required to remove systemic barriers. This means shifting the focus from a reactive model to one of preventing and eliminating systemic barriers for people with disability more broadly.

- The Report describes how people with disability face a range of barriers to accessing quality health care. These must be removed by building the capability of the health care workforce, and identifying adaptations and supports required for a person-centred and directed approach. It also recommends that all states and territories should have legal frameworks to reduce the use of restrictive practices, with the aim of elimination. This must include taking immediate action to prohibit some practices, including the seclusion of children.
- Throughout the Report, the Commission strongly illustrates how supported decision-making (SDM) should be embedded across the service system. The Report describes how “some people with disability are denied the right to make big or even everyday decisions about their lives.” ‘Substitute decision-making’ can prevent people with disability from exercising their autonomy. This occurs when a person is considered to lack capacity to make decisions themselves. Substitute decisions can be made on personal, financial, property and health matters.

People living with cognitive or psychosocial disabilities are disproportionately affected by substitute decision-making. Supported decision-making, however, starts from the premise that everyone can make decisions and should be supported to do so.

Article 12 of the CRPD recognises the right to support for decision-making. The Commission recommend that under a ‘principled’ approach, a person is supported to maximise their autonomy in making decisions and a ‘representative’ decision-maker can only be appointed as a last resort. Where this happens, a person’s ‘will and preference’ must remain central and be reflected in the representative’s decision. The Commission support the adoption of a new supported decision-making framework and consider state and territory guardianship and administration legislation should be reformed to recognise and encourage supported decision-making. They also recommend that all governments adopt uniform national decision-making principles.⁹

The Commission also recommends that a new supported decision-making framework in guardianship and administration legislation should be complemented by robust tribunal practices and processes that maximise the participation of people with disability in tribunal proceedings. This also means that states and territories should ensure the functions of public advocates and public guardians include providing information, education, and training about supported decision-making.

To complement these efforts, The Commission recommends that every state and territory have a statutory body to undertake systemic advocacy to promote supported decision-making.

- The National Disability Advocacy Framework (NDAF) recognises the critical role of advocacy. Under the 2023–2025 NDAF, the Australian Government and state and territory governments have already committed to the objective 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 full community participation and inclusion.”¹⁰

People with disability face unique barriers to accessing disability advocacy if they live in supported accommodation. Group homes can be isolating and can prevent residents from participating in their local communities. Opportunities for building informal support networks can be limited or non-existent, but many people in group homes may have limited access to independent advocates. The Commission describe in Volume 10, *Disability Services*, how it can be difficult for group home residents to contact advocacy services, and that staff in group homes can limit residents’ access to information about advocacy.

Under the National Disability Advocacy Program, the government funds disability advocacy providers to deliver advocacy support across Australia. The program provides ‘people with

disability with access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation'.¹¹ The NDIS Appeals Program likewise is targeted at people with disability affected by NDIA reviewable decisions. It provides support to people seeking review of these decisions in the Administrative Appeals Tribunal or through other dispute resolution avenues.

Often people with disability require advocacy support in relation to service systems that are the responsibility of state and territory governments. These include housing, transport, education, child protection and health. States and territories have a critical role in funding advocacy services. However, the certainty and amount of advocacy funding states and territories provide has fluctuated over the past decade. The Commission propose that additional funding required to address the lack of adequate or consistent funding which represents is a major factor contributing to the unmet demand for disability advocacy.

- Informal supports, or natural safeguards are the social support networks that provide protection for people with disability by increasing connections, relationships and visibility in the wider community. Peer support brings people with disability together to support each other, share experiences and develop skills.

In its Report, the Commission strongly supports the critical role of informal supports for people with disability particularly important for people in supported accommodation, living alone or experiencing homelessness. Informal supports are an important part of advocacy since they build the capacity of a person with disability to self-advocate. The Commission made recommendations throughout the Final Report to better recognise and enhance peer supports for people with disability.

- The Commission stress the importance of overcoming barriers to health care and treatment and propose that quality health care is an essential service and a human right in and of itself. The CRPD recognises people with disability have the right to 'the enjoyment of the highest attainable standard of health without discrimination on the basis of disability'.

The Report revealed many people with disability are denied access to health care on an equal basis to people without disability. Evidence clearly shows people with disability have worse health outcomes and lower life expectancy than people without disability. The Report recommendations strongly suggest that state and territory governments fund, establish and evaluate specialised health and mental health services for people with cognitive disability to provide specialist assessment and clinical services.

- Report recommendations identified reducing and eliminating restrictive practices as critical to reversing the evidence demonstrating that people with disability are solely or disproportionately subjected to several practices that deny them their autonomy and can affect their health, safety, and wellbeing. These include 'restrictive practices', such as seclusion and physical, chemical, as well as mechanical and environmental restraints. People with disability are subjected to restrictive practices in multiple settings.

Whilst the use of restrictive practices is regulated at national, state and territory levels in a range of contexts, including disability service provision and health, education and justice settings, there is no single national law on the use of restrictive practices and no nationally agreed definition of a restrictive practice. States and territories regulate different categories of such practices.

For the purposes of the Final report, the Commission defined a 'restrictive practice' as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability'. This is the definition adopted in the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act).

The Commission recommend that reform is necessary to improve the processes for authorising, reviewing, and overseeing restrictive practices. They recommend state and territory governments ensure appropriate legal frameworks are in place in disability, health, education, and justice settings. They also propose the use of restrictive practices be independently overseen and monitored, and that authorisation decisions be subject to independent review.

- The Commission's vision for an inclusive Australia would ensure that Mainstream systems are significantly reformed to remove barriers to people with disability accessing education, employment, and housing to improve outcomes and to enable meaningful inclusion.

Group Homes – differing views

The Report demonstrates how both mainstream settings and those where people are frequently separated because of their disability, can expose people with disability to various forms of violence, abuse, neglect, and exploitation. It has also shown mainstream systems must be significantly reformed, and in some cases transformed, to remove barriers to access for people with disability and to enable their meaningful inclusion. However, Commissioners expressed their differing views about whether settings exclusively for people with disability should be phased out over time.

Following on from Commissioners differing recommendations, MHCC will strongly advocate that people with disability should have the opportunity to exercise as much choice as possible into where they live.

Member organisations report great outcomes experienced by consumers living in group homes and from both their own and their families' perspectives. As people build capacity they might well move from these more segregated environments to accommodation in the more general community with various degrees of wrap-around supports. However, it is vital to provide a range of accommodation and supports that suits people at a certain point in their recovery, circumstances, availability, and preference.

MHCC and its members most generally do not support the idea that people living with their peers amounts to segregation and strongly oppose phasing out of small group home accommodation. MHCC would strongly support its members' position should governments propose this model of reform that some members of the Royal Commission favour. We suggest that there is scope to build on existing work and evidence to co-design, demonstrate preferences and evaluate more contemporary models of housing and the way that support is provided within the home.

MHCC members strongly assert that residents in group homes enjoy regular and significant interaction with their peers without a disability and the wider community, as well as being able to live, learn, work, or engage in leisure activities in those group settings in a way that enables them to exercise free and informed choice. Additionally, in making choices, people with disability should be assured they will receive the supports and adjustments they are entitled to receive to enable them to participate as fully as practicable in mainstream settings. These settings must of course, also be subject to rigorous regulatory oversight and programs designed to prevent people with disability experiencing violence, abuse, neglect, and exploitation.

- A home is central to a person's dignity, autonomy, independence and wellbeing and a fundamental human right. A home is the place where a person should be safe, secure, and able to choose how to live their daily life. It is also critical to participating in other areas of life, for example, to obtaining and maintaining employment and to accessing necessary support.

People with disability face multiple barriers to securing accessible, appropriate, and safe housing. Some people with disability have little choice but to remain in substandard accommodation, such as boarding houses, with limited occupancy rights and oversight. Some people with disability experience chronic homelessness. People can be exposed to violence, abuse, neglect, and exploitation in these settings. Current practices in group homes can deny people with disability their autonomy, choice, and control.

The Commission recommend that reforms are required to increase supply of accessible and adaptive housing for people with disability; as well as increase tenancy and occupancy protections for people with disability whilst improving regulatory oversight of supported accommodation. They also describe the necessity to improve responses to homelessness. The

Commission recommends and MHCC strongly support the adoption of more inclusive and alternative models of housing for people with disability.

The Commission likewise recommend both the proposed National Housing and Homelessness Plan and the National Housing Supply and Affordability Council include people with disability as a priority group in developing reforms; and that the Australian Government include homelessness as a policy priority in the Inclusive Homes and Communities outcome area of Australia's Disability Strategy (ADS).

People living in supported accommodation, such as group homes, are particularly vulnerable due to their limited security of tenure. A high proportion of people living in supported accommodation are people with intellectual disability or cognitive impairment. The Commission recognised the importance that occupancy rights of NDIS participants who live in group homes be recognised and protected by legislation.

- Report recommendations included that the Australian Government and state and territory governments should commit to a policy of 'no exits into homelessness' for people with disability. They also recommended a lead agency be designated in each Australian jurisdiction to provide this support and system navigation for people with disability.

The Australian Government is developing a National Housing and Homelessness Plan. In developing the National Plan, The Commission recommend the Australian Government, working with state and territory governments to review the adequacy of funding for homelessness, particularly for people with disability and complex needs, and expand pathways and support for people with disability out of homelessness.

- The opportunity for a person with disability to work, earn a living and participate as an economic citizen is a key component of an inclusive Australia. It has flow-on effects for the person's ability to access services, support themselves and their family, realise life aspirations and achieve financial security. Article 27 of the CRPD recognises this.

The Royal Commission found that people with disability face systemic barriers to obtaining and retaining open employment. The Commissioners recommend that action is needed to: "reform the Disability Employment Services program and increase opportunities for people with disability in public sector employment and leverage the procurement power of governments to encourage inclusive employment practices in the private sector."

A strong recommendation in the report to achieve inclusive employment is that workers in Australian Disability Enterprises (ADEs) should be paid at least 50 per cent of the minimum wage, moving to the full minimum wage by 2034. The employment of people with disability requires a commitment to recruitment and retention. The Commission recommends the Australian Government, as well as state and territory governments adopt specific and disaggregated targets to increase the proportion of people with disability working in the public sector and establish greater regulatory coordination and legislative clarity to support people with disability and employers to understand their rights and obligations.

- People with disability, particularly people living with mental health condition, and psychosocial difficulties, and with cognitive disabilities, are significantly over-represented at all stages of the criminal justice system. The over-representation of First Nations people with cognitive disability in custody, particularly in youth detention, is a largely hidden national crisis.

Australia has international obligations to take appropriate legislative, administrative and other systemic measures to promote the human rights of people with disability, including those in the criminal justice system. Under the CRPD, Australia is obligated to protect people with disability, including those in the criminal justice system, from all forms of exploitation, violence, and abuse.

Each state and territory in Australia have its own legislation that determines 'fitness to be tried' and the consequences of a finding that an accused is not fit to be tried. Whilst intended to protect people with disability (particularly people with cognitive disability and mental

health conditions) in practice, however, this can deny people with disability the right to exercise legal capacity and expose them to long-term detention.

Forensic patients can be at risk of indefinite detention, meaning no fixed date is set for their release. This can lead to a period of detention longer than if they had been convicted and sentenced in an ordinary criminal trial. Prolonged detention places forensic patients at risk of violence, abuse and neglect and experiencing cumulative trauma. For decades in Australia there have been calls for law reform to end the indefinite detention of people with cognitive and psychiatric impairments.

The Commission recommends that the Australian Government, together with state and territory governments, review the National Principles through the Standing Council of Attorneys-General, as well as all amend their legislation on fitness to stand trial to align with the revised National Principles. They also recommend the Australian Government as well as state and territory governments provide step-down options for the placement of people from the forensic system to facilitate their progressive transition to less restrictive environments. This includes medium and low secure and community-based accommodation options.

- People with disability particularly people with mental health conditions come into contact with the police as alleged offenders, and as victims of or witnesses to a crime. Some people with disability reported positive experiences with police but more generally Police responses to people with disability are shown to be inadequate or giving rise to further distress and poor outcomes.

The Commission commissioned a report, *Police responses to people with disability* (Police responses report), by researchers at the University of New South Wales. The report concluded that while some individual police adopt good practices, police forces generally have not formulated systemic approaches to engaging with people with disability.

The Commission recommend the Australian Government and state and territory governments collaborate with people with disability in the co-design, implementation, and evaluation of strategies to improve police responses to people with disability. They also stress the importance of implementing an alternative reporting pathway. The Police responses report identified the barriers faced by people with disability who are victims or witnesses of crime to coming forward to police and being believed. The report found police responses were often inadequate because people coming forward could not give a clear account of what occurred, and consequently were often dismissed as either substance affected or as wasting police time.

- No jurisdiction in Australia, with the partial exception of New South Wales, comprehensively collects or publishes data that records the number of people with disability in criminal justice systems or identifies the type of disability people have in custodial settings. Nor do we have data disaggregated for intersectional characteristics such as First Nations status, culturally and linguistically diverse status, and gender.

The lack of complete, consistent, and disaggregated data about people with disability in the criminal justice system has serious implications. These include limitations on the ability to identify and plan for the disability support needs of the prison population together with evaluations of programs, services and policies offered in custodial settings; because they fail to identify and consider their use by, relevance to, and efficacy for people with disability. There is also little assessment of diversionary programs and evaluation of the practical effect of legislative changes.

The Commission recommend that all states and territories should commit to cooperation and consistency in data collection in the criminal justice system, which should be informed by the recommendations on data consistency in Volume 12, *Beyond the Royal Commission*.

- First Nations people with disability are uniquely marginalised in Australia. The experiences of First Nations people with disability cannot be separated from the ongoing impacts of colonisation, intergenerational trauma and racism experienced by First Nations people more generally. Due to a complex history of trauma, stigma and shame, First Nations people can be reluctant to identify with disability.

First Nations people with disability have identified a lack of culturally safe disability services and supports across almost every system they encounter. Denial of or limited access to safe, inclusive, quality services and supports results in continued neglect of First Nations people with disability.

Barriers to accessing the NDIS in remote areas have resulted in neglect of First Nations people with disability. The NDIA should consult on culturally appropriate assessment and consider modifying eligibility criteria in some circumstances. It should also increase the number and coverage of culturally safe services for First Nations communities through long-term investment and a flexible approach to funding to address systemic policy and service delivery failures including investing in a First Nations disability workforce and understanding rights within a First Nations framework.

Significant change is required to dismantle the barriers many First Nations people with disability face to accessing culturally safe and quality services and supports. The Commission identified the need for reforms to address the over-representation of First Nations people in particularly in the child protection system and the criminal justice system. The Commission recommends that Governments commit to cultural safety in mainstream services which must be robust and based on genuine engagement with First Nations people and their culture and bring about a fundamental shift within organisational cultures and mindsets.

- The governance and leadership of organisations providing disability services influence how they embed a human rights culture and identify and manage risk, including the risk of maltreatment of the people receiving their services.

Disability service providers need robust and transparent policies and procedures to detect and respond to violence, abuse, neglect, and exploitation. These should support people with disability, their families, and advocates, as well as service provider staff, to raise concerns, make complaints and report incidents.

Skilled and capable disability support workers including peer workers are crucial to providing safe and high-quality services. Career pathways, including remuneration commensurate with skills, experience, and expertise, will assist with workforce retention.

Rigorous disability support worker screening and recruitment processes, as well as effective training and supervision of workers, are also needed to prevent violence, abuse, neglect, and exploitation. The Commission recommended a national disability support worker registration scheme to support workforce development.

The Commission considers a national disability support worker registration scheme could help achieve this through a framework to professionalise and stabilise the disability workforce. It would also “promote professionalisation of the disability workforce and is key to driving increased quality of services.” Registration can attract workers to the sector and promote respect and recognition for the important work they do.

A shortage of disability support workers across Australia and recruiting and retaining a suitably skilled workforce continues to be a significant challenge for service provider organisations. The crisis in the disability workforce has been driven both by the growth of the sector and the large numbers of workers who are leaving the industry. Worker stress due to the insecure nature of their employment, low pay, concerns about having the skills and time to complete all aspects of their jobs within paid working hours, and undervaluing of disability support work contribute to these workforce shortages.

The Commission supports appropriate funding to meet current and future needs. This is a recommendation that MHCC supports identified in our *Shifting the Balance*, Position Paper.¹²

- Embedding human rights is an important way to prevent violence, abuse, neglect, and exploitation. Disability service providers in the community have an important role to play in respecting, protecting, and fulfilling the rights of people with disability.

A commitment to a human rights approach means ensuring, so far as practicable, those who lead, manage and work in service providers understand the nature and scope of the human rights of people with disability, how their decisions and practices impair or enhance a person's

rights and how to incorporate respect for human rights in practice at all levels of service provision on a day-to-day basis.

Training in supported decision-making as a core skill for the sector is strongly advocated by the Commission and strongly supported by MHCC and its members, who consider all service providers should take steps to ensure the views and wishes of the people with disability using their services are at the forefront of decision-making about service delivery. Deficiencies or gaps in support worker training can lead to maltreatment and inadequate responses when violence or abuse occur.

- People with disability and their carers often find service provider complaints processes confusing or ineffective to address and resolve their concerns and complaints. Service providers should be aware of and address the barriers people face when raising concerns and complaints or reporting incidents.

The Commission recommend that states and territories each establish or maintain an independent 'one-stop shop' complaint reporting, referral, and support mechanism to receive reports of violence, abuse, neglect, and exploitation of people with disability. They also propose a phone line to provide warm referrals to appropriate complaints bodies, to reduce the burden of navigating complex complaints mechanisms.

Recommendations also include the development of universal guidelines to support organisations to implement complaint handling systems and processes that are accessible and responsive to people with disability. In particular, the Commission highlight the need for better guidance about how to handle more serious complaints about abuse and neglect and how to conduct investigations in a trauma-informed way that prioritises the meaningful participation of people with disability.

Service providers should align their policies and practices with elements of best practice identified in the Commission's Report. This includes taking an integrated and holistic approach to supporting the health, safety and wellbeing of their service users following an incident and in the long term. It requires an assessment of individual needs and preferences, the nature and impact of the incident, and the effect of any investigation or court process.

- A significant proportion of providers operate without being registered due to the cost and regulatory burden associated with registration. The availability of unregistered providers is seen by many people with disability as a key element of the principle of choice and control that underpins the NDIS. This reflects the shortage of experienced and qualified disability support workers and allied health professionals.

Provider registration is a critical safeguard for people with disability. NDIS providers should be encouraged to register with the NDIS Commission. MHCC write about their concern in relation to this issue in their submission to the NDIS Review.¹³

The Commission recognise that imposing additional regulatory obligations on unregistered providers could have unintended consequences on the supply of support workers and the choice and control of people with disability. They therefore recommend that any decision to change the existing regulatory obligations of unregistered providers should therefore be informed by the views of people with disability and their supporters, advocates, and disability rights organisations.

- The National Disability Insurance Scheme (NDIS) provides funding to eligible people with a permanent and significant disability so they can access reasonable and necessary supports and services through individual support plans. Critical to its success is increased and equitable access for all people with disability to mainstream services and community supports. This includes services provided by all governments. However, there continues to be confusion over the roles and responsibilities of the NDIS and those of mainstream and other community managed services.

The Australian Government's independent review of the NDIS was due to report in October 2023. As part of its terms of reference, the review is looking at 'improving the interaction

between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector’.

Given the NDIS review is underway the Commission did not make recommendations on these issues. Nevertheless, they stressed that it is critical that national disability policy and strategic arrangements ensure governments meet their obligations to provide inclusive and accessible mainstream services.

- The National Disability Agreement is the intergovernmental agreement between the Australian Government and state and territory governments relating to disability policy and the provision of services. It provides the national framework and key areas of reform for the provision of government support to services for people with disabilities. In its 2019 review of the National Disability Agreement, the Productivity Commission concluded it was no longer fit for purpose and had a weak influence on policy. The current version is out of date, particularly because it does not reflect the implementation of the NDIS.

In their Report, the Commission agree with the Productivity Commission’s conclusion that an ‘overarching disability agreement’ is needed to clarify the relationships between the policy and strategy arrangements and promote greater accountability. They therefore recommend that the Australian Government and state and territory governments, through the Disability Reform Ministerial Council, develop a new National Disability Agreement to provide the framework for collaboration.

- Importantly the Commission talk about what might happen following the Royal Commission. The last volume of the Final report recommends key steps for implementing and monitoring the recommendations of the Royal Commission. It asks that the Australian Government and state and territory governments should each publish a written response to the Final Report by 31 March 2024, and that the Disability Reform Ministerial Council should oversee the implementation of the Commission’s recommendations.

They also recommend that the independent National Disability Commission should provide an annual assessment on the implementation of the recommendations; and evaluate their effectiveness. Likewise, they suggest that high quality data and research are important for measuring the effectiveness of policy and holding governments and organisations to account.

- In their Final report, the Commission make a range of recommendations designed to achieve significant change for people with disability. If implemented, they will help prevent violence against, and abuse, neglect, and exploitation of, people with disability. They will also embed the human rights of people with disability in government policy and practices to ensure respect for their inherent dignity and individual autonomy.

In Volume 12, *Beyond the Royal Commission*, are the Commission’s four steps for responding to, implementing, and monitoring their recommendations. The Commission write that “People with disability, their supporters and representative organisations have been at the centre of our work and have invested a great deal in the Royal Commission. They rightly expect governments to respond in a timely manner to our recommendations. The Australian Government and state and territory governments should table their responses in their respective parliaments”.

*

MHCC wish to congratulate the Royal Commission on what can only be described as the most robust inquiry into the experiences of people with disability across multiple service contexts in Australia. The report presents the Commission’s vision for an inclusive Australia and their recommendations for realising the human rights of people with disability. We express thanks on behalf of our members for the Commission’s clear articulation of so many recommendations that we actively support.

We present this synopsis and analysis of what has been a massive undertaking on the part of the Commission to provide our members and the community-managed sector with an

overview of the issues of principal interest to our sector. It doesn't in any way suggest that there aren't many other extremely important areas that might affect and be of concern to people with disability and the mental health community-managed sector, but we felt it was important to provide a digestible overview that could direct readers to certain areas across the 12 Volumes that may be of particular relevance to its work with people living with mental health conditions and psychosocial disability.

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7 November 2023

For quick access to the Final Report and all 12 Volumes of the Final Report see Appendix 1

APPENDIX 1

Please follow these links:

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Volume 12

ENDNOTES

¹ Letters Patent (Cth), 4 April 2019, as amended, (c).

² Royal Commission, 2023, *Final Report: Executive summary, Our vision for an inclusive Australia and Recommendations*. Available: <https://disability.royalcommission.gov.au/publications/final-report>

³ Senate Community Affairs References Committee, Parliament of Australia, *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*, November 2015, pp xv, 268 [10.10].

⁴ Royal Commission, 2023, *Final Report: Executive summary, Our vision for an inclusive Australia and Recommendations, Supported Decision-Making Principles*, p.288, Rec 6.6. Available: Royal Commission, 2023, *Final Report: Executive summary, Our vision for an inclusive Australia and Recommendations*. Available: <https://disability.royalcommission.gov.au/publications/final-report>

⁵ Shane Clifton, 2020, *Hierarchies of power: theories and models of disability and their implications for violence, abuse, neglect, and exploitation of people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, p 33.

⁶ Christine Bigby, Terry Carney, Shih-Ning Then, Ilan Wiesel, Craig Sinclair, Jacinta Douglas and Julia Duffy, 2023, *Diversity, dignity, equity and best practice: a framework for supported decision-making*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 175.

⁷ MHCC Learning and Development, Online training module Supported Decision-Making: What it is and why it's important, Available <https://mhcc.org.au/course/introduction-to-supported-decision-making/>

⁸ Transcript, Angel Dixon, Public hearing 31, 14 December 2022, P-181 [25–27].

⁹ Royal Commission, 2023, *Final Report: Executive summary, Our vision for an inclusive Australia and Recommendations, Supported Decision-Making Principles*, p.288, Rec 6.6. Available: Royal Commission, 2023, *Final Report: Executive summary, Our vision for an inclusive Australia and Recommendations*. Available: <https://disability.royalcommission.gov.au/publications/final-report>

¹⁰ Australian Government Department of Social Services, National Disability Advocacy Framework 2023–25, June 2023, p 3.

¹¹ National Disability Advocacy Program¹, Australian Government Department of Social Services, web page, 24 June 2022. www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap

¹² Mental Health Coordinating Council, 2022, *Shifting the Balance*. Available: <https://mhcc.org.au/wp-content/uploads/2022/11/Shifting-the-Balance-MHCC-2022.pdf>

¹³ Mental Health Coordination Council, 2023, Submission to the NDIS Review. Available: https://mhcc.org.au/wp-content/uploads/2023/06/MHCC_Submission_NDIS-Review_14062023.pdf



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