

Appendix A: NSW Government response to Disability Royal Commission recommendations

31 July 2024

The tables below provide NSW Government responses to the 222 recommendations in the 12 volumes of the Disability Royal Commission's final report, which was published on 29 September 2024 and is available at: <https://disability.royalcommission.gov.au/publications/final-report>.

The first recommendation is Recommendation 4.1. There are no recommendations in volumes 1, 2 or 3.

At the Disability Reform Ministerial Council meeting on 3 November 2023, Australian Government, State and Territory Disability Ministers agreed in-principle to the allocation of recommendations across the Australian Government and States and Territories, as follows:

- Joint Australian Government, and States and Territories: 85 recommendations.
- Australian Government: 84 recommendations.
- States and Territories: 50 recommendations. This includes 44 recommendations for all States and Territories and 6 recommendations for specific States and Territories, including 2 for NSW.
- Non-government and Australian Government: 3 recommendations.

There is one joint recommendation (Recommendation 4.30) with two distinct parts, the first directed to the Australian Government and the second to States and Territories. The NSW Government has noted the first part and responded to the second.

This means the NSW Government response includes joint responses to 84 recommendations and NSW responses to 47 recommendations, a total of 131 responses. In some instances, the NSW Government response includes a NSW-specific comment in addition to the joint response, and this is clearly indicated in the tables. The NSW Government notes the remaining 91 recommendations allocated for other governments to respond.

Volume 4: Realising the Human Rights of People with Disability

Volume 4 includes 34 recommendations. Two recommendations have been allocated for joint response by the Australian Government and States and Territories. The remaining 32 recommendations have been allocated to the Australian Government and are noted by the NSW Government.

| Recommendation | Response |
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| <p>Recommendation 4.1 Establish a Disability Rights Act The Australian Government should commit to the enactment of a Disability Rights Act and take the necessary steps to introduce the legislation into Parliament and support its enactment. The necessary steps should include consultation with people with disability, disability representative organisations and other key stakeholders.</p> | <p>NSW Response to recommendations 4.1 to 4.21: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 4.2 Objects of the Disability Rights Act The objects of the Disability Rights Act should include giving effect to Australia’s obligations under, and the general principles set out in, the <i>Convention on the Rights of Persons with Disabilities</i>.</p> | |
| <p>Recommendation 4.3 Principles in the Disability Rights Act The Disability Rights Act should include a set of guiding principles designed to promote and advance the rights of people with disability in Australia. The Disability Rights Act should require that a person or entity exercising functions under the Act have regard to the principles.</p> | |
| <p>Recommendation 4.4 Future review of the Disability Rights Act a) The Australian Government should ensure that a review of the Disability Rights Act is undertaken in consultation with people with disability within five years of the commencement of the Act. The review should include consideration of:</p> <ul style="list-style-type: none"> • how the Act should be improved • the effectiveness of compliance mechanisms | |

- the availability of appropriate remedies that meet the needs of people with disability whether and how duties in the Act should be extended or applied to additional persons or entities, including private sector providers under the National Disability Insurance Scheme (NDIS).

b) Commissioners Bennett, Galbally and McEwin alternatively recommend the final point above be considered by the Australian Government as a priority and that these additional duty-holders be included from the commencement of the Act.

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

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

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

Recommendation 4.6 The right to equal recognition before the law

a) The Disability Rights Act should recognise that people with disability have the right to recognition as a person before the law. Accordingly, they have the same rights as other members of the community to make decisions that affect their lives to the full extent of their ability to do so.

- b) The Disability Rights Act should recognise:
- the right of people with disability to access and use supports in making and participating in decisions that affect them, communicating their will and preferences, and developing their decision-making ability

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

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

The Disability Rights Act should recognise:

- people with disability have the right to live free from all forms of exploitation, violence and abuse, including the right to freedom from gender-based violence and abuse
- people with disability have the right to accessible information and education on how to avoid, recognise and report exploitation, violence and abuse
- people with disability who are victims of any form of exploitation, violence or abuse have the right to:

- access protection services that promote the health, welfare, dignity and autonomy of such persons
- access protection services that are sensitive and responsive to the different needs and experiences of people with disability, due to one or more attributes such as sex; gender identity; sexual orientation; ethnicity; language; race; religion, faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
- report allegations of exploitation, violence and abuse, with protection from victimisation for making a report.

Recommendation 4.8 The right to liberty and security of person

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

Recommendation 4.9 The right to equitable access to health services

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

- a) the right to the same range, quality and standard of free and affordable health care and programs as people without disability
- b) the right to exercise choice about healthcare options and between available services
- c) the right to access and receive quality health services appropriately adapted or specifically designed to meet the needs of the person with disability

- d) the presumption of legal capacity and provision for supported decision-making
- e) the right to adjustments required to access services and to receive treatment and care (to the extent that a duty-holder is required to provide adjustments in accordance with the *Disability Discrimination Act 1992* (Cth))
- f) the right to accessible information
- g) the right of First Nations people with disability to receive health care that is culturally safe and recognises the importance of their personal connection to community and Country
- h) the right to access health services that are safe, sensitive and responsive to the intersectional needs and experiences of the person with disability, noting that intersectional needs and experiences may be due to a variety of attributes, including sex; gender identity; sexual orientation; ethnicity; language; race; religion; faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
- i) the right to voice opinions and to make complaints about health services.

Recommendation 4.10 Public authority conduct

- a) The Disability Rights Act should make it unlawful for a ‘public authority’ to:
 - act in a way that is incompatible with a right in the Disability Rights Act
 - fail to give proper consideration to a right where relevant to the decision being made.
- b) ‘Public authority’ should be defined to include:
 - a minister of the Australian Government when exercising a statutory power or authority
 - a Commonwealth entity defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)

- an official of a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth)
- an individual who is employed by, or engaged in assisting, a Commonwealth entity or a staff member of a Commonwealth entity on behalf of the entity or the Commonwealth
- a contracted service provider for the Commonwealth when providing goods or services under a Commonwealth contract, as well as an officer or employee of the contracted service provider for the contract, and someone who provides goods and services for the purposes of the contract
- an individual who is appointed or engaged as an officer or employee of a federal court or tribunal when acting in an administrative capacity
- other entities prescribed by regulations as public authorities for the purposes of the Disability Rights Act.

c) The Disability Rights Act should provide for a mechanism through which a non-Commonwealth entity could ask the minister to declare that the entity is subject to the obligations of a public authority under the Act and for a register of such entities to be published.

Recommendation 4.11 Consultation with people with disability

a) The Disability Rights Act should require Commonwealth entities (as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)), in developing and evaluating policies, laws and programs and in planning new initiatives or making major changes to services that are provided to the public, or have a direct and significant impact on the public, to consult with:

- people with disability (including disability representative organisations), recognising the special importance of consulting

and actively involving First Nations people with disability in issues that affect them

- children and young people with disability where appropriate, or representatives of children and young people (including, as relevant, disability representative organisations, the National Children's Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner or equivalents in the States and Territories)
- families, carers and supporters of people with disability (which could include their representative organisations) on issues that will or could affect families, carers and supporters in their caring role.

b) The Disability Rights Act should specify the nature of any consultation required and the consequences of a failure to consult.

c) The Disability Rights Act should provide that the consultation requirement does not give rise to a civil cause of action in any person or organisation.

d) The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) should be amended, or an accompanying legislative instrument be prepared, requiring statements of compatibility accompanying Bills and legislative instruments to provide information about relevant actions taken by Commonwealth entities to comply with the consultation requirement in the Disability Rights Act.

Recommendation 4.12 Positive duty to promote disability equality and inclusion

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

b) The requirement in a) should include the Commonwealth entity having due regard to the need to:

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

Recommendation 4.13 The duty to provide an interpreter

a) The Disability Rights Act should require Commonwealth entities to provide (arrange and fund) an appropriately trained and credentialed interpreter when required by a person with disability who is accessing or using its services or engaging with its statutory functions. Interpreters may be required in Auslan, First Nations sign languages or spoken languages other than English.

b) The Disability Rights Act should provide that it is not a breach of the above duty if the relevant Commonwealth entity can demonstrate that:

- there was no appropriately qualified interpreter available after reasonable enquiry
- the conversation or activity that the interpreter was required for could not reasonably have been undertaken at an alternative time when an interpreter would have been available.

Recommendation 4.14 The duty to provide accessible information

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

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

Recommendation 4.15 Duties supporting compliance with the Disability Rights Act

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

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

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

The Disability Rights Act should require interpretation of the Act to be compatible, as far as possible, with the international human rights

treaties to which Australia is a party, including the *Convention on the Rights of Persons with Disabilities*, and with the United Nations Declaration on the Rights of Indigenous Peoples.

Recommendation 4.17 Limitations on rights

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

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

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

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

during the conduct of a formal inquiry

h) require the examination of witnesses under oath or affirmation during the conduct of a formal inquiry

i) enter into an enforceable undertaking with a person or entity in relation to compliance with the Act (engaging Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth))

j) issue a compliance notice where the National Disability Commission reasonably believes that the relevant person or entity, without reasonable excuse, has failed to comply with the Act

k) apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for enforcement of a compliance notice

l) apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for an injunction (engaging Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth)) to prevent or stop a contravention of the Act

m) intervene in any proceedings before a court or tribunal that relate to the application or interpretation of the Act.

These functions would be in addition to those recommended for the National Disability Commission in Volume 5, *Governing for inclusion*, and Volume 12, *Beyond the Royal Commission*. The Australian Government should provide the National Disability Commission with dedicated resources to undertake these functions.

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

- a) The National Disability Commission should co-design its complaints mechanism under the Disability Rights Act with people with disability, taking into account:
- the national guideline for accessible and responsive complaint handling and investigative practice to be co-designed with people

with disability (recommended in Volume 11, Independent oversight and complaint mechanisms)

- processes to support referrals to police and other regulatory or oversight bodies (noting that Volume 11 recommends a ‘one-stop shop’ independent complaint reporting, referral and support mechanism in each State and Territory)
- key features for effective remedies outlined in this Final report.

b) Acts, omissions or practices that are unlawful under the Disability Rights Act (with the exception of duties supporting compliance with the Act, such as reporting obligations) should be added to the definition of ‘unlawful discrimination’ under section 3(1) of the *Australian Human Rights Commission Act 1986* (Cth). This would enable the Australian Human Rights Commission to offer dispute resolution for relevant Disability Rights Act matters alongside related human rights and discrimination complaints involving a public authority.

Recommendation 4.20 Enabling remedies through the courts

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

a) the following persons can bring a claim to the Federal Court of Australia or the Federal Circuit and Family Court of Australia that a relevant duty-holder has acted in contravention of the Disability Rights Act (other than compliance with the consultation requirement, notices of the National Disability Commission, duties supporting compliance with the Act such as reporting and self-audit obligations, and the positive duty to promote disability equality and inclusion):

- an aggrieved person on their own behalf; an aggrieved person on behalf of themselves and others who are also aggrieved
- two or more aggrieved persons on behalf of themselves or others who are also aggrieved (a group claim)
- a person or disability representative organisation on behalf of one or more aggrieved persons (a representative claim).

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| <p>b) where a claim is brought before a court under a) and the court finds that a person or entity has acted incompatibly with the Disability Rights Act, it can make any order it considers just and appropriate, including damages</p> <p>c) provisions in relation to costs are aligned with Commonwealth discrimination law, as amended following the 2022–23 review by the Australian Government Attorney General’s Department.</p> | |
| <p>Recommendation 4.21 Strengthening awareness and understanding of disability rights</p> <p>a) The Disability Rights Act should provide the National Disability Commission with statutory functions to:</p> <ul style="list-style-type: none"> • promote understanding and acceptance, and the public discussion, of the rights of people with disability under the Act • develop and deliver guidance materials and educational and training programs in relation to the rights and duties under the Act. Guidance should include how the intersectional experiences and identities of people with disability can affect the ways in which rights are limited or promoted in practice. <p>b) The National Disability Commission should co-design and co-deliver training programs and resources with people with disability, and with the Australian Human Rights Commission where relevant, to provide a complete picture of human rights protections for people with disability under Disability Rights Act and <i>Disability Discrimination Act 1992</i> (Cth).</p> <p>c) The Australian Government should provide the National Disability Commission and the Australian Human Rights Commission with dedicated resources to undertake these roles.</p> | |
| <p>Recommendation 4.22 Strengthening disability rights protection in State and Territory laws</p> <p>a) States and Territories should enact legislation complementary or equivalent to the Australian Disability Rights Act, taking into account</p> | <p>Joint Response: <u>Subject to further consideration</u></p> <p>The Australian Government and State and Territory governments are committed to working with people with disability, their families, carers, supporters and representative organisations to consider the most</p> |

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| <p>their own legal frameworks.</p> <p>b) The Disability Rights Act should provide that the Act is not intended to exclude or limit the operation of a State or Territory law that furthers the objectives of the <i>Convention on the Rights of Persons with Disabilities</i> and is capable of operating concurrently with the Act.</p> | <p>appropriate and impactful ways to strengthen disability rights protections.</p> <p>This recommendation is being considered alongside the findings and recommendations of the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework.</p> |
| <p>Recommendation 4.23 Burden of proof in direct discrimination</p> <p>The <i>Disability Discrimination Act 1992</i> (Cth) should be amended by inserting new subsections 5(1) and 5(1A). The subsections would read as follows:</p> <p>(1) For the purposes of this Act, a person (the alleged discriminator) directly discriminates against another person (the aggrieved person), if the person treats, or proposes to treat, the aggrieved person unfavourably on the ground of the aggrieved person’s disability.</p> <p>(1A) For the purposes of subsection (1), an alleged discriminator who has treated, or proposes to treat, the aggrieved person unfavourably bears the burden of proving that the treatment or proposed treatment was not on the ground of the aggrieved person’s disability.</p> | <p>NSW Response to recommendations 4.23 to 4.29: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 4.24 Reforming indirect discrimination</p> <p>The <i>Disability Discrimination Act 1992</i> (Cth) should be amended by inserting a new subsection 6(3) to substitute existing subsections 6(3) and (4) as follows:</p> <p>6(3) Subsection (1) or (2) does not apply if avoiding the discrimination would impose an unjustifiable hardship on the alleged discriminator.</p> | |
| <p>Recommendation 4.25 Adjustments</p> <p>The <i>Disability Discrimination Act 1992</i> (Cth) should be amended by replacing all references to ‘reasonable adjustments’ with ‘adjustments’.</p> | |
| <p>Recommendation 4.26 Standalone duty to make adjustments</p> <p>The <i>Disability Discrimination Act 1992</i> (Cth) should be amended to include</p> | |

the following provision:

Duty to make adjustments

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

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

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

Recommendation 4.27 Positive duty to eliminate disability discrimination

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

Duty to eliminate discrimination on the ground of disability

- (1) A person must take reasonable and proportionate measures to eliminate all forms of discrimination on the ground of disability.
- (2) In determining whether a measure is reasonable and proportionate the following factors must be considered –
 - (a) the size of the person’s business or operations;
 - (b) the nature and circumstances of the person’s business or operations;
 - (c) the person’s resources;
 - (d) the person’s business, risk management plans and operational priorities;
 - (e) the practicability and the cost of the measures;
 - (f) whether the person has a disability action plan;
 - (g) nature and extent of the person’s consultation with any person with disability concerned; and
 - (h) all other relevant facts and circumstances.

Other duties not limited or otherwise affected

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

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

Recommendation 4.28 Systemic discrimination

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

Recommendation 4.29 Offensive behaviour

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

Section 39A Offensive behaviour because of disability

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

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- (b) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it:

- (a) causes words, sounds, images or writing to be communicated to the public; or
- (b) is done in a public place; or
- (c) is done in the sight or hearing of people who are in a public place.

(3) In this section:

public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

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| <p>Recommendation 4.30 Vilification because of disability</p> <p>a) The <i>Disability Discrimination Act 1992</i> (Cth) should be amended by inserting a new provision as follows: <i>Section 39C Vilification because of disability</i> <i>It is unlawful for a person (the first person) to do an act otherwise than in private, if:</i></p> <ul style="list-style-type: none"> <i>(a) the act involves threats by the first person to perpetrate or encourage violence or serious abuse directed at another person or group of people;</i> <i>(b) the act is reasonably likely, in all the circumstances, to incite hatred towards another person or a group of people; and</i> <i>(c) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.</i> <p>b) States and Territories that already have legislation imposing criminal penalties for vilification of people on grounds that do not include disability should extend the legislation to vilification of people on the ground of disability.</p> | <p>NSW Response:</p> <p>Recommendation 4.30(a) <u>Note</u> This recommendation is directed at the Australian Government.</p> <p>Recommendation 4.30(b) <u>Subject to further consideration</u> NSW is committed to providing appropriate protections for people with disability. Reviews are currently being undertaken by the NSW Law Reform Commission into the <i>Anti-Discrimination Act 1977</i> (NSW) and section 93Z of the <i>Crimes Act 1900</i> (NSW). The outcomes of, and recommendations arising from, these reviews will need to be considered by NSW and may directly impact recommendation 4.30(b).</p> |
| <p>Recommendation 4.31 Disability discrimination and migration law</p> <p>a) The Australian Government should initiate a review of the operation of section 52 of the <i>Migration Act 1958</i> (Cth), insofar as it authorises discrimination against people with disability seeking to enter Australia temporarily or permanently. The review should consider changes to the legislation and migration practices to eliminate or minimise the discrimination.</p> <p>b) The review should be conducted with particular reference to the rights recognised by the <i>Convention on the Rights of Persons with Disabilities</i> and the Concluding observations on the combined second and third periodic reports of Australia made by the United Nations Committee on the Rights of Persons with Disabilities.</p> | <p>NSW Response for recommendations 4.31 to 4.34: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

Recommendation 4.32 Unjustifiable hardship

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

11 Unjustifiable hardship

(1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the first person) would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including the following:

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- (aa) the nature and extent of the first person's consultations with any person with disability concerned;
- (ab) the first person's consideration of all available and appropriate alternative measures or actions;
- (b) the effect of the disability of any person concerned;
- (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
- (d) the availability of financial and other assistance to the first person;
- (e) any relevant action plans given to the Commission under section 64.

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

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

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

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

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

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

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

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

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

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

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

Volume 5: Governing for Inclusion

Volume 5 includes seven recommendations.

| Recommendation | Response |
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| <p>Recommendation 5.1 Development of a National Disability Agreement</p> <p>The Australian Government and State and Territory governments should develop a new National Disability Agreement through the Disability Reform Ministerial Council, to be signed by first ministers. The fundamental objective of the Agreement should be to advance equality, inclusion and the rights of people with disability in Australia. The Agreement should provide the framework for intergovernmental collaboration to:</p> <ul style="list-style-type: none"> • develop and implement reforms requiring national attention and coordination, including recommendations of this Royal Commission • implement Australia’s Disability Strategy 2021–2031 (ADS) and the National Disability Insurance Scheme (NDIS). <p>The ADS, NDIS national agreements and policies, and other national disability frameworks should be schedules to the new National Disability Agreement.</p> <p>The Agreement should clearly set out roles and responsibilities of parties to the Agreement.</p> <p>The new National Disability Agreement should be developed and finalised by the end of 2024.</p> | <p>Commonwealth: <u>Subject to further consideration</u> ACT, NSW, NT, QLD, SA, TAS, VIC, WA: <u>Accept in Principle</u></p> <p>The Australian Government and State and Territory governments are committed to ensuring intergovernmental arrangements support collaboration to advance equality, inclusion and the rights of people with disability in Australia and ensure appropriate governance of the disability ecosystem.</p> <p>All governments have agreed to work together, and with the disability community, to:</p> <ul style="list-style-type: none"> • Implement legislative and other changes to the NDIS to improve the experience of participants and restore the original intent of the Scheme, within a broader ecosystem of supports. • Jointly design additional Foundational Supports to be jointly funded through new Federal Funding Agreements, with additional costs split 50-50 between the Commonwealth and jurisdictions. • Undertake a targeted review of Australia’s Disability Strategy 2021-31 to identify practical process, governance and reporting improvements in response to issues identified in the Disability Royal Commission’s inquiry and final report. <p>Governments will respond this recommendation by 31 December 2024, following further consideration alongside relevant recommendations of the NDIS Review.</p> |
| <p>Recommendation 5.2 Review and update of Australia's Disability Strategy</p> | <p>Joint Response: <u>Accept</u></p> <p>The Australian Government, State and Territory governments, and the</p> |

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| <p>The signatories to Australia’s Disability Strategy 2021–2031 (ADS) (the Australian Government, State and Territory governments and the Australian Local Government Association) should review and update the ADS to ensure it reflects the issues raised and recommendations made by this Royal Commission.</p> <p>This review and update should:</p> <ul style="list-style-type: none"> • consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Engagement Plan, Outcomes Framework, Guiding Principles, reporting arrangements and Data Improvement Plan • be undertaken in partnership with people with disability and their representative organisations. <p>An updated ADS should be released by the end of 2024.</p> | <p>Australian Local Government Association have commenced a focused review of Australia’s Disability Strategy 2021-31 to consider the issues raised in the Disability Royal Commission and to take account of feedback from the first two years of Australia’s Disability Strategy 2021-31 implementation.</p> <p>The review is being undertaken with the active involvement of the Australia’s Disability Strategy Advisory Council and will consider the Australia’s Disability Strategy 2021-31 and its artefacts and processes, including Targeted Actions Plans (concluding and new). It will focus on identifying practical process, governance and reporting improvements, and addressing key gaps or missing elements.</p> <p>The review will inform the publication of changes to Australia’s Disability Strategy 2021-31 and implementation processes before the end of 2024.</p> <p>A separate major evaluation of Australia’s Disability Strategy 2021-31, focused on outcomes, is due to commence in 2025 and be completed in 2026.</p> |
| <p>Recommendation 5.3 Review and update of disability strategies and plans</p> <p>State and Territory governments should review and update their disability strategies and plans to ensure they reflect the issues raised and recommendations made by this Royal Commission.</p> <p>These reviews and updates should:</p> <ul style="list-style-type: none"> • consider how these strategies and plans align with Australia’s Disability Strategy 2021–2031, including outcomes of Recommendation 5.2 • be undertaken in partnership with people with disability and their representative organisations. <p>The reviews and updates should be completed by mid-2025.</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Disability Inclusion Plan 2021–2025 (DIP) is intended to align with Australia’s Disability Strategy (ADS).</p> <p>The NSW Government will undertake a strategic review of the NSW DIP. This review will examine further opportunities for alignment between the next DIP and the ADS, including the outcomes of recommendation 5.2.</p> <p>Following this review, the NSW Government is expecting to launch a refreshed NSW DIP which will incorporate commitments of the NSW Government in response to the Disability Royal Commission. The NSW Government will partner with people with disability and their</p> |

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| | <p>representative organisations, including the Disability Council NSW, to prepare the refreshed NSW DIP and Disability Inclusion Action Plans (DIAPs).</p> <p>NSW Government departments and prescribed entities will prepare new or remade DIAPs by mid-2025.</p> |
| <p>Recommendation 5.4 Review of national agreements, strategies and plans</p> <p>The Australian Government and State and Territory governments, should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.</p> <p>Reviews should consider:</p> <ul style="list-style-type: none"> • the alignment of national agreements, strategies and plans with Australia’s Disability Strategy 2021–2031 • how funding allocations should recognise the needs and rights of people with disability • the inclusion of specific outcome measures related to people with disability • the development of specific action plans relating to people with disability. <p>National agreements that should be reviewed include the:</p> <ul style="list-style-type: none"> • National Agreement on Closing the Gap • National Housing and Homelessness Agreement • National School Reform Agreement • National Health Reform Agreement • National Mental Health and Suicide Prevention Agreement • National Agreement for Skills and Workforce Development. <p>Other national agreements, strategies and plans to be reviewed should include, but not be limited to, those relating to:</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to ensuring national agreements, strategies and plans support an inclusive Australian society that ensures people with disability can fulfil their potential as equal members of the community, consistent with the vision and purpose of Australia’s Disability Strategy 2021-31 and responsibilities under the United Nations <i>Convention on the Rights of Persons with Disabilities</i>.</p> <p>These considerations will be incorporated into future reviews of relevant agreements, strategies and plans as they become due for renegotiation. This will be considered through the respective governance mechanisms and structures for each agreement, in consultation with disability portfolios.</p> <p>Given the scope and complexity of reviewing these agreements, flexibility for delivery timeframes will be required in undertaking this action.</p> <p>Through a targeted review in 2024, governments will also consider how Australia’s Disability Strategy 2021-31 can be improved to more effectively drive work towards a more inclusive society across all portfolios (see recommendation 5.2).</p> |

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| <ul style="list-style-type: none"> • emergency management, such as those for pandemics and natural disasters • children and young people, such as the National Framework for Protecting Australia’s Children 2021–2031 • employment, education, training and skills, such as the National Workforce Strategy 2022–2027 • legal support, such as the National Legal Assistance Partnership 2020–2025 • health services, such as those for preventative health, community health, and mental health • family and sexual violence, such as the National Plan to End Violence against Women and Children 2022–2032. <p>The reviews of current agreements, strategies and plans should be completed by the end of 2025.</p> | |
| <p>Recommendation 5.5 Establishment of a National Disability Commission</p> <p>The Australian Government should establish the National Disability Commission as an independent statutory body under the Disability Rights Act (see Volume 4). The National Disability Commission should:</p> <ul style="list-style-type: none"> • support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act • monitor and report on outcomes for people with disability across Australia • promote best practice and innovative approaches to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community. <p>The Commission should be chaired by a person with disability and comprise a small group of commissioners. The majority of commissioners should be people with disability, and represent the diversity of people</p> | <p>NSW Response for recommendations 5.5 to 5.6: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

with disability.

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

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

- developing an Outcomes for People with Disability report every two years and tabling it in the Australian Parliament.

The report should:

- detail outcomes achieved under Australia's Disability Strategy 2021–2031 (ADS)
- provide comparative performance assessments on outcomes for people with disability, including the implementation of the ADS, through traffic light reporting across each jurisdiction
- analyse data, including outcomes data from National Disability Insurance Scheme reporting and other relevant reporting from the Australian Government and State and Territory governments. This includes reporting on jurisdictional disability strategies and plans, and reporting from relevant oversight bodies
- include the views and experiences of people with disability, as well as those of families and carers of people with disability
- recommend to governments actions needed to improve outcomes for people with disability
- promote and disseminate information, research and evidence on best practice models for –and innovative approaches to – improving outcomes for people with disability.

This information should be shared across governments, the non-government sector, the private sector and the broader community

- partnering with a diverse range of people with disability, and their families and carers, to develop advice and key reports.

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| <p>Recommendation 5.6 New governance arrangements for disability</p> <p>The Australian Government should establish:</p> <ul style="list-style-type: none"> • a portfolio responsible for the disability and carers policies and programs currently the responsibility of the Social Services portfolio • a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs that are currently under the remit of the Minister for Social Services • a Department of Disability Equality and Inclusion, responsible for the national disability and carers policies and programs that are currently the responsibility of the Department of Social Services. <p>People with disability should be recruited to positions within the new department, including into leadership positions.</p> <p>These new arrangements should be established by the end of 2024.</p> | |
| <p>Recommendation 5.7 Focal points across jurisdictions to implement the CRPD</p> <p>The Australian Government and State and Territory governments should ensure each jurisdiction has a designated focal point for matters relating to implementation of the <i>Convention on the Rights of Persons with Disabilities</i> (CRPD).</p> <p>At the Australian Government level, this should be the new Department of Disability Equality and Inclusion, alongside the Attorney General’s Department.</p> <p>Each CRPD focal point should include people with disability in leadership positions.</p> <p>Each jurisdiction should designate focal points by the end of 2024.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support designating a focal point, or focal points, in each government to support work relating to implementation of the United Nations <i>Convention on the Rights of Persons with Disabilities</i>.</p> |

Volume 6: Enabling Autonomy and Access

Volume 6 includes 41 recommendations.

| Recommendation | Response |
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| <p>Recommendation 6.1 A national plan to promote accessible information and communications</p> <p>The Australian Government and State and Territory governments should develop and agree on an Associated Plan in connection with Australia’s Disability Strategy 2021–2031 to improve the accessibility of information and communications for people with disability. The Associated Plan should be co-designed with people with disability and their representative organisations. It should be finalised by the end of 2024. The Associated Plan should:</p> <ul style="list-style-type: none"> • consolidate and build on existing initiatives and commitments by governments • recognise the diversity of people with disability and the many formats and languages that people may require information to be provided in • consider the roles of various stakeholders, including the Australian Government, State and Territory governments, disability service providers, disability representative organisations and organisations representing people from culturally and linguistically diverse backgrounds • focus, in the first instance, on information and communications about preparing for and responding to emergencies and natural disasters, and public health • include targeted actions to ensure access to information and communications for people with disability in the criminal justice system; supported accommodation, including group homes; Australian Disability Enterprises; and day programs | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments recognise that people with disability have a right to access information and communications on an equal basis with others.</p> <p>All governments support the development of an Associated Plan to Australia’s Disability Strategy 2021-31 to improve the accessibility of information and communications for people with disability.</p> <p>The Australian Government will lead the development of the Associated Plan, building on existing initiatives to deliver a unified approach. The Associated Plan will be developed in consultation with States and Territory governments.</p> <p>The Associated Plan will be developed with people with disability and their representative organisations. This includes First Nations people with disability, people with disability from culturally and linguistically diverse backgrounds, people who are Deaf or hard of hearing, people who are blind or have low vision, Deafblind people, people with intellectual disability, and other people with disability who may face additional barriers to accessing the information and communications they need.</p> <p>Scoping and development will commence in 2024.</p> |

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| <ul style="list-style-type: none"> • identify and allocate appropriate funding and resources for delivery • include mechanisms for review and public reporting of progress made against the Associated Plan. | |
| <p>Recommendation 6.2 Increase the number of Auslan interpreters The Australian Government and State and Territory governments, through the Disability Reform Ministerial Council, should commission the development of a workforce strategy to increase the number and quality of Auslan interpreters. The strategy should:</p> <ul style="list-style-type: none"> • be based on a robust demand-supply analysis to quantify the current gaps and shortages in interpreting services. This includes analysis of qualifications, specialisations, geographic coverage, and the availability and use of face-to-face interpreting and Video Remote Interpreting • include costed initiatives to: <ul style="list-style-type: none"> – increase the number of Auslan interpreters, including the provision of scholarships and stable ongoing employment opportunities, particularly in under-serviced areas – support specialisations in health, legal and other critical sectors (including minimum qualifications) – provide ongoing professional development and industry standards to support a high-quality interpreter workforce – increase and retain Auslan interpreters who are First Nations or from culturally and linguistically diverse backgrounds – raise awareness and promote pathways to becoming an Auslan interpreter. <p>The strategy should be developed by September 2024, and implementation of the strategy should begin by January 2025.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments recognise the critical role Auslan interpreters play in supporting people who are Deaf or hard of hearing to access the information and communications they need.</p> <p>Governments also recognise Deaf interpreters and translators who support people from culturally and linguistically diverse backgrounds or are more familiar with foreign sign languages, people with sensory or cognitive disability, people who are educationally or linguistically disadvantaged, or people who have limited conventional Auslan.</p> <p>All governments support nationally coordinated work to boost the Auslan and Deaf interpreter workforce. As part of its work developing an Associated Plan under Australia’s Disability Strategy 2021-31 to improve the accessibility of information and communications for people with disability consistent with recommendation 6.1, the Disability Reform Ministerial Council will consider strategies, initiatives and approaches to boost the Auslan and Deaf interpreter workforce.</p> |

Recommendation 6.3 Access to appropriately skilled and qualified interpreters

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

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

Interpreters in disability service provision

The NDIA should:

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

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

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

NSW Response: Note

This recommendation is directed at the Australian Government.

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| <p>The NDIS Quality and Safeguards Commission should amend the NDIS Workforce Capability Framework to provide that the Communicate Effectively Core Capability for Advanced Support Work explicitly includes working with interpreters.</p> | |
| <p>Recommendation 6.4 Terms and definitions in guardianship and administration legislation</p> <p>a) States and Territories should amend their guardianship and administration legislation to:</p> <ul style="list-style-type: none"> • include the terms ‘support order’, ‘support agreement’ and ‘supported persons’ • remove the terms ‘guardianship order’ and ‘administration order’ or ‘financial management order’, and replace these with ‘representative order’ • remove the terms ‘guardian’ and ‘administrator’ or ‘financial manager’, and replace these with ‘representative’ • remove the term ‘enduring guardian’ and replace this with ‘enduring representative’ • remove the terms ‘enduring guardianship’ and ‘enduring power of attorney’, and replace these with ‘enduring representation agreement’ • remove the terms ‘decision-making capacity’, ‘capacity’ and ‘mental incapacity’, and replace these with ‘decision-making ability’. <p>b) The new and replacement terms should be defined consistently with the definitions provided in Table 6.2.11.</p> <p>c) States and Territories should amend the title of their guardianship and administration legislation to refer to decision-making. For example, ‘Supported and represented decision-making Act’ or ‘Decision-making Act’.</p> | <p>NSW Response: <u>Subject to further consideration</u> [Text covering Recommendations 6.4 6.5, 6.7, 6.8, 6.9, 6.10, 6.12, 6.13, 6.14 and 6.16, noting the additional responses provided for specific recommendations]</p> <p>The NSW Government is closely considering the recommended reforms in relation to supported decision making and reform of the guardianship framework. A Guardianship Working Group, made up of both government and non-government stakeholders has been engaged to inform the development of the NSW response to these recommendations. The Government is also undertaking a detailed assessment of the operational and resourcing impacts of reforms.</p> |

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| <p>Recommendation 6.5 Objects of guardianship and administration legislation</p> <p>States and Territories should review and reform their guardianship and administration legislation to include a statement of statutory objects which:</p> <p>a) recognises and promotes the rights of people with disability consistent with the <i>Convention on the Rights of Persons with Disabilities</i> (CRPD)</p> <p>b) includes the text of article 12 of the CRPD</p> <p>c) recognises the role of support to enable people who may require support to make, participate in and implement decisions that affect their lives.</p> | <p>NSW Response: <u>Subject to further consideration</u></p> <p>See Rec 6.4</p> |
| <p>Recommendation 6.6 Supported decision-making principles</p> <p>a) States and Territories which have not already done so should review and reform their guardianship and administration legislation to include the following supported decision-making principles. The legislation should oblige all persons exercising powers, carrying out functions or performing duties under the legislation to have regard to the principles.</p> <p>Principle 1 – Recognition of the equal right to make decisions All people have an equal right to make decisions that affect their lives and to have those decisions respected.</p> <p>Principle 2 – Presumption of decision-making ability All people must be presumed to be able to make decisions.</p> <p>Principle 3 – Respect for dignity and dignity of risk All people must be treated with dignity and respect and supported to take risks to enable them to live their lives the way they choose, including in their social and intimate relationships.</p> <p>Principle 4 – Recognition of informal supporters and advocates The role of informal supporters, support networks and advocates who provide support for decision-making should be acknowledged and respected.</p> <p>Principle 5 – Access to support</p> | <p>Commonwealth, ACT, NT, QLD, TAS, VIC, WA: <u>Accept in principle</u></p> <p>NSW and SA: <u>Subject to further consideration</u></p> <p>The Australian Government and State and Territory governments recognise and respect the inherent dignity and individual autonomy of all people with disability, and are committed to ongoing work to ensure people with disability who may require support to make decisions are provided that support. All governments recognise substituted decision-making should only be used as a last resort.</p> <p>Recommendation 6.6 (a)</p> <p>The Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria accept in principle the principles outlined by the Disability Royal Commission.</p> <p>New South Wales, South Australia and Western Australia note that consideration of the Disability Royal Commission’s supported decision-making principles is subject to respective legislative review processes in their respective jurisdictions.</p> <p>Recommendation 6.6 (b)</p> |

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

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

Principle 6 – Decisions directed by will and preferences

The will and preferences of people who may require supported decision-making must direct decisions that affect their lives.

Principle 7 – Inclusion of safeguards

There must be appropriate and effective safeguards where people may require supported decision-making, including to prevent abuse and undue influence.

Principle 8 – Co-designed processes

People with disability, in particular people with cognitive disability, their supporters and representative organisations, should be involved in the development and delivery of policies and practices on supported decision-making.

Principle 9 – Recognition of diversity

The diverse experiences, identities and needs of people who may require supported decision-making must be actively considered.

Principle 10 – Cultural safety

First Nations people and cultural and linguistically diverse people with disability are entitled to supported decision-making that is culturally safe, sensitive and responsive. This includes recognising the importance of maintaining a person's cultural and linguistic environment and set of values.

b) The Australian Government and State and Territory governments should also take steps to review and reform other laws concerning individual decision-making to give legislative effect to the supported decision-making principles.

The Australian Government and State and Territory governments support taking steps to identify other relevant laws concerning decision-making that may require review regarding approaches to supported decision-making.

Recommendation 6.7 Decision-making ability

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

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

NSW Response: Subject to further consideration

See Rec 6.4

Recommendation 6.8 Formal supporters

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

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

Recommendation 6.9 Representatives as a last resort

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

a) the repeal of provisions authorising plenary representation orders

b) a requirement that the relevant tribunal should make an order appointing a representative only if satisfied that:

- the proposed represented person does not have decision-making ability for one or more decisions
- the order is necessary, taking into account:
 - the will and preferences of the proposed represented person
 - the availability and suitability of less intrusive and restrictive measures, including formal and informal support arrangements, negotiation and mediation
- the order will promote the person's personal and social wellbeing

c) a provision that the tribunal must take into account, in deciding whether a person (other than a public official) is suitable for appointment as a representative:

- the will and preferences of the proposed represented person
- the nature of the relationship between the proposed representative and the proposed represented person
- whether the proposed representative is likely to act honestly, diligently and in good faith
- whether the proposed representative has or may have a conflict of interest in relation to any of the decisions referred to in the order

d) a prohibition on a representation order made in the absence of the proposed represented person, unless the tribunal is satisfied that either:

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| <ul style="list-style-type: none"> • the represented person does not wish to attend the hearing in person • the personal attendance of the represented person at the hearing is impracticable or cannot reasonably be arranged <p>e) a requirement that when considering whether a support or representation order should be made for a First Nations person, the tribunal should take into account:</p> <ul style="list-style-type: none"> • the likely impact of the order on the person’s culture, values, beliefs (including religious beliefs) and linguistic environment • the likely impact of the order on the person’s standing or reputation in their community • any other considerations pertaining to the person’s culture <p>f) provisions on the review and revocation of representation orders, including that:</p> <ul style="list-style-type: none"> • a representation order lapses on the expiration of three years after the date on which it is made, unless the tribunal has specified an expiry date (earlier than three years) in the order or the order is renewed • a tribunal must conduct a review of representation order at least once within each three-year period after making the order • when reviewing an order, the tribunal should consider: <ul style="list-style-type: none"> – whether the order is still necessary, considering the factors listed in b) – whether the representative is still eligible and suitable – whether the representative is meeting their responsibilities and carrying out their required functions. | |
| <p>Recommendation 6.10 Decision-making process</p> <p>States and Territories should review and reform their guardianship and administration legislation to include a decision-making process that appointed supporters and representatives are required to follow.</p> | |

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| <p>The decision-making process for both supporters and representatives should involve:</p> <ul style="list-style-type: none"> • supporting the person to express their will and preferences • assisting the person to develop their own decision-making ability. <p>The decision-making process for representatives should also include the following steps and considerations:</p> <ul style="list-style-type: none"> • the person’s will and preferences must be given effect • where the person’s current will and preference cannot be determined, the representative must give effect to what they believe the person’s will and preferences are likely to be, based on all the information available • if it is not possible to determine what the person would likely want, the representative must act to promote and uphold the person’s personal and social wellbeing with the least possible restriction on their dignity and autonomy • a representative may override the person’s will and preferences only where necessary to prevent serious harm. In these circumstances, the representative must act to promote and uphold the person’s personal and social wellbeing with the least possible restriction on their dignity and autonomy. | |
| <p>Recommendation 6.11 Guidelines on maximising participation</p> <p>a) The Australian Guardianship and Administration Council should update the Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings to align with our recommendations on guardianship and supported decision-making (see in particular Recommendations 6.4–6.10 and 6.19).</p> <p>b) The guardianship division or list in each State and Territory tribunal should consider adopting, through practice directions or other appropriate means, the updated Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings.</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>NSW notes that updating the Guidelines is the responsibility of the Australian Guardianship and Administration Council (AGAC). . The Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) already dedicates resources to comply with its statutory obligation to take into account the views of the subject person. This includes through pre-hearing outreach to ensure that the subject person attends the hearing and suitable arrangements are made to facilitate their attendance and participation.</p> |

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| | <p>NCAT is committed to implementing the existing AGAC Guidelines for participation and in many areas exceeds that recommended by the Guidelines.</p> |
| <p>Recommendation 6.12 Public disclosure and confidentiality restrictions States and Territories should amend their guardianship and administration laws or tribunals acts, to:</p> <ul style="list-style-type: none"> • repeal provisions prohibiting publication of material identifying a party to the proceedings as the default position • empower the tribunal to make an order prohibiting publication of material identifying the party to the proceedings, if the circumstances justify such an order, taking into account the will and preferences of that party. | <p>NSW Response: <u>Subject to further consideration</u> The NSW Government supports the overarching principle that a person to whom a guardianship or financial management order relates should be able to tell their story. However, any amendment would need to appropriately balance privacy concerns with this objective. The NSW Government will consider this issue in light of the recommendations about these provisions made by the NSW Law Reform Commission in its Open Justice review. Also see Rec 6.4</p> |
| <p>Recommendation 6.13 Information and education on supported decision-making a) States and Territories should ensure that, where legislation to this effect is not already in place, the functions of public advocates and public guardians include providing information, education and training on supported decision-making to people requiring supported decision-making and their families, private supporters and representatives (present or prospective), disability service providers, public agencies, the judiciary, tribunal members and legal representatives. b) States and Territories should ensure that, where legislation to this effect is not already in place, public advocates and public guardians are empowered to provide advice and assistance to people who may require decision-making support, including in relation to applications for support and representation orders.</p> | <p>NSW Response: <u>Subject to further consideration</u> The Government will consider whether further reform in relation to information and education functions is required in conjunction with its further consideration of other supported decision-making recommendations.</p> <p>In NSW, the Public Guardian already provides a range of information and education to guardians, service providers and the broader community about the role and function of a guardian, alternatives to guardianship, and the process for applications for and reviews of guardianship orders. It also provides support to private and enduring guardians. The NSW Trustee and Guardian also provides information and education to private financial managers.</p> <p>The Ageing and Disability Commission (ADC) also has functions in relation to information, education and advice and assistance in relation to the abuse, neglect and exploitation of adults with disability and older adults.</p> |

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| | Also see Rec 6.4 |
| <p>Recommendation 6.14 Systemic advocacy to promote supported decision-making</p> <p>States and Territories should ensure that, where this is not already the case, a statutory body has a function to undertake systemic advocacy to promote supported decision-making. This function should include:</p> <ul style="list-style-type: none"> • monitoring, investigating, researching, reporting, making recommendations and advising on any aspect of relevant decision-making legislation • encouraging the development and improvement of programs, services and facilities that promote the autonomy of people with disability • supporting organisations that undertake advocacy and education on supported decision-making. | <p>NSW Response: <u>Subject to further consideration</u></p> <p>The Government will consider whether further reform in relation to systemic advocacy functions is required in conjunction with its consideration of other supported decision-making recommendations.</p> <p>The <i>Ageing and Disability Commissioner Act 2019</i> provides that one of the Commissioner’s functions is to inquire into and report on systemic issues relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults. Systemic issues relating to supported decision-making are directly relevant to this function.</p> <p>The Commissioner is also empowered to advise and make recommendations to the Minister on matters relating to the abuse, neglect and exploitation of adults with disability and older adults.</p> <p>Also see Rec 6.4</p> |
| <p>Recommendation 6.15 Updating the national standards for public advocates, public guardians and public trustees</p> <p>Public advocates, public guardians and public trustees, through the Australian Guardianship and Administration Council, should update the National Standards of Public Guardianship and National Standards for Financial Managers to:</p> <ul style="list-style-type: none"> • include the supported decision-making principles • align with reforms to State and Territory guardianship and administration legislation that give effect to Recommendations 6.4–6.10 • amend the relevant standards to provide that public officials acting as representatives should have frequent meetings and | <p>NSW Response: <u>Accept in principle</u></p> <p>Accept in principle, noting that changes to the Standards are a matter for AGAC.</p> |

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| <p>ongoing, accessible communication with the represented person to get to know the person and develop a trusted relationship. Meetings should take place in line with a represented person's preferences as to format and attendees, wherever practicable</p> <ul style="list-style-type: none"> • amend the relevant standards to recognise the importance of ensuring all engagement with First Nations and culturally and linguistically diverse people is culturally safe and responsive and that appropriate training for staff is provided to enable them to do so • amend the relevant standards to recognise the importance of public officials acting as representatives facilitating connections between a represented person and advocates and informal supporters. | |
| <p>Recommendation 6.16 Financial skills development programs</p> <p>a) All public trustees should offer a financial skills development program to people under a representation order appointing the public trustee as a representative. The program should promote financial independence and:</p> <ul style="list-style-type: none"> • be developed in partnership with representative organisations of people with disability, including organisations representing people with intellectual disability, and financial counselling community support organisations • incorporate broad eligibility criteria • be actively promoted, especially among people entering administration. <p>b) Upon successful completion of the program, public trustees should support a person to apply for a review of their order. If a person is not eligible for the program, the public trustee must advise them of their right to apply to the relevant tribunal for review of their order.</p> <p>c) Public trustees should report annually on the number of people who have participated in the program, the number who have completed it and</p> | <p>NSW Response: <u>Subject to further consideration</u></p> <p>In NSW, section 71 of the <i>NSW Trustee and Guardian Act 2009</i> provides that the NSW Trustee and Guardian may authorise a person under financial management to deal with specified financial matters.</p> <p>The NSW Trustee and Guardian has established a financial independence team to support this function as highlighted in the Disability Royal Commission Report. The NSW Government is considering whether further reform is required in conjunction with its consideration of the other supported decision-making recommendations.</p> <p>Also see Rec 6.4</p> |

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| <p>the number who have subsequently transitioned out of administration arrangements.</p> | |
| <p>Recommendation 6.17 Transparency of public trustee fees and charges Public trustees in each State and Territory should:</p> <ul style="list-style-type: none"> publish accessible information about the services they provide to people under administration orders, the fees and charges applicable for those services and the ways in which fees are calculated for each individual on appointment, annually and following any significant change to a person’s circumstances, send to people under administration orders individualised and accessible information detailing the services they will receive and the fees for those services. | <p>NSW Response: <u>Accept in principle</u> In NSW, information about services, fees and charges are already publicly available and provided directly to people under financial management.</p> <p>Fees for financial management are set out in the NSW Trustee and Guardian Regulation 2017. The NSW Trustee and Guardian also has discretion to waive or reduce fees.</p> <p>Current fee structures are published on the NSW Trustee and Guardian website and are provided to people under financial management when a new order is made. Fees and charges are also recorded in a person’s transaction statement.</p> |
| <p>Recommendation 6.18 Review of public trustees fees and charges State and Territory governments should ensure that public trustees’ fees and charges have been independently reviewed since 2019. Where such a review has not been conducted since this time, state and territory governments should arrange a comprehensive review of the fees and charges payable by people under administration orders to the public trustee in their jurisdiction. The reviews should make recommendations to ensure fees and charges are fair and equitable for all people under administration orders.</p> | <p>NSW Response: <u>Accept in principle</u> On 18 May 2023, the Audit Office of NSW released an independent assessment of whether NSW Trustee and Guardian is effectively delivering public guardianship and financial management services, which included recommendations about how NSW Trustee and Guardian could improve its processes to inform on actual costs of service delivery and identify and address cross-subsidisation. The NSW Trustee and Guardian has committed to a range of actions in response to the findings of the Audit Office report that are detailed in the report’s appendix.</p> |
| <p>Recommendation 6.19 Data collection on support and representation arrangements The Australian Government and States and Territories should develop and implement a national approach to collecting and publishing de-identified data on support and representation arrangements, led by the</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments recognise the benefits of a nationally consistent approach to data collection and reporting on support and representation arrangements to support an evidence-based approach to reform in this area.</p> |

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| <p>Australian Institute of Health and Welfare.</p> <p>The national approach should consistently use definitions of ‘disability’, ‘representation’ and ‘support’ arrangements proposed in this Final report, and should employ methodologies which enable reporting on comparisons across jurisdictions and trends over time.</p> <p>The national approach should include collection and publication of data on:</p> <ul style="list-style-type: none"> • numbers of formally appointed representatives and supporters, disaggregated appropriately • the extent to which people with disability who are the subject of the proceedings participate in the proceedings and the manner in which they participate (for example, in person or via alternative technological means) • numbers of representative agreements commenced, terminated, revoked, varied or reviewed • the extent to which people with disability who are the subject of the proceedings are legally represented. <p>The data should identify, to the greatest extent practicable, types of impairment, age, First Nations people with disability, culturally and linguistically diverse people with disability, LGBTIQ+ people with disability, women with disability and National Disability Insurance Scheme participants.</p> | <p>In January 2024, Disability Ministers agreed Commonwealth, State and Territory officials focus and accelerate work to resolve data gaps in relation to the reporting requirements under Australia’s Disability Strategy 2021-2031 Outcomes Framework by the end of 2024. All governments are also working together to develop an action plan, with agreed timeframes, to drive data collection (including gender disaggregated data) and reporting on data-related Disability Royal Commission recommendations. The action plan is expected to be published in 2024.</p> |
| <p>Recommendation 6.20 Interpretative declaration</p> <p>Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government withdraw its interpretative declaration in relation to article 12 of the <i>Convention on the Rights of Persons with Disabilities</i>.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 6.21 Additional funding for advocacy programs</p> <p>a) For the financial years 2024–25 and 2025–26, the Australian Government should commit additional funding of:</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and the state and territory governments recognise the importance of advocacy in supporting people with disability to defend and protect their rights.</p> |

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| <ul style="list-style-type: none"> • \$16.6 million per annum for the National Disability Advocacy Program • \$20.3 million per annum for the National Disability Insurance Scheme Appeals Program. <p>These amounts should be indexed to maintain their value in real terms from year to year.</p> <p>b) From 1 July 2026, the Australian Government should ensure long-term and stable funding for national disability advocacy programs to meet demand. This should be informed by improved data in line with Recommendation 6.22.</p> <p>c) From at least 1 July 2026, State and Territory governments should ensure long-term and stable funding for disability advocacy programs in their jurisdictions to meet demand. This should be informed by improved data in line with Recommendation 6.22.</p> | <p>On 21 April 2023, Disability Ministers endorsed the National Disability Advocacy Framework 2023-2025 (NDAF) and associated Disability Advocacy Work Plan. The NDAF commits all governments to work together to improve national consistency and access to advocacy services for people with disability across Australia. Its purpose is to ensure 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 and inclusion.</p> <p>All governments support prioritising work on increasing culturally appropriate and accessible advocacy services for First Nations people with disability, people with disability from culturally and linguistically diverse backgrounds and LGBTIQ+ people with disability.</p> |
| <p>Recommendation 6.22 Improved data collection and reporting on met and unmet demand for disability advocacy</p> <p>The Australian Government and State and Territory governments should improve data collection and reporting on met and unmet demand for disability advocacy within their jurisdiction. At a minimum, this data should:</p> <ul style="list-style-type: none"> • be collected and published on an annual basis • include demographic indicators that show geographic location, First Nations and culturally and linguistically diverse status • identify, where possible, whether a request for disability advocacy is from or concerns a person with disability who lives in supported accommodation or is in prison or juvenile detention. <p>This data should be collected and reported on an ongoing basis. The Australian Government and State and Territory governments should include data collection and reporting as a priority work area in the Disability Advocacy Work Plan associated with the 2023–2025 National</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 6.21</p> |

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| <p>Disability Advocacy Framework, and progress this as part of future National Disability Advocacy Frameworks or equivalents. The Australian Government and State and Territory governments should work together to ensure consistent definitions and methodologies allowing comparisons across jurisdictions and trends over time. Publication of the data should commence no later than 1 July 2026.</p> | |
| <p>Recommendation 6.23 Culturally safe disability advocacy The Disability Advocacy Work Plan associated with the 2023–2025 National Disability Advocacy Framework should be amended to include priority work areas on increasing culturally appropriate and accessible advocacy services for people with disability from culturally and linguistically diverse backgrounds and LGBTIQ+ people with disability. Efforts under these priority work areas, and the priority work area on increasing culturally appropriate and accessible advocacy services for First Nations people with disability, should include training led by First Nations, culturally and linguistically diverse and LGBTIQ+ people with disability and their representative organisations. This work should be progressed as part of future National Disability Advocacy Frameworks or equivalents.</p> | |
| <p>Recommendation 6.24 Improve implementation planning and coordination for the cognitive disability health capability framework The Australian Government Department of Health and Aged Care should:</p> <ul style="list-style-type: none"> • expand the role of the Intellectual Disability Education and Training Expert Advisory Group to develop an implementation plan for the cognitive disability health capability framework, including key steps for embedding the capabilities from the framework in curricula in education and training programs for health practitioners across all training stages | <p>NSW Response for recommendations 6.24 – 6.25: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> develop a monitoring and evaluation framework to coordinate and measure delivery of the expanded capability framework and its implementation. | |
| <p>Recommendation 6.25 Expand the scope of health workforce capability development to include all forms of cognitive disability at all stages of education and training</p> <p>The Australian Government Department of Health and Aged Care should:</p> <ul style="list-style-type: none"> immediately expand the scope of the work on an intellectual disability health capability framework and associated resources to address all forms of cognitive disability, to apply at all stages of education and training. This expansion should include autism-specific content, and address specific healthcare issues for people with learning disability, dementia and acquired brain injury allocate additional funding to support the expanded scope of health workforce capability development. | |
| <p>Recommendation 6.26 Expand the role of the Health Ministers Meeting to monitor health workforce capability development</p> <p>The Health Ministers Meeting should expand its role in monitoring progress of the intellectual disability health capability framework to encompass the expanded capability framework proposed in Recommendation 6.25. This should include annual reporting to the Health Ministers Meeting on the progress of actions.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>Health Ministers have committed to annual reporting on progress of actions under the Roadmap for Improving the Health of People with Intellectual Disability. Ongoing annual reporting will consider any expansion to activities.</p> |
| <p>Recommendation 6.27 Establish regular progress reporting by accreditation authorities</p> <p>Accreditation authorities for registered health professions and the peak professional bodies for non-registered health professions should:</p> <p>a) review and amend accreditation standards and evidence requirements where necessary to address whether cognitive disability health is sufficiently covered. If it is not, they should amend their accreditation</p> | <p>NSW Response for recommendations 6.27 –6.30: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

standards or evidence requirements (as the case may be) accordingly

b) encourage or mandate education providers to develop specific cognitive disability health curriculum content and deliver such content using inclusive teaching practices, involving people with cognitive disability where possible

c) report annually to the Australian Government Department of Health and Aged Care on their progress in implementing this recommendation. Where accreditation authorities have only recently undertaken their five-yearly review, annual reporting should include progress on implementation planning to address this recommendation pending the next scheduled review.

Recommendation 6.28 Improve access to clinical placements in disability health services

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

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

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

a) The Royal Australasian College of Physicians, Royal Australian and New Zealand College of Psychiatrists, Australian and New Zealand College of Anaesthetists, Royal Australian College of General

Practitioners, Australasian College of Emergency Medicine and Australian College of Rural and Remote Medicine should each:

- develop specialised training content in cognitive disability health for different areas of specialisation, building on the capability framework and the core set of learning resources, so that future specialists can develop skills and competencies in cognitive disability health
- expand and promote pathways for sub-speciality training in cognitive disability health.

b) These groups, as well as the Australian Dental Association and professional bodies responsible for continuing professional development (CPD) in the nursing and allied health professions should each:

- review CPD programs in their respective health discipline or specialty to determine whether CPD for the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities, should be enhanced
- promote the development of CPD opportunities on the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities
- raise awareness of such CPD opportunities among members.

c) The Australian Government Department of Health and Aged Care should reprioritise the National Roadmap for Improving the Health of People with Intellectual Disability action to embed training and CPD within all specialist training programs from a medium-term action (four to six years), to a short-term action (one to three years).

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

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

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| <p>Recommendation 6.31 Embed the right to equitable access to health services in key policy instruments</p> <p>a) The Australian Commission on Safety and Quality in Health Care should:</p> <ul style="list-style-type: none"> • amend the Australian Charter of Healthcare Rights to incorporate the right to equitable access to health services for people with disability and align with the scope of this proposed right in the Disability Rights Act recommended in Volume 4, Realising the human rights of people with disability • review and revise the National Safety and Quality Health Service Standards and the National Safety and Quality Primary and Community Healthcare Standards to provide for the delivery of safe and high-quality health care for people with disability and align with the scope of the proposed right to equitable access to health services in the Disability Rights Act recommended in Volume 4 • as part of this review, consider how the national standards support equal access to health services for people with disability throughout life, including (but not limited to) prevention and health promotion, diagnosis and early intervention and rehabilitation services. <p>b) The Australian Government Department of Health and Aged Care and State and Territory counterparts should review all policies and protocols to ensure people with disability are permitted to be accompanied by a support person in any health setting. This should apply at all times, including when in-person healthcare restrictions are in place, such as during COVID-19.</p> | <p>Joint Response: <u>Accept</u></p> <p>Recommendation 6.31 (a)</p> <p>The Australian Government and state and territory governments are committed to ensuring key policy instruments and plans support an inclusive Australian society that ensures people with disability have access to health care services that address their needs. The Australian Government, through the Australian Commission on Safety and Quality in Health Care will provide a plan and timeline to update key policy instruments to ensure they articulate the requirements for safe and equitable access to health services for people with disability. Enacting this recommendation will enable a more person-centred approach to health care planning and delivery, reduce health disparities, provide guidance to patients, and set clear expectations on health services and clinicians.</p> <p>Joint Response: <u>Accept in principle</u></p> <p>Recommendation 6.31 (b)</p> <p>The Australian Government and State and Territory governments are committed to reviewing all policies and protocols to support an inclusive Australia that ensures people with disability have access to high-quality health care. This includes permission to be accompanied by a support person in as many health settings as possible.</p> <p>There may be some situations where disability support workers are not able to accompany patients (e.g. during surgical procedures; some involuntary or forensic spaces). These instances will be minimised, and state and territory governments will ensure that disability adjustments and supports are fully provided where support workers cannot be present.</p> |
| <p>Recommendation 6.32 Increase capacity to provide supports and adaptations through improved guidance, funding and accessible</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments</p> |

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| <p>information</p> <p>The Australian Government and State and Territory governments, in consultation with people with disability, should:</p> <p>a) identify and publish a list of frequently needed adaptations and supports (including communication supports) to enable people with disability to receive high-quality health care in all publicly funded settings. Adaptations and supports may need to be tailored to individual needs and additional supports may be required. These should include:</p> <ul style="list-style-type: none"> • environmental modifications and aids to reduce sensory loads, such as dimmer lighting, reduced background noise and noise-cancelling headphones • preparatory action to familiarise the person with disability with clinical environments, such as hospital tours and animated videos • different modes of service delivery, such as home visits, and taking a forward-looking approach to minimise distress associated with certain procedures – for instance, taking extra blood to reduce the need for additional blood draws, or undertaking multiple procedures at once if sedation is required to decrease the number of hospital visits • novel and flexible approaches to pre-medication, including sedation, to reduce distress and anxiety before critical medical procedures. <p>b) review hospital (admitted and non-admitted care) and primary health care funding models to ensure these adaptations and supports can be implemented in all relevant settings</p> <p>c) disseminate information about the provision of adaptations and supports in a range of accessible formats.</p> | <p>recognise that people with disability have a right to receive high-quality health care and that adaptations and supports may need to be tailored to individual needs. Further, that access to information and communications are on an equal basis with others.</p> <p>All governments acknowledge that aspects of this recommendations require further consideration in the context of any changes to Australia’s human rights framework. This recognises that the Disability Royal Commission’s proposed <i>Disability Rights Act</i> will be considered alongside the recently published recommendations of the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework.</p> <p>This recommendation also requires consideration of any activities that are in-scope of National Health Reform Agreement public hospital services. As well as consideration of any activities that align with reforms considered for the 2025-30 National Health Reform Agreement Addendum.</p> |
| <p>Recommendation 6.33 Develop specialised health and mental health services for people with cognitive disability</p> <p>State and Territory governments should establish and fund specialised</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Government is committed to the provision of high-quality health care for all people with disability including people with cognitive disability.</p> |

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| <p>health and mental health services for people with cognitive disability to provide:</p> <ul style="list-style-type: none"> • specialist assessment and clinical services, including preventive medicine, for people with cognitive disability and complex or chronic health and mental health needs • training and support for health providers to build their capacity to provide safe, high-quality health care to people with cognitive disability. <p>These services should be delivered through a model that includes:</p> <ul style="list-style-type: none"> • specialist roles and multi-disciplinary teams embedded in local health service delivery • statewide specialised services that can be accessed by people with cognitive disability and health professionals regardless of their location • participation in a national network of specialised disability health and mental health services • evaluation of the impact of specialised services and publication of evaluation findings. <p>Planning to implement specialised services in each jurisdiction should begin as soon as practicable and take into account existing services and needs in each jurisdiction. These changes should be introduced by September 2026.</p> | <p>Specialised health and mental health services for people with intellectual disability are in place and deliver a statewide service across NSW. These specialised services offer a clinical service as well as training and support that builds the capacity of other health providers. The NSW Intellectual Disability Health Service (IDHS) provides a comprehensive health assessment, time-limited clinical service and recommendations for people with intellectual disability with complex needs. An evaluation of the IDHS is expected to be finalised by June 2025.</p> <p>The NSW Intellectual Disability Mental Health Hubs (Mental Health Hubs) help people with intellectual or developmental disability and co-occurring mental health problems access specialised mental health assessment and care.</p> <p>Further enhancement to health services for people with intellectual disability and cognitive disability will be informed by service evaluations, consideration of best practice approaches in other jurisdictions and consultation with people with disability.</p> |
| <p>Recommendation 6.34 Introduce disability health navigators to support navigation of health care for people with disability</p> <p>Through the Health Ministers Meeting, the Australian Government and State and Territory governments should:</p> <p>a) jointly fund a national workforce of ‘disability health navigators’ to support people with cognitive disability and complex health needs access health services and to embed safe, accessible and inclusive practice in everyday health service provision</p> <p>b) develop a national evaluation framework to assess the impact of</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and States and Territory governments are committed to ensuring people with disability have access to health care services that address their needs and recognise that people with disability may require additional support to navigate the health care system. All governments are committed to ensuring all Australians have access to safe and high-quality healthcare that meets their needs.</p> <p>This recommendation also required consideration of any activities that</p> |

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| <p>disability health navigators and share lessons learned across jurisdictions. Evaluation findings should be published.</p> | <p>are in-scope of National Health Reform Agreement public hospital services as well as consideration of any activities that align with reforms considered for the 2025-30 National Health Reform Agreement Addendum.</p> <p>All governments are committed to working together to support the development of a nationally consistent health navigation framework, which will be coordinated and aligned to complement the reshaped disability navigation function of the NDIS and would include scoping of disability health navigation in partnership with State and Territory governments.</p> <p>Scoping of disability health navigation would be required to identify what is currently available, what is working well and what gaps or missing elements in the support system need to be addressed to help people with disability and complex health needs navigate and access all aspects of the health and mental health systems. Scoping would include system navigation services that already exist within the State and Territory health system. Stakeholders, including people with disability, would be consulted as part of the scoping of disability health navigation.</p> <p>All governments acknowledge that there are significant workforce challenges across the health care system, therefore the scoping of disability health navigators would also involve consideration of this issue.</p> |
| <p>Recommendation 6.35 Legal frameworks for the authorisation, review and oversight of restrictive practices</p> <p>a) States and Territories should ensure appropriate legal frameworks are in place in disability, health, education and justice settings, which provide that a person with disability should not be subjected to restrictive practices, except in accordance with procedures for authorisation, review</p> | <p>NSW Response: <u>Subject to further consideration</u></p> <p>The NSW Government is committed to reducing the use of restrictive practices and, where possible, eliminating the use of restrictive practices against people with disability.</p> |

and oversight established by law.

b) The legal frameworks should incorporate the following requirements, appropriately adapted to sector-specific contexts:

- Restrictive practices should only be used:
 - as a last resort, in response to a serious risk of harm to a person with disability or others, and only after other strategies, including supported decision-making, have been explored and applied
 - as the least restrictive response possible to ensure the safety of the person with disability or others
 - to the extent necessary to reduce the risk of harm and proportionate to the potential negative consequences from the use of restrictive practices
 - for the shortest time possible.
- Decisions to authorise restrictive practices should be subject to independent review.
- The use of restrictive practices should be subject to independent oversight and monitoring.

c) The legal frameworks should set out the powers and functions of a Senior Practitioner for restrictive practices in disability service provision (or equivalent authority). These powers and functions should include:

- promoting the reduction and elimination of the use of restrictive practices
- protecting and promoting the rights of people with disability subjected to restrictive practices
- developing and providing information, education and advice on restrictive practices to people with disability, their families and supporters, and the broader community
- considering applications to use restrictive practices in disability service settings and authorising their use according to

The NSW Government is carefully considering the best method and legislative framework for achieving this. People with disability and other stakeholders will be consulted should the NSW Government decide to pursue a legislative framework.

It is important that solutions take account of the context and existing operating systems in each different setting.

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| <p>procedures consistent with the Draft Principles for Consistent Authorisation</p> <ul style="list-style-type: none"> • developing guidelines and standards, and providing expert advice, on restrictive practices and behaviour support planning • receiving complaints about the use of restrictive practices and the quality of behaviour support planning • investigating the use of restrictive practices and the quality of behaviour support planning, either in response to complaints or of its own motion • acting in response to complaints and investigations where appropriate. | |
| <p>Recommendation 6.36 Immediate action to provide that certain restrictive practices must not be used</p> <p>State and Territory governments should immediately:</p> <ul style="list-style-type: none"> • Adopt the list of prohibited forms of restrictive practices agreed by the former Disability Reform Council in 2019 and provide that the use of seclusion on children and young people is not permitted in disability service settings. • Provide that the following are not permitted in health and mental health settings: <ul style="list-style-type: none"> – using seclusion and restraint as a means to reduce behaviours not associated with immediate risk of harm – using seclusion and restraint as a form of discipline, punishment or threat – restrictive practices that involve or include deliberate infliction of pain to secure compliance – using prone or supine holds, using any restraint intended to restrict or affect respiratory or digestive function, or forcing a person’s head down to their chest – secluding a person who is also mechanically restrained – secluding a person who is actively self-harming or suicidal | <p>NSW Response: <u>Subject to further consideration</u></p> <p>NSW Government is committed to ensuring people with disability are not subjected to prohibited restrictive practices. Reducing and eliminating the use of seclusion and restraint where possible remains a priority of NSW Health. Seclusion and restraint are only used in accordance with legislation, to manage the risk to the safety of the patient, staff and public. NSW Health is undertaking further analysis, consideration and consultation on this recommendation.</p> <p>The NSW Department of Education remains committed to the national goal of reducing and eliminating the unnecessary or inappropriate use of restrictive practices. The department supports clarity on prohibited forms of restrictive practices. However, further consideration and agreement of the definitions are required state-wide or nationally</p> |

- using metal handcuffs or hard manacles as a form of mechanical restraint (unless under police or other custodial supervision while in the health facility)
- vest restraints for older people
- neck holds
- drugs, or higher doses of drugs, that create continuous sedation to manage behaviour
- seclusion of children and young people.
- Provide that the following are not permitted in education settings:
 - the use of restrictive practices:
 - as a form of discipline, punishment or threat
 - as a means of coercion or retaliation
 - in response to property destruction
 - for reasons of convenience
 - life threatening physical restraints, including physical restraints that restrict a student's breathing or harm the student by:
 - covering the student's mouth or nose, or in any way restricting breathing
 - taking the student to the ground into the prone or supine position
 - causing hyperextension or hyperflexion of joints
 - applying pressure to the neck, back, chest or joints
 - deliberately applying pain to gain compliance
 - causing the student to fall
 - having a person sit or kneel on the student
 - chemical restraints
 - mechanical restraints
 - clinical holding:
 - as a behaviour support strategy
 - to enforce the compliance of a student in undertaking personal care that is non-urgent and does not present

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| <p>a risk to the student to punish a student – denial of key needs, such as food and water.</p> | |
| <p>Recommendation 6.37 Data collection and public reporting on psychotropic medication The NDIS Quality and Safeguards Commission, the Australian Commission on Safety and Quality in Health Care and the Aged Care Quality and Safety Commission should:</p> <ul style="list-style-type: none"> • publish joint annual progress reports on implementation of measures under the Joint statement on the inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people • commission an independent evaluation of these measures to determine whether they have resulted in a reduction in the use of psychotropic medicines against people with cognitive disability. The evaluation should be co-designed with people with cognitive disability and their representative organisations, and its results should be publicly reported. | <p>NSW Response to recommendations 6.37 to 6.38: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 6.38 Strengthening the evidence base on reducing and eliminating restrictive practices The National Disability Research Partnership should commission a longitudinal study of the impact of positive behaviour support and other strategies to reduce and eliminate restrictive practices. This study should:</p> <ul style="list-style-type: none"> • be co-designed with people with disability and relevant experts and professionals from the disability, health, education and justice sectors, to ensure the findings are relevant across a range of settings • include the experiences and identify the intersecting needs of a broad range of people with disability, such as First Nations people | |

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| <p>with disability, LGBTIQ+ people with disability, and culturally and linguistically diverse people with disability.</p> <p>Upon completion, the findings of the study should be made publicly available. Interim findings should be published at regular intervals.</p> | |
| <p>Recommendation 6.39 Improving collection and reporting of restrictive practices data</p> <p>The Australian Institute of Health and Welfare should work with State and Territory governments to develop consistent data definitions and collection methods on restrictive practices across all jurisdictions, and align reporting periods. These definitions and collection methods should be finalised by the end of 2024. Using consistent definitions and collection methods, State and Territory governments should collect and publish data on the use of restrictive practices in health, education and justice settings. This data should be collected and published on an annual basis, with publication commencing by the end of 2025 at the latest. Data should identify, to the greatest extent practicable:</p> <ul style="list-style-type: none"> • restraint type, including chemical, physical, mechanical, environmental and seclusion • disability status • types of impairment • age • gender • First Nations people • culturally and linguistically diverse people • people who identify as LGBTIQ+. | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to working together to improve the collection and reporting of restrictive practices data and to considering sector-specific targets and performance indicators to drive the reduction and elimination of restrictive practices across all settings.</p> <p>As a first step, and consistent with Action 18.1 of the NDIS Review, the Disability Reform Ministerial Council will prioritise action to establish consistent targets and performance indicators to drive the reduction and elimination of restrictive practices in the NDIS and will task officials to develop a Joint Action Plan to reduce and eliminate restrictive practices in the NDIS.</p> <p>Given the complexity and variation of data collection processes across jurisdictions, consultation with all sectors and flexibility on the timeframe for implementing these recommendations may be required.</p> <p>Additional NSW comment:</p> <p>In developing consistent definitions and data collection methodology in relation to educational settings, NSW will need to give careful consideration to the administrative burden this record-keeping will create for schools, and consider whether there are opportunities to enhance existing data collections, such as the Nationally Consistent Collection of Data on school students with disability (NCCD) to reduce duplication.</p> |

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| | NSW supports further analysis and consultation on targets and performance indicators to drive the reduction and elimination of restrictive practices. |
| <p>Recommendation 6.40 Targets and performance indicators to drive the reduction and elimination of restrictive practices</p> <p>The Australian Government and State and Territory governments should establish sector-specific targets and performance indicators to drive the reduction and elimination of restrictive practices over time. This should be at both the national and State and Territory levels for disability, health, education and justice settings. These targets and performance indicators should be established by 1 July 2025 at the latest.</p> | <p>Joint Response: <u>Accept in principle</u> See 6.39.</p> |
| <p>Recommendation 6.41 Legislative prohibition of non-therapeutic sterilisation</p> <p>a) All jurisdictions should amend or enact legislation prohibiting non-therapeutic procedures resulting in permanent sterilisation of people with disability, except where:</p> <ul style="list-style-type: none"> • there is a threat to the life of the person with disability were the procedure not performed or • the person with disability is an adult and has given voluntary and informed consent to the procedure, with support for decision-making if required. <p>b) All jurisdictions should amend or enact legislation in accordance with paragraph a) by the end of 2024.</p> <p>c) The Australian Guardianship and Administrative Council (AGAC) should expand its annual collation and publication of data on the sterilisation of people with disability. This data should include the number of applications, reasons for applications, reasons for the outcomes of applications and the number of approvals to conduct a sterilisation procedure.</p> | <p>Joint Response: ACT and WA: <u>Accept in principle</u> Commonwealth, NSW, NT, QLD, SA, TAS, VIC: <u>Subject to further consideration</u></p> <p>The Australian government and State and Territory governments are committed to protecting the human rights of people with disability and will work to strengthen protections in relation to non-therapeutic procedures resulting in permanent sterilisation of people with disability.</p> <p>The need to protect the privacy of individuals is relevant in considering approaches to expanding data collection and reporting.</p> <p>The Commonwealth, NSW, NT, QLD, SA, TAS and VIC governments will further consider issues raised by this recommendation noting differences between jurisdictions' legislative frameworks and current reform processes underway in some jurisdictions.</p> |

Where this does not already occur, the data should be collected and provided to AGAC annually by:

- the Federal Circuit and Family Court of Australia
- state and territory superior courts
- state and territory guardianship and administration bodies.

The data should be de-identified, as appropriate. It should be disaggregated, to the greatest extent possible, by:

- disability status
- types of impairment
- age
- gender
- First Nations people
- culturally and linguistically diverse people
- people who identify as LGBTIQ+.

A review of legislation enacted or amended according to paragraph a) of this recommendation should be conducted every five years, in light of the data published according to paragraph c). This review should aim to strengthen protections for people with disability and avoid consequences which hamper reproductive autonomy.

Volume 7: Inclusive Education, Employment and Housing

Volume 7 includes 44 recommendations, split across three parts which deal with inclusive education, employment and housing.

Part A - Inclusive Education

Volume 7 Part A includes 15 recommendations.

| Recommendation | Response |
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| <p>Recommendation 7.1 Provide equal access to mainstream education and enrolment States and Territories should amend education Acts (or the equivalent) to:</p> <ul style="list-style-type: none"> • create a legal entitlement for students with disability to enrol in a local mainstream school • provide that the right to enrolment is subject only to 'unjustifiable hardship' in the sense used in the <i>Disability Discrimination Act 1992</i> (Cth). <p>State and Territory governments should take the following actions to prevent gatekeeping in mainstream schools:</p> <ul style="list-style-type: none"> • maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers • establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school. <p>State and Territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.</p> | <p>NSW Response: <u>Accept in part</u></p> <p>The NSW Government supports legal entitlement for students with disability to enrol in their local mainstream schools. This is an existing entitlement in NSW under the <i>Education Act 1990</i> (NSW). The NSW Government also supports, and will continue to provide and disseminate, clear and accessible material for students with disability and their families on their rights. This includes the obligations of schools relating to applications to attend a local school as well as enrolment review processes.</p> <p>The NSW Department of Education is currently reviewing its enrolment policy. This review of enrolment procedures is intended to support the department to confidently deliver on its legislative requirement to provide equal access to mainstream education and enrolment consistently across the state.</p> <p>Further consideration is required in relation to other components of this recommendation to ensure:</p> <ul style="list-style-type: none"> • undue confusion and administrative complexity is not created for families and schools by introducing an additional caveat to existing legislation, e.g. 'unjustifiable hardship') noting that existing NSW legislation adequately addresses this intent |

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| | <ul style="list-style-type: none"> • data collection, reporting and review processes of enrolment decisions do not impose undue administrative burden on schools and/or families. |
| <p>Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability</p> <p>State and Territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:</p> <ul style="list-style-type: none"> • adopt the principle that education providers: <ul style="list-style-type: none"> – should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff – in considering the use of exclusionary discipline, consider the student’s disability, needs and age, and the particular effects of exclusionary discipline for young children – require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters. • include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management • include a robust review or appeals process for students with disability and their families or carers and supporters • ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline | <p>Joint Response for recommendations 7.2 to 7.3: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support the Disability Royal Commission’s vision for more accessible and inclusive education for school students with disability.</p> <p>Education Ministers commit to work in partnership with people with disability to set out how this vision will be achieved over time.</p> <p>Additional NSW comment:</p> <p>The NSW Government is committed to inclusive education. This is underpinned by a focus on prevention and positive approaches to student behaviour support and management. This includes evidence-based practices such as positive behaviour for learning, trauma informed and inclusive education practices. Suspension remains a critical safeguard if student behaviour poses a risk to the health and safety, learning and/or wellbeing of others.</p> <p>The NSW Department of Education’s 2024 Student Behaviour Policy, developed with extensive collaboration with stakeholders, reflects a balanced approach to student welfare and safety.</p> <p>Additionally, school registration requirements currently include an obligation for all schools to have discipline policies including but not limited to suspension, expulsion and exclusion of students that are based on procedural fairness.</p> |

- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector. Section 22(2)(b) of The *Disability Discrimination Act 1992* (Cth) should be amended to cover ‘suspension and exclusion’ as well as expulsions.

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

a) State and Territory educational authorities should develop and make available in accessible form:

- guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
- guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
- guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability
- guidelines explaining the nature and content of the obligation under the *Disability Standards for Education 2005* (Cth) (Education Standards) to consult with students with disability and their parents, carers and supporters
- information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose

The department acknowledges there is more to do to address the disproportionate suspension rates for students with disability and is committed to driving early intervention and support for this cohort of students.

The NSW Government supports the provision of accessible information and guidance to support schools, principals, teachers, and staff in fulfilling their obligations regarding the provision of reasonable adjustments to students with disability.

In addressing additional requirements for record keeping, the NSW Government recognises the importance of minimising administrative burdens on schools and notes existing record keeping requirements under the Nationally Consistent Collection of Data on school students with disability (NCCD).

- requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
- guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
- guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.

b) State and Territory educational authorities should ensure that education providers have greater access to tools and resources to:

- assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992* (Cth))
- support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.

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

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| <p>Recommendation 7.4 Participation in school communities State and Territory school educational authorities should:</p> <ul style="list-style-type: none"> • wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools • facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools • create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting. | <p>NSW Response: <u>Accept in part</u> The NSW Government supports the need to embed inclusive practices in all educational settings.</p> <p>The NSW Government recognises the value of forging partnerships between mainstream and non-mainstream schools to create opportunities for students from diverse backgrounds to interact and learn from one another, contributing to a more inclusive and diverse educational environment that benefits all.</p> <p>Further consideration, which will include undertaking a process of funding prioritisation, is required for infrastructure decisions such as co-location or relocation of non-mainstream schools within NSW. This reflects the complexity of and need for careful evaluation of factors such as land availability. Any co-location plans must prioritise meaningful integration and seamless operation.</p> |
| <p>Recommendation 7.5 Careers guidance and transition support services State and Territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:</p> <ul style="list-style-type: none"> • commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school • take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds • provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities | <p>NSW Response: <u>Accept in part</u> The NSW Government supports a consistent approach to supporting students as they transition from school to post school options.</p> <p>Given that the post-school landscape can be complex, with numerous training organisations and universities nationwide, the NSW Government is working to ensure a consistent approach to assist students transition to post-school pathways options aligned to their goals. Current support initiatives encompass government-subsidised training, funding for TAFE NSW, and collaboration with industry to create workplace engagement models.</p> <p>Supporting students with disability through access to, and participation in, quality career learning is essential for students to develop their personal identity, a sense of belonging and ideas about their future in a</p> |

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| <ul style="list-style-type: none"> • provide students with opportunities to undertake work experience in open employment aligned with their goals and interests • provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators). | <p>rapidly changing world as they transition from educational institutions to further education and/or open employment.</p> <p>The NSW Department of Education acknowledges the value of the Commission’s findings in these transition points, and is committed to delivering on its goal in providing comprehensive career resources and support services, to all students, including those with disability, to navigate their post-school options as effectively as possible.</p> |
| <p>Recommendation 7.6 Student and parental communication and relationships</p> <p>a) State and Territory educational authorities should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships. These should:</p> <ul style="list-style-type: none"> • include clear, accessible material for students with disability and their families on their rights and school obligations • target decision-making for individual students and at the whole-of-school-level • cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes • indicate types of decisions that require formal parental agreement, such as approaches to behaviour management • be co-designed with people with disability and their families. <p>b) State and Territory educational authorities should develop material similar to that outlined in a) specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support the Disability Royal Commission’s vision for more accessible and inclusive education for school students with disability.</p> <p>Education Ministers commit to work in partnership with people with disability to set out how this vision will be achieved over time.</p> <p>Additional NSW comment:</p> <p>The NSW Government is committed to providing clear guidance for schools to enhance communication and relationships between students, parents, and staff. This includes supporting the development of specific guidance tailored for Aboriginal and Torres Strait Islander students with disability.</p> |

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| <p>c) School principals should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student’s educational experience.</p> <p>d) In undertaking c), school principals should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.</p> <p>e) The Australian Government through the responsible minister, should consider updating the <i>Disability Standards for Education 2005</i> (Cth) to:</p> <ul style="list-style-type: none"> • ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require • entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability. | |
| <p>Recommendation 7.7 Inclusive education units and First Nations expertise</p> <p>a) State and Territory educational authorities should establish inclusive education units within the relevant departments. These units should provide:</p> <ul style="list-style-type: none"> • advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities • resources and advice to schools and teachers about implementing inclusive education. <p>b) Educational authorities should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to</p> | <p>NSW Response: <u>Accept</u></p> <p>The NSW Government supports the establishment of inclusive education units within relevant departments. The NSW Department of Education has an existing inclusive education unit, performing education support functions that include advising educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities. The department’s Inclusive Education unit also provides extensive resources and advice to schools and teachers about implementing inclusive education.</p> <p>Taking into account the current NSW Auditor-General’s Review of ‘Supporting students with a disability in NSW Public schools’, and the NSW Parliamentary Inquiry examining ‘Children and young people with</p> |

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| <p>improve access to inclusive and culturally appropriate education for First Nations students with disability.</p> | <p>disability in NSW educational settings’, the department intends to consult with partners and stakeholders in 2024/2025 about actions to continue delivering resources and advice to schools and teachers about implementing inclusive education. This will include close consideration of the procedures and practices of applying reasonable adjustments in the classroom.</p> <p>The NSW Government is committed to improving the educational outcomes and wellbeing of First Nations students so that they excel and achieve in every aspect of their education, as set out in our Aboriginal Education Policy and our Innovate Reconciliation Action Plan. The department is committed to ensuring that First Nations students have access to an education and training system that values their cultural heritage. We will measure our progress through a number of ways in schools. This includes the School Improvement Plan and reporting through the Annual School Report.</p> <p>The NSW Education Standards Authority (NESA) similarly operates an inclusive education unit, aligning with the educational support functions of the recommendation.</p> |
| <p>Recommendation 7.8 Workforce capabilities, expertise and development Knowledge and skills a) The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights based approach to inclusive education for students with disability across teachers’ careers. b) To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments supports the Disability Royal Commission’s vision to build workforce capability and expertise and strengthen complaints management practices.</p> <p>Considerable progress has already occurred in relation to these recommendations as part of the National Teacher Workforce Action Plan and the review of the <i>Disability Standards for Education 2005</i> Review undertaken in 2020.</p> |

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| <p>Continuing professional development</p> <p>c) State and Territory educational authorities should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.</p> <p>Disability expertise and skills shortages</p> <p>d) The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.</p> <p>e) State and Territory governments should increase access to expertise in inclusive education in government schools by:</p> <ul style="list-style-type: none"> • employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students • employing skilled and qualified Auslan interpreters • setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment. | <p>Additional NSW comment</p> <p>The NSW Government remains committed to enhancing professional development and expertise in inclusive education across NSW schools. The NSW Department of Education has professional development strategies in place as well as a range of resources aimed to ensure our workforce is equipped with the necessary knowledge and skills to foster inclusive learning environments.</p> <p>Additionally, the NSW Government recognises the need to bolster expertise in inclusive education within government schools, including teachers who specialise in inclusive teaching, behavioural support, and deaf education. The NSW Government recognises the complex challenge presented by the current teacher shortage, but is committed to addressing this through the National Teacher Workforce Action Plan, along with the Commonwealth, States and Territories.</p> <p>The NSW Government is committed to increasing accessibility and disability employment across the public sector, including in education.</p> |
| <p>Recommendation 7.9 Data, evidence and building best practice</p> <p>Data development and collection</p> <p>a) The Education Ministers Meeting should:</p> <ul style="list-style-type: none"> • commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability • ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support a vision for improved data and evidence on the experience and outcomes of students with disability, building best practice for inclusive education and improving funding for students with disability. Implementing these recommendations requires further consideration by governments, including further work to consider data collection categories and reporting. In addition, implementing components of these</p> |

School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQ+ status) is collected by State and Territory departments on:

- student experiences
- school outcomes for students with disability
- progress in addressing barriers to inclusive education practices.

b) State and Territory governments should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.

c) State and Territory school registration authorities should:

- embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
- require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child's educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.

Monitoring and reporting

d) State and Territory education departments should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:

- the educational experiences of students with disability
- outcomes of students with disability
- progress in addressing barriers to inclusive education practices.

e) To improve reporting of disability data, the Education Ministers Meeting should:

recommendations will require consideration of impacts on workload for schools and data management systems.

State and Territory governments will consider how to deliver the intent of these recommendations within their jurisdictions.

Additional NSW comment:

The NSW Government is committed to enhancing the monitoring of outcomes for students with disability to support best practices in inclusive education.

The NSW Government recognises the need to avoid duplication and minimise administrative burden on schools. The Government will work closely with stakeholders to address concerns and ensure any data collection respects privacy while enhancing educational support for students with disability across NSW.

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| <ul style="list-style-type: none"> • publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues • commission the Australian Curriculum Assessment and Reporting Authority to work with States and Territories on data collection requirements to enable reporting on National Assessments Program – Literacy and Numeracy results for students with disability • include broader school workforce characteristics and information about workforce shortages in State and Territory and Australian Government annual inclusive education reporting. <p>f) To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:</p> <ul style="list-style-type: none"> • develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability • conduct and coordinate inclusive education research • support schools to translate research into school practices. | |
| <p>Recommendation 7.10 Complaint management</p> <p>a) State and territory governments should create or expand existing complaint management offices that operate within educational authorities at arm’s length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:</p> <ul style="list-style-type: none"> • provide students and parents with information about their rights and options when managing complaints • request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments supports the Disability Royal Commission’s vision to build workforce capability and expertise and strengthen complaints management practices.</p> <p>Considerable progress has already occurred in relation to these recommendations as part of the National Teacher Workforce Action Plan and the review of the Disability Standards for Education 2005 Review undertaken in 2020.</p> <p>Additional NSW comment:</p> |

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| <ul style="list-style-type: none"> • initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues • support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved • work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints • work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate. <p>b) The Australian Government should include new duties and measures relating to complaint management procedures in the <i>Disability Standards for Education 2005 (Cth)</i> (Education Standards) to help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.</p> <p>c) State and territory school registration authorities should embed new complaint handling duties and measures for compliance, as defined in the Education Standards, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.</p> <p>d) School principals should ensure their school-level operating policies and procedures for handling complaints:</p> <ul style="list-style-type: none"> • satisfy the Education Standards requirements • are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate are observed in practice. | <p>The Australian & NZ Standards in Complaint Handling, the NSW Government Commitments to Effective Complaint Handling and associated guidance underpin complaint management practice within our education system.</p> <p>The NSW Government recognises the importance of effective complaint processes so that employees and community members can raise concerns about our services and they are addressed fairly, impartially, promptly, locally and as informally as possible. The NSW Education department implemented revised Community Complaint procedures and Staff Complaint procedures in May 2024, following extensive stakeholder consultation. The revised procedures clarify and streamline the department’s processes for addressing complaints, and provide direction and guidance on raising and addressing concerns about the department’s products, services, employees and complaint handling. This procedure review also highlighted the need for a framework to support the department’s engagement with communities. A Community Engagement Policy is in the early stages of development, which will provide greater guidance to schools and education support areas.</p> |
| <p>Recommendation 7.11 Stronger oversight and enforcement of school duties</p> <p>a) State and Territory governments should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Government supports in principle, any amendments to the school registration requirements and regulatory oversight which aims to improve the safety, inclusivity and quality of education for students with disability.</p> |

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| <ul style="list-style-type: none"> • school enrolment policies (see Recommendation 7.1) • procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8) • procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10) • reporting on the use of funding for students with disability (see Recommendation 7.12). <p>b) State and Territory school registration authorities should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.</p> <p>c) The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with appropriate monitoring, compliance and enforcement.</p> | <p>The NSW <i>Education Act 1990</i> and NSW school registration requirements currently require all schools to provide a safe and supportive environment for students.</p> |
| <p>Recommendation 7.12 Improving funding</p> <p>a) The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with disability in response to the findings of the Student with disability loading settings review.</p> <p>b) The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.</p> <p>c) State and Territory governments should ensure they are using a</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support a vision for improved data and evidence on the experience and outcomes of students with disability, building best practice for inclusive education and improving funding for students with disability.</p> <p>Implementing these recommendations requires further consideration by governments, including further work to consider data collection categories and reporting. In addition, implementing components of these recommendations will require consideration of impacts on workload for schools and data management systems.</p> |

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| <p>disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.</p> <p>d) State and Territory education departments should improve transparency on the use of disability funding in the government school sector by:</p> <ul style="list-style-type: none"> • developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability • applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability • publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding. <p>e) State and territory school registration authorities should require schools to complete the funding template mentioned at d) and submit the template to the relevant state or territory education department.</p> | <p>State and Territory governments will consider how to deliver the intent of these recommendations within their jurisdictions.</p> <p>Additional NSW comment: The NSW Government welcomes the opportunity to enhance disability funding arrangements nationally, aligning them with a needs-based approach and the Nationally Consistent Collection of Data on school students with disability.</p> <p>The NSW Government acknowledges the importance of comprehensive funding models that consider both student needs and school contexts. The Government is committed to continuing to collaborate with the Commonwealth Government to ensure funding frameworks effectively support the diverse needs of students with disability in NSW schools.</p> |
| <p>Recommendation 7.13 National Roadmap to Inclusive Education</p> <p>a) The Education Ministers Meeting should publicly release a ‘National Roadmap to Inclusive Education’ for students with disability. The roadmap should:</p> <ul style="list-style-type: none"> • detail the outcome measures, targets, actions and milestones for delivering the Royal Commission’s recommendations for inclusive education • provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported. <p>b) State and Territory education ministers should report annually to the Education Ministers Meeting on progress against agreed milestones and</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support the Disability Royal Commission’s vision for more accessible and inclusive education for school students with disability.</p> <p>Education Ministers commit to work in partnership with people with disability to set out how this vision will be achieved over time.</p> <p>Additional NSW comment: The Government supports the public release of a national roadmap to advance inclusive education nationwide. A shared national vision will</p> |

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| <p>associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.</p> <p>c) The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include it in its workplan.</p> | <p>enable States and Territories to collectively address barriers and enhance the inclusivity of our education systems.</p> |
| <p>Recommendation 7.14 Phasing out and ending special/segregated education</p> <p>Commissioners Bennett, Galbally and McEwin recommend:</p> <p>a) The Australian Government and State and Territory governments should recognise that inclusive education as required by article 24 of the <i>Convention on the Rights of Persons with Disabilities</i> is not compatible with sustaining special/segregated education as a long-term feature of education systems in Australia.</p> <p>b) As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:</p> <ul style="list-style-type: none"> • the phasing out of special/segregated education • no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025 • a process for work on milestones and activities related to ceasing special/segregated education by all jurisdictions. <p>c) As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/segregated education settings and financial penalties for failing to meet these milestones, including:</p> <ul style="list-style-type: none"> • no new enrolments of students with disability in special/segregated schools from 2032 • no new placements of students with disability in special/segregated units or classes from 2041 | <p>Joint Response for recommendations 7.14 to 7.15: <u>Note</u></p> <p>The Australian Government and State and Territory governments note the differing views held by Commissioners and the community on special /segregated settings.</p> <p>The Australian Government recognises the ongoing role of specialist settings in service provision for students with disability and providing choice for students with disability and their families.</p> <p>State and Territory governments will continue to be responsible for making decisions about registration of schools in their jurisdictions, with the intent to strengthen inclusive education over time.</p> <p>Additional NSW comment:</p> <p>The NSW Government acknowledges and respects the broader intent and goals outlined in the joint response to 7.14 and 7.15, enabling the government to assess these recommendations within our state's educational framework. This allows us to tailor our responses to best suit the needs and circumstances of NSW schools and students.</p> <p>The NSW Government chooses to support a balanced approach, aligning with Recommendation 7.15, to ensure inclusivity while respecting community preferences. This decision reflects our thorough consideration of the specific implications and feasibility of implementing these recommendations within our educational environment.</p> |

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| <ul style="list-style-type: none"> • no students remaining in special/segregated schools by the end of 2051. <p>d) The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia’s Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.</p> <p>e) The Australian Government should consider the design of a ‘Transition Fund’ under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.</p> <p>f) Consistent with phasing out and ending special/segregated education, states and territories should implement the following recommendations:</p> <ul style="list-style-type: none"> • when no students are in special/segregated schools, the sunsetting of: <ul style="list-style-type: none"> – measures to prevent gatekeeping (see Recommendation 7.1) – provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4) • to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5): <ul style="list-style-type: none"> – is delivered alongside careers guidance for students without disability – has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises. | <p>The NSW Government recognises the varied perspectives on specialist settings within the educational landscape, as evidenced by differing views among stakeholders and commissioners. The Government is committed to supporting educational environments that cater effectively to all students, fostering inclusive practices while recognising the importance of choice and diversity in educational provision. We acknowledge that specialist settings play a crucial role in meeting the diverse needs of students and offer choice to families in selecting the most suitable educational environment.</p> |
| <p>Recommendation 7.15 An alternative approach</p> | <p>See 7.14.</p> |

The Chair and Commissioners Mason and Ryan recommend:

a) State and Territory educational authorities should implement the following measures:

- wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
- facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
- arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
- establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
- provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools
- assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
- provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability

for post-school transition, including assistance in planning and preparing for further study and training

- ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.

b) The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified.

Part B - Inclusive Employment

Volume 7 Part B includes 17 recommendations.

| Recommendation | Response |
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| <p>Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model</p> <p>a) is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team</p> <p>b) adopts customised employment models as a core component of service provision</p> <p>c) ensures funding arrangements facilitate flexible employment supports, such as customised employment, and support the progress of Disability Employment Services participants in achieving employment goals and long-term employment outcomes</p> <p>d) considers options to remove the requirement for a person to have a minimum future work capacity of eight hours a week in order to access the Disability Employment Services program, to facilitate access for all people with disability to the new model.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.17 Develop education and training resources for Disability Employment Services staff</p> <p>The Australian Government Department of Social Services should develop a suite of accessible education and training resources for providers of Disability Employment Services to upskill their staff. Resources should be co-designed by people with disability and involve consultation with advocates, employers and Disability Employment Services providers. Resources should address the gaps we have identified, including in:</p> <ul style="list-style-type: none"> • disability awareness • cultural competence | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> • human rights • customised employment • employer engagement • Disability Employment Services guidelines and procedures. | |
| <p>Recommendation 7.18 Establish specific and disaggregated targets for disability employment in the public sector</p> <p>The Australian Government and State and Territory governments should adopt specific and disaggregated targets to increase the proportion in the public sector of:</p> <ul style="list-style-type: none"> • employees with disability at entry and graduate levels • employees with disability at executive levels • employees with cognitive disability. <p>Public sector targets should be supported by:</p> <ul style="list-style-type: none"> • clear employment pathways into the relevant public services for each target cohort • measures and programs to support the recruitment and progression of each target cohort • provision of appropriate supports. <p>The Australian Public Service Commission and State and Territory public service commissions should ensure these targets contribute to their existing overall employment targets for people with disability.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support continued action to increase opportunities for people with disability in public sector employment across Australia.</p> <p>All governments recognise that people with disability have a right to work, and that employment supports an individual’s social and economic participation and independence in society.</p> <p>As large employers, public services have a crucial national role as leaders in modelling best practice inclusion that can positively influence other employers and workplaces.</p> <p>Governments agree that specific employment targets can have a positive impact on the number of people with disability employed in the public sector, noting that some jurisdictions may need to further consider data limitations and privacy considerations before committing to disaggregated targets.</p> <p>The Australian Government and state and territory governments also support continued and increased focus on ensuring public sector workplaces are accessible and inclusive for people with disability, including through workplace adjustments. Public service commissioners will work together to share best practice on improving public sector employment outcomes for people with disability.</p> |

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| | <p>Governments also support in principle adopting procurement policies that encourage inclusive employment practices in the private sector, noting governments will individually consider opportunities and approaches that most appropriately work with respective government procurement frameworks.</p> <p>Additional NSW comment: Implementation will consider issues and challenges around data availability, the feasibility to achieve the targets, and application in specific contexts.</p> <p>Information is published annually on NSW public sector disability employment strategies and targets through the State of the Public Sector Report, Workforce Profile Report and the People Matter Employee Survey report, as well as through Disability Inclusion Plan Reporting.</p> |
| <p>Recommendation 7.19 Establish specific disability employment targets for new public service hires in agencies and departments The Australian Government and State and Territory government departments and agencies should be required to set a target to ensure that a proportion of new public service hires to their respective workforce are people with disability. The target should be at least 7 per cent by 2025. The target should increase to at least 9 per cent by 2030.</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 7.18</p> |
| <p>Recommendation 7.20 Clarify the application of the merit principles in public sector recruitment The Australian Public Service Commission should incorporate clearer directions in Australian Public Service training and support on applying the merit principle in recruitment. Training and support materials should:</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <p>specifically address the importance of having a diverse public sector workforce that reflects the community it serves and provide guidance in considering the need for diversity in the application of the merit principle in recruitment.</p> | |
| <p>Recommendation 7.21 Introduce consistent adjustment principles and adjustment passports</p> <p>The Australian Public Service Commission should:</p> <p>a) lead the development of common principles to underpin adjustment policies for providing and managing adjustments in the public sector. This should occur in partnership with State and Territory public service commissions. The principles should be used to inform Australian Government and State and Territory government department policies and procedures on adjustments. The principles should include:</p> <ul style="list-style-type: none"> • clear and accessible processes for staff to request adjustments • timeframes for implementing adjustments and a process for review and seeking feedback on adjustments • clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about refusal to provide an adjustment) • clear policies on handling and sharing information about a person’s disability or adjustments • referrals to internal and external supports in relation to requesting and managing adjustments • requirements to collect data on applications for, and the implementation of, adjustments. <p>b) develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 7.18</p> |

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| <p>Recommendation 7.22 Public reporting on public sector disability employment strategies and targets</p> <p>The Australian Public Service Commission and State and Territory public service commissions should report annually on the progress of their public sector disability employment strategies, including progress against overall and disaggregated targets for increasing the percentage of employees with disability. These reports should be published and made available in accessible formats.</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 7.18</p> |
| <p>Recommendation 7.23 Strengthen disability employment procurement policies</p> <p>The Australian Government and State and Territory governments should adopt procurement policies that:</p> <p>a) favour businesses and entities able to demonstrate, in accordance with published criteria, they are providing employment opportunities for people with disability in open, inclusive and accessible settings, including people with intellectual disability or cognitive impairments.</p> <p>b) require all information and communication technology purchases to comply with the current Australian information and communication technology (ICT) accessibility standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services).</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 7.18</p> |
| <p>Recommendation 7.24 Convene a Disability Employment Rights Council</p> <p>The Australian Government should convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.25 Amend the <i>Fair Work Act 2009</i> (Cth)</p> <p>The <i>Fair Work Act 2009</i> (Cth) should be amended to:</p> <p>a) ensure the definition of ‘disability’ is consistent with the <i>Disability Discrimination Act 1992</i> (Cth)</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <p>b) remove the words ‘physical and mental’ preceding ‘disability’ in sections 351 and 772.</p> | |
| <p>Recommendation 7.26 Amend the <i>Disability Discrimination Act 1992</i> (Cth) Section 21A of The <i>Disability Discrimination Act 1992</i> (Cth) should be amended to expand the factors to be considered in determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role. These factors include the:</p> <ul style="list-style-type: none"> • nature and extent of any adjustments made • extent of consultation with any person with disability concerned. | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.27 Enable a Fair Work Ombudsman referral mechanism The Australian Government should expand the functions of the Fair Work Ombudsman to allow a matter involving an employee with disability to be referred back to the Fair Work Ombudsman by relevant authorities if they:</p> <ul style="list-style-type: none"> • consider a complaint may be best addressed by the Fair Work Ombudsman • have the complainant’s consent to do so. <p>The referral mechanism should be available in instances where a matter was initially referred by the Fair Work Ombudsman to a relevant authority.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.28 Improve information about wages and the Disability Support Pension The Australian Government should fund Disability Representative Organisations to deliver an information campaign for employees with disability in Australian Disability Enterprises. This campaign should provide information about:</p> <ul style="list-style-type: none"> • open employment, including wage conditions | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> • how receipt of the Disability Support Pension (DSP) interacts with a person’s wages, including: <ul style="list-style-type: none"> – assistance with financial literacy materials – supports for individuals to calculate how changes to their DSP or wages impact their overall income and financial situation • options for a person to suspend their DSP if they are earning above the threshold • who to contact to ask questions or obtain further information. This information should be available in a range of accessible formats. | |
| <p>Recommendation 7.29 Embed an ‘open employment first’ approach in the NDIS Participant Employment Strategy</p> <p>Following the conclusion of the NDIS Participant Employment Strategy in 2023, the National Disability Insurance Scheme (NDIS) should adopt an ‘open employment first’ approach in the next iteration of the strategy. The strategy should:</p> <ul style="list-style-type: none"> • ensure the development of employment goals in participants’ NDIS plans considers employment in open and integrated employment settings as a first option • provide training for Local Area Coordinators, National Disability Insurance Agency planners and support coordinators to build knowledge, resources and capacity to encourage participants to: <ul style="list-style-type: none"> – develop employment goals in open and integrated employment settings as a first option – identify appropriate supports available to achieve open employment goals • establish a target to increase the proportion of participants in open and integrated employment settings • build the knowledge and capacity of NDIS employment support providers to assist participants to – | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> - transition from Australian Disability Enterprises to open and integrated employment settings • provide ongoing support in open and integrated employment settings. | |
| <p>Recommendation 7.30 Support the transition to inclusive employment</p> <p>The Australian Government Department of Social Services should develop a plan to support people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment options in a range of settings.</p> <p>The plan should incorporate:</p> <ul style="list-style-type: none"> • the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice. Commissioners Bennett, Galbally, Mason and McEwin provide a recommendation to phase out ADEs by 2034 (Recommendation 7.32). They support this element of Recommendation 7.30 until ADEs are phased out • action to increase employment opportunities in open and inclusive settings for people with disability (linking with Recommendation 7.29) • improved information for people with disability about employment supports, opportunities in other settings, wages and the Disability Support Pension (linking with Recommendation 7.28) • active consultation with people with disability, Disability Representative Organisations and Disabled People’s Organisations Australia, and the adoption of inclusive design principles in developing and implementing the plan • the Australian Government working with industry to support people with disability to access more inclusive, open employment options and to transform their segregated employment services to a more comprehensive service offering improved collaboration between the National Disability Insurance Scheme and Disability | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>Employment Services to ensure different employment services work cohesively to deliver supports for people with intellectual disability and others.</p> | |
| <p>Recommendation 7.31 Raise subminimum wages</p> <p>a) The Australian Government should introduce a scheme to ensure that employees with disability are paid at least half the minimum wage. The scheme should include:</p> <ul style="list-style-type: none"> • revision of the productivity-based wages calculation to accommodate the move to a new minimum amount of 50 per cent of the current minimum wage • a provision for the Australian Government to subsidise employers for the difference between the wages payable under the relevant award or enterprise agreement and the new minimum wage until 2034. <p>b) A review of the scheme should be undertaken by the Disability Reform Ministerial Council after five years of operation.</p> <p>c) The Australian Government should use the results of the review to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.32 End segregated employment by 2034</p> <p>a) Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government Department of Social Services should develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises (ADEs) and eliminate subminimum wages for people with disability by 2034.</p> <p>b) The National Inclusive Employment Roadmap should be centred on the following principles:</p> <ul style="list-style-type: none"> • equal access for people with disability to all opportunities for employment, starting with the Australian Public Service and State and Territory public services | <p>Joint Response: <u>Subject to further consideration</u></p> <p>Supported employment refers to jobs where people with high employment support needs can receive extra support while they are at work.</p> <p>In Australia, around 160 Australian Disability Enterprises (ADEs), registered as NDIS providers, provide supported employment for approximately 16,000 people with disability. While ADEs currently play an important role in providing employment opportunities for people with disability, they are not, and should not, be the only employment option for people with high employment support needs.</p> |

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| <ul style="list-style-type: none"> • increased availability of jobs for people with disability, especially in: <ul style="list-style-type: none"> – Australian and State and Territory public services supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer. This recommendation would operate in advance of Recommendation 7.31 to raise all subminimum wages to the full minimum wage by 2034 – non-government organisations that receive government grants – private companies that receive government procurement contracts • availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability • better pathways to work for people with disability • as set out in Recommendation 7.31, lifting wages to 50 per cent of the minimum wage, with all people with disability moving to the full minimum wage by 2034 (noting our expectation that the public sector, as a model employer, will pay full minimum wages to employees with disability before that time) • governance and accountability for system change. <p>c) The National Inclusive Employment Roadmap should address:</p> <ul style="list-style-type: none"> • the reform of ADEs to operate in accordance with the social firm model, providing open workplaces in which employees with disability can receive support in an integrated setting to undertake work tasks, develop skills and transition to further open employment • the establishment of a grant-based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs | <p>In October 2022, Disability Ministers convened a supported employment roundtable with people with disability, family representatives, ADE representatives, peak bodies and other sector experts. Attendees developed a set of guiding principles for the future of supported employment. The principles aim to ensure people with high support needs have informed choice and control, real options for employment and a range of support to meet their employment goals.</p> <p>To ensure the guiding principles are brought to life, Disability Ministers agreed a national Supported Employment Plan in November 2023. The plan is focused on providing people with informed choice and control about their employment, as well as genuine opportunities to work in a wider range of settings, be it in an ADE, social enterprise, in open employment or in their own business.</p> <p>The Australian Government and State and Territory governments acknowledge the significant community interest, and diversity of views, around the Disability Royal Commission’s recommendations on supported employment.</p> <p>Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government develop a National Inclusive Employment Roadmap to transform ADEs and end segregated employment by 2034. While the Chair and Commissioner Ryan have no issue with the implementation of a plan to guide changes that should occur in the operation of ADEs and similar workplaces, they do not describe this process as ending segregated employment. The Chair and Commissioner Ryan do not consider every workplace established exclusively for people with disability should be characterised as segregated in the pejorative sense in which the word is typically understood. They consider workplaces exclusively for people with disability may have a continuing,</p> |
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| <ul style="list-style-type: none"> • support for people with disability to transition to open employment through programs such as the School Leaver Employment Supports program. <p>d) To support the National Inclusive Employment Roadmap as ADEs transform into social firms, government procurement rules should also be amended to give preference to enterprises that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage at the time of the procurement process (this recommendation would operate in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034).</p> <p>e) The implementation of the National Inclusive Employment Roadmap should be monitored by the Disability Reform Ministerial Council.</p> | <p>albeit diminishing, role in providing employment opportunities, especially for people with intellectual or cognitive disability.</p> <p>The Australian Government will undertake consultation to further consider views and implications associated with this recommendation and then determine next steps. Disability Ministers will also update the Supported Employment Plan in 2024.</p> |
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Part C - Inclusive Housing

Volume 7 Part C includes 12 recommendations.

| Recommendation | Response |
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| <p>Recommendation 7.33 Prioritise people with disability in key national housing and homelessness approaches</p> <p>a) The Australian Government should, in collaboration with State and Territory governments, expressly identify people with disability in key housing-related agreements and planning including the: National Housing and Homelessness Agreement (NHHA), which should include people with disability as a priority group in housing and homelessness reforms including in the proposed National Housing and Homelessness Plan, which should include people with disability as a priority group, and include the measurement and evaluation of outcomes for people with disability and the National Housing Supply and Affordability Council, which should include people with disability as a priority group in the development of housing supply and affordability policy advice, data collection and reporting.</p> <p>b) All State and Territory governments should include people with disability in housing and homelessness strategies, policies and action plans developed under the NHHA. This should include people with disability as a priority group, and the monitoring and evaluation of implementation and outcomes for people with disability.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments recognise the additional barriers some people with disability face in accessing appropriate housing, and the disproportionate risks and impacts of homelessness among people with disability.</p> <p>The National Housing Supply and Affordability Council’s inaugural report State of the Housing System 2024 highlights the rising number of people with disability and that the lack of accessible, inclusive housing disproportionately impacts on people with fixed or low incomes, particularly those with high support needs.</p> <p>All governments have committed to an ambitious housing reform agenda to boost the supply of all housing, and increase housing and homelessness supports for vulnerable communities.</p> <p>To prioritise accessible housing for people with disability, governments will continue working together to develop integrated responses. With respect to the items listed in the recommendation:</p> <ul style="list-style-type: none"> • The National Agreement on Social Housing and Homelessness (replacement of the NHHA) is designed to help people who are experiencing, or at risk of, homelessness and support the effective operation of Australia’s social housing and homelessness services sectors. It provides jurisdictions with flexibility to address issues for cohorts with disproportionate disadvantage, such as people with disability. The funding |

available to states and territories through the National Agreement on Social Housing and Homelessness can be prioritised through inclusion of people with disability as a priority group in housing and homelessness strategies, policy and action plans development un the agreement, and the monitoring and evaluation of implementation and outcomes for people with disability.

- The proposed National Housing and Homelessness Plan is under development and is subject to negotiation between the Australian Government and State and Territory governments. It is expected the Plan will be released later in 2024.
- The enabling legislation for the Supply Council, the *National Housing Supply and Affordability Council Act 2023*, acknowledges the importance of accessibility for people with disability as it is one of the areas of expertise considered when appointing members.

In addition, other housing policies and programs recognise the importance of supporting people with disability. For example:

- New homes delivered under the National Housing Accord and the Housing Australia Future Fund are required to meet standards in the 2022 National Construction Code relating to liveable housing design.
- The Safe Places Inclusion Round focuses on increasing access to appropriate emergency accommodation for women and children experiencing family and domestic violence (FDV), including women and children with disability. New builds delivered under the Safe Places Inclusion Round are required to meet Liveable Housing Australia Silver level accreditation.

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| <p>Recommendation 7.34 Include homelessness in Australia’s Disability Strategy</p> <p>The Australian Government should increase the focus on homelessness in Australia’s Disability Strategy by:</p> <p>a) ensuring consultations concerning, and reviews of, Australia’s Disability Strategy include people with disability at risk of experiencing homelessness and their representative organisations</p> <p>b) expressly including homelessness as a policy priority within the ‘Inclusive Homes and Communities’ key outcomes.</p> | <p>Joint Response: <u>Accept</u></p> <p>The Australian Government and State and Territory governments agree to increasing the focus on homelessness in Australia’s Disability Strategy 2021-2031 and are prioritising consideration of this through the review of Australia’s Disability Strategy 2021-31 being undertaken in 2024 in response to recommendation 5.2.</p> |
| <p>Recommendation 7.35 Increase the availability and supply of accessible and adaptive housing for people with disability through the National Construction Code</p> <p>State and Territory governments should commit to increasing the availability and supply of accessible and adaptive housing for people with disability by:</p> <p>a) immediately adopting the mandatory Australian Building Codes Board (ABCB) Livable Housing Design Standard for all new dwellings if they have not done so already, and developing a plan for the full implementation of the standard, including timeframes and outcomes measures</p> <p>b) adopting the voluntary ABCB Livable Housing Design Standard for all new social housing construction</p> <p>c) auditing the demand for, and accessibility of, current crisis housing (including domestic family violence shelters and refuges, and natural disaster crisis accommodation) to –</p> <ul style="list-style-type: none"> • determine the appropriate amount, location and cost of crisis housing required to meet the needs of people with disability • set appropriate targets for new crisis housing construction and refurbishment that meet the voluntary ABCB Livable Housing Design Standard. | <p>NSW Response: <u>Subject to further consideration</u></p> <p>7.35(a)</p> <p>The NSW Government remains committed to ensuring NSW delivers quality, affordable and trustworthy homes to meet NSW’s housing needs.</p> <p>The Government is continuing to work with other jurisdictions to understand the impact of the new accessible housing provisions on the delivery of affordable and accessible homes in other States to determine how it could impact the NSW’s delivery of affordable homes.</p> <p>7.35(b) social housing construction</p> <ul style="list-style-type: none"> • Design requirements for social housing stipulate a minimum Silver Level (of the Livable Housing Design Guidelines) for new ground level and lift-accessible properties and Silver Standard interiors for new dwellings where lifts are not available. • Where possible, Homes NSW builds a proportion of social homes to Livable Housing Design Guidelines Gold performance level with some Platinum level features. • When designing and planning for new social homes, Homes NSW also considers how close they are to shops and essential services, and how easy it will be for people to get around their neighbourhood. |

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| | <ul style="list-style-type: none"> • On average, over 2,280 properties are modified every year, supporting public housing tenants to live independently and safely in their homes. • As of 31 March 2023, the Social & Affordable Housing Fund has delivered 2,983 (of 3,089) homes that meet the requirements of the Liveable Housing Australia silver standard. <p>7.35 (c) Disaster Welfare The NSW Government provides shelter for people evacuated during emergencies through evacuation centres and commercially arranged emergency accommodation. Every effort is made to provide for the needs of all people who require shelter and emergency accommodation including triaging the needs of people with disability and offering priority placement in appropriately facilitated commercial accommodation. Evacuation centres are regularly audited to ensure they are fit for purpose and accessible to the public in emergencies. All people are encouraged to develop their own emergency plans including when to go early and where they may go if forced to evacuate.</p> |
| <p>Recommendation 7.36 Improve social housing operational policy and processes State and Territory governments should develop and implement accessible and inclusive processes for allocating and modifying social housing for people with disability, including by:</p> <p>a) reviewing and amending application processes to:</p> <ul style="list-style-type: none"> • identify whether applicants have a disability or accessibility needs, including those relating to communication, housing and access to community/support networks and services • put processes in place to update this information as needs change <p>b) reviewing, amending and publishing (in accessible formats) housing allocation and ‘reasonable offer’ policies and procedures to ensure these</p> | <p>NSW Response: <u>Accept</u> Homes NSW is working to improve its social housing policy and processes to make them more accessible and inclusive for people with disability and anticipates they will be implemented in late 2024.</p> |

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| <p>can be easily understood and do not disadvantage people with disability seeking particular adjustments or modifications, or people who decline housing for accessibility reasons</p> <p>c) reviewing, amending and publishing (in accessible formats) housing modification policies. The policies should clearly articulate who is responsible for organising and funding housing modifications, expected timeframes, and contacts for following up and raising concerns.</p> | |
| <p>Recommendation 7.37 Increase tenancy and occupancy protections for people with disability</p> <p>States and Territories should review legislation governing the tenancy and occupancy rights of people with disability and adopt the best regulatory and legislative models currently in force, including:</p> <p>a) in the case of tenancies –</p> <ul style="list-style-type: none"> • enacting legislation to replace landlords’ ‘no-grounds’ termination rights with ‘reasonable grounds’ as currently specified in Victoria, Queensland and Tasmania • for both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy or that the tenant give up possession, empowering the tribunal to take the tenant’s or a co-occupier’s disability and the nature of that disability into account. <p>b) in the case of non-tenancy accommodation –</p> <ul style="list-style-type: none"> • adopting the provisions included in the <i>Residential Tenancies Act 1997</i> (Vic) Part 12A to protect residents of Specialist Disability Accommodation (SDA) under the National Disability Insurance Scheme • introducing ‘occupancy principles’ similar to those under the <i>Boarding Houses Act 2012</i> (NSW), to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Government is committed to ending no grounds terminations and improving protections for occupants in residential tenancies and shared accommodation.</p> <p>A statutory review of the Boarding Houses Act 2012 has been completed. The incorporation of the specific elements of the recommendation will be considered as part of the development/drafting of the of future legislation.</p> |

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| <ul style="list-style-type: none"> • extending these occupancy principles to cover ‘general boarding houses’ in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction • in hearing disputes about eviction, tribunals be required when determining whether to make an eviction order to consider the occupant’s disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation. | |
| <p>Recommendation 7.38 Minimum service standards and monitoring and oversight of supported residential services and their equivalents</p> <p>This recommendation applies to State and Territory government entities responsible for regulating privately operated and government-funded board and lodging-type supported accommodation services—including supported residential services (SRS) (in Victoria), assisted boarding houses (in New South Wales), Level 3 residential centres (Queensland), and supported residential facilities (SRF) (in South Australia). The entities should develop and implement minimum service and accommodation standards, strengthen oversight mechanisms, and increase service-level monitoring activities and compliance action, as follows:</p> <p>a) Minimum standards should require all SRS providers and their equivalents in other jurisdictions to –</p> <ul style="list-style-type: none"> • develop support plans for each resident, covering personal care, financial management, medication management, and the use of restrictive practices • keep up-to-date records of how services are delivered in line with support plans, to allow regulatory bodies to more effectively monitor the quality of supports and services by regulatory bodies | <p>NSW Response: <u>Accept in principle</u></p> <p>NSW Assisted Boarding Houses are registered with NSW Fair Trading and licenced by the Department of Communities and Justice as prescribed under the <i>Boarding Houses Act 2012</i>.</p> <p>A statutory review of the <i>Boarding Houses Act 2012</i> has been completed. The incorporation of the specific elements of the recommendation will be considered as part of the development/drafting of new legislation.</p> |

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| <ul style="list-style-type: none"> • establish clear complaint management processes, including how complaints are reported to the central registration body, and a feedback loop for residents, their family and advocates • guarantee access to independent advocacy services through advocacy organisations and community visitor schemes • support residents to access independent advocacy services focused on identifying alternative, longer term accommodation options in recognition of the transitional nature of these services. <p>b) Monitoring and oversight mechanisms for SRS and their equivalents in other jurisdictions should –</p> <ul style="list-style-type: none"> • require central registration for all SRS and equivalent services with the relevant State or Territory department responsible for SRS standards • require all SRS and their equivalents to undergo an initial audit when seeking registration, as well as ongoing audits (minimum yearly) for monitoring and compliance with all minimum standards • audits should include direct engagement with people with disability residing in SRS and their equivalents, and should be undertaken centrally by the responsible state or territory department • establish procedures to monitor services in response to complaints and incidents, including when and how the relevant State or Territory department will undertake investigations • establish compliance activities in response to audit results and investigations following complaints and incidents, including when registration will be impacted • include the specific rights of community visitor programs to attend and report on standards within SRS and their equivalents • be developed in consultation with other regulatory systems to identify and close regulatory gaps between schemes and settings | |
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| <p>including SRS, the National Disability Insurance Scheme, and in aged care and mental health services.</p> <p>c) Regulatory entities should have adequate powers to enforce all standards. Up-to-date records of infringements, enforcement action and remedies should be maintained centrally. The regulatory entities should notify substantiated infringements by providers to other oversight bodies with responsibilities for those providers, including the NDIS Quality and Safeguards Commission.</p> <p>d) States and Territories should consider whether these recommendations should be implemented in relation to other forms of marginal accommodation for people with disability, including general boarding houses and caravan parks.</p> | |
| <p>Recommendation 7.39 Preventing homelessness when people with disability transition from service or institutional settings</p> <p>The Australian Government (including the National Disability Insurance Agency (NDIA)) and State and Territory governments should commit to a policy of ‘no leaving into homelessness’ for people with disability. The Australian Government (including the NDIA) and state and territory governments should establish or nominate a lead agency with responsibility for planning and coordinating the transition of people with disability from service or institutional settings (including health services, mental health services, correctional facilities, and out-of-home care) directly into safe and appropriate housing. The lead agency should be the NDIA when the person is a National Disability Insurance Scheme (NDIS) participant (consistent with the role of the NDIS under Applied Principles and Tables of Support). If the person is not an NDIS participant, the lead agency should be the agency responsible for the service or institutional setting at the time the person leaves. The role of the lead agency should include:</p> <ul style="list-style-type: none"> • developing and implementing individual plans for people with disability leaving service or institutional settings to identify | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to working collaboratively to support people with disability leaving institutional settings into safe and appropriate housing. Part of this work will be determining if nominating a lead agency or agencies is the appropriate mechanism for implementing this recommendation. All governments recognise that continued, focussed and coordinated work is required across systems to ensure people with disability do not ‘leave into homelessness’ from health services, mental health services, correctional facilities, and out-of-home care.</p> <p>Disability Ministers will work together in 2024 to identify responsibilities for planning and coordinating the transition of people with disability from service or institutional settings directly into safe and appropriate housing. All governments will also continue working together to leverage and implement objectives and priorities under the new National Housing and Homelessness Plan 2024-2034 to support better housing outcomes and reduce rates of homelessness for people with disability.</p> |

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| <p>housing, services and supports for a successful transition into secure housing</p> <ul style="list-style-type: none"> • ensuring supports can be put in place before a person with disability leaves the service or institutional setting • coordinating the implementation of the plan until the person with disability has successfully transitioned to safe and appropriate housing. | |
| <p>Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan</p> <p>In developing the National Housing and Homelessness Plan, the Australian Government, working with State and Territory governments, should:</p> <p>a) identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort or cohorts for intensive homelessness support, recognising their needs, circumstances and diversity</p> <p>b) review the adequacy of funding for homelessness, with particular regard to the cost of providing more intensive homelessness support for people with disability and complex needs, and current levels of unmet demand</p> <p>c) expand pathways and support for people with disability out of homelessness, including through Housing First programs</p> <p>d) consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness to help them navigate the different homelessness supports to which they are entitled at State or Territory and Australian Government levels.</p> | <p>Joint Response: <u>Subject to further consideration</u></p> <p>The Australian Government and State and Territory governments are committed to national action to help more Australians access safe and affordable housing, including people with disability.</p> <p>Safe and affordable housing is central to the security and dignity of people with disability. All governments have committed to an ambitious housing reform agenda to boost the supply of all housing, and increase housing and homelessness supports for vulnerable communities, including people with disability.</p> <p>This includes the proposed National Housing and Homelessness Plan, which is expected to provide a shared national vision for tackling Australia’s housing challenges and support those experiencing housing stress and homelessness.</p> <p>The National Plan is currently under development and is subject to negotiation between the Australian Government and State and Territory governments. It is expected the Plan will be released later in 2024 and it is anticipated that the Plan:</p> <ul style="list-style-type: none"> • will focus on supporting all individuals regardless of their characteristics or background; • will not prioritise different cohorts in recognition of the large degree of intersectionality and diversity among individuals and |

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| | <p>households, but will acknowledge that some groups, including people with disability, face additional barriers and need additional or targeted responses; and is built on all governments' commitment to prioritising the needs of those people who need housing and homelessness assistance the most, in recognition of the flexibility required to support people in a way which recognises the uniqueness of an individual's circumstances, needs and experiences.</p> |
| <p>Recommendation 7.41 Group home reform The NDIS Quality and Safeguards Commission should prioritise the implementation of the Own Motion Inquiry into Aspects of Supported Accommodation – Action Plan (the Action Plan) and expand actions to include:</p> <p>a) a specific review of mechanisms to transition away from allowing the same provider to provide Supported Independent Living and Specialist Disability Accommodation services, with interim arrangements to strengthen oversight to address and monitor conflicts of interest (under Action 8)</p> <p>b) strengthening how disability providers implement models of practice, such as Active Supports, to ensure that people with disability living in group homes are actively supported to have opportunities for greater social interaction and community participation and inclusion (under Action 2)</p> <p>c) developing an implementation plan for the Action Plan, with –</p> <ul style="list-style-type: none"> • explicit timeframes for delivery • annual reporting on progress and outcomes to the Disability Reform Ministerial Council. | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 7.42 Improve access to alternative housing options The National Disability Insurance Agency (NDIA) should work with the Australian Government, and State and Territory governments, to expand</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support the development of a diverse range of inclusive housing options for</p> |

alternative housing options and support for people with disability to access and transition to these options through a proactive market enablement strategy. This should include:

a) an increase in innovative housing options, such as by –

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

b) reform of NDIS participant funding models, including Supported Independent Living, Specialist Disability Accommodation and Individualised Living Options to provide greater flexibility. In particular, this flexibility should ensure that administrative and pricing mechanisms do not favour group home living over other models of inclusive housing.

c) development of clear and supportive transition pathways that provide access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition. This should include –

- an individualised assessment of a person’s housing needs and preferences, with the option for this to be regularly updated

people with disability.

All governments are committed to continuing to work together to further consider options to expand the availability of more inclusive and alternative models of housing for people with disability.

Approaches to specific reform and implementation to address the intent of this recommendation will be considered alongside relevant NDIS Review recommendations and actions.

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| <ul style="list-style-type: none"> • an update of a person’s NDIS plan to include specific support, including capacity building to support the decision to transition to more independent living • where a person is interested in changing housing, the development of an individual transition plan that identifies current available and emerging alternative housing options, beyond the offerings of their current provider • access to independent advocacy and an independent support coordinator to provide support for and facilitate the transition <p>d) prioritisation of the implementation of the NDIA Home and Living Framework, including –</p> <ul style="list-style-type: none"> • establishing explicit timeframes for its implementation that recognise the urgency of these reforms, in relation to realising the rights of people with disability under the <i>Convention on the Rights of Persons with Disabilities</i> • continuing work with the disability community to identify key outcomes and measures, and developing a comprehensive monitoring and evaluation plan to measure and report on progress • ensuring the chosen approaches address the key elements set out above in this recommendation, including – <ul style="list-style-type: none"> – providing a dedicated pathway for participants with a current or anticipated high need for home and living supports – ensuring participants taking this pathway have appropriate and timely support to explore and design individualised home and living solutions that work for them. | |
| <p>Recommendation 7.43 A roadmap to phase out group homes within 15 years</p> <p>Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government and State and Territory governments develop and implement a comprehensive roadmap to phase out group homes within</p> | <p>Joint Response: <u>Subject to further consideration</u></p> <p>The Australian Government and State and Territory governments support the development of a diverse range of inclusive housing options for people with disability that support them to exercise choice and control over their living arrangements.</p> |

the next 15 years. This roadmap should address delivering inclusive housing supply to meet demand, transition support for people with disability, and implementation planning for phasing out group homes. It should include:

a) delivery of inclusive housing supply to meet demand, by –

- undertaking a comprehensive assessment of existing service demand (including people with disability who are currently living in group homes and current unmet needs) and projected service demand (forecasted demand for supported accommodation over the next 30 years)
- assessing projected supply of alternative housing to inform planning for the transition of people out of group homes, including conducting a stocktake of existing disability housing assets that may be repurposed or used to increase the supply of inclusive housing
- piloting alternative housing models with increased investment to roll out successful models in line with supply and demand modelling to meet future housing needs for people with disability (see also Recommendation 7.42).

b) a review of the current Specialist Disability Accommodation (SDA) Pricing and Payments Framework to ensure it remains fit for purpose, focusing on ensuring that –

- a data-driven approach is used to direct investment where it has the greatest benefit for participants and the National Disability Insurance Scheme (NDIS)
- NDIS funding for specialist accommodation is directed to those participants with significant functional impairment or high support needs for whom specialised housing would deliver a measurable benefit
- the needs of people with disability for affordable and accessible housing are prioritised by state and territory governments

In January 2023, the NDIS Quality and Safeguards Commission completed an own motion inquiry into aspects of supported accommodation in the NDIS. An Action Plan was developed in response to the inquiry, focusing on elevating the quality and safety of supported independent living (SIL) services; amplifying the voices of people with disability living in supported accommodation; and improving the NDIS to maximise the choice, control and experience of participants living in supported accommodation –including the interaction between SIL and specialist disability accommodation (SDA).

SDA is one of the supports that might be funded under the NDIS for some participants. SDA is a range of housing designed specifically for people with extreme functional impairment or very high needs.

The NDIA and States and Territories have implemented a number of initiatives to support the phasing out of group homes enrolled as SDA (noting that not all people with disability residing in group homes receive SDA supports).

For example, the NDIA no longer provides SDA payments for enrolled SDA properties with 11 or more residents and is progressively ceasing SDA payments for dwellings accommodating 6-10 residents. New Build SDA must only accommodate 5 or less residents to be enrolled with the NDIA.

All governments will consider this recommendation further alongside recommendations of the NDIS Review, including Recommendations 8 and 9 of the NDIS Review and their associated actions.

- prices are set to encourage development of best practice examples of SDA.

c) transition support for people currently living in group homes, including through –

- a transition pathway that provides access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition (see also Recommendation 7.42)
- interim improvements in group home oversight and practices to ensure that people with disability living in group homes are safe and have greater choice and control during this transition period (see also Recommendation 7.41)
- grandfathering arrangements for those people who wish to stay in their group home, including consideration of additional financial support to maintain financially viable group home arrangements where necessary

d) implementation planning undertaken through co-design with people with disability and the disability community, including –

- a specific timeframe for ceasing construction of any new group homes (within the next two years)
- a specific timeframe for ceasing placement of new residents in group homes (within five years)
- a specific timeframe for completing transition of those residents who wish to move from group homes to alternative housing options (within 15 years)
- development of an outcomes-based evaluation framework, tool and processes to track short-, medium- and long-term outcomes across the roadmap, and build an understanding of emerging best practice.

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

Commissioner Ryan recommends the Australian Government and State and Territory governments commit to phasing out group homes in stages.

This commitment should include:

- a) immediate commitments to reduce the reliance on group homes, including –
- not approving new four-to six-bedroom group home models for Specialist Disability Accommodation
 - only allowing new National Disability Insurance Scheme participants to enter group home accommodation as a last resort
 - prioritising moving existing residents of group homes to move into smaller groups over time on request, subject to need

b) development of a staged approach to phasing out group homes, including consideration of housing availability, transition logistics and financial impacts.

Annual progress and outcomes should be reported to the Disability Reform Ministerial Council.

Joint Response: Subject to further consideration

See 7.43

Volume 8: Criminal Justice and People with Disability

Volume 8 includes 24 recommendations.

| Recommendation | Response |
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| <p>Recommendation 8.1 Conditions in custody for people with disability State and Territory governments should uphold the rights of people with disability who are in custody. Consistent with article 14 of the <i>Convention on the Rights of Persons with Disabilities</i>, all corrective service and youth justice agencies should provide people with disability with the disability supports they require to place them in the same position, so far as feasible, as other people in custody.</p> | <p>NSW Response: <u>Accept in principle</u> NSW Government recognises that people with disability are overrepresented in the youth and adult justice system. They must have equal access to their rights for dignity and care, safety, service and interventions, as part of being involved in the justice system.</p> <p>NSW Government is committed to continuing to build on work that is happening across the NSW justice system to improve conditions in custody through a range of specialist interventions.</p> <p>NSW Government recognises the current limitations within the NSW justice system and notes that adult and youth custodial facilities are not currently funded nor expected to operate as a primary disability service.</p> <p>NSW Government supports a whole of government response to people with a disability in custody to maximise the potential to provide the necessary supports and services and strengthen the service response for people with disability in custody and the wider justice system.</p> |
| <p>Recommendation 8.2 Disability awareness in OPCAT monitoring In implementing the Optional Protocol to the <i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>, the Australian Government, in consultation with the state and territory governments, should support the development of a human rights education and training strategy that includes disability awareness training for National Preventive Mechanisms (NPMs), detention authorities and their staff. NPMs should:</p> | <p>Commonwealth, ACT, NT, TAS: <u>Accept in principle</u> NSW, QLD, SA, VIC, WA: <u>Subject to further consideration</u></p> <p><i>The following response is provided by the Commonwealth, ACT, NT, SA, TAS and WA:</i></p> <p>The Australian Government and State and Territory governments are committed to continuing to consider and progress reform to better protect the human rights of people with disability in places of detention.</p> |

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| <ul style="list-style-type: none"> engage with disability organisations about the needs of people with disability in places of detention obtain training and education for their staff on the types of disability and needs of people with disability in places of detention, including the impact of intersectional disadvantage obtain the views of people with disability in places of detention by directly engaging with them about their experiences in places of detention have effective mechanisms for obtaining the views of people with disability in places of detention. | <p>All governments continue to cooperatively and progressively work towards implementation of the <i>Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (OPCAT), including resolving ongoing funding arrangements.</p> <p><i>The following response is provided by NSW, QLD and VIC:</i></p> <p>All governments continue to cooperatively and progressively work towards implementation of OPCAT, subject to the resolution of sufficient and ongoing funding from the Commonwealth and the resolution of implementation issues, including the Commonwealth leading work in consultation with States and Territories to reach agreement on the definition and scope of places of detention.</p> |
| <p>Recommendation 8.3 Prohibiting solitary confinement in youth detention States and Territories should:</p> <p>a) introduce legislation to prohibit solitary confinement in youth justice settings (being the enforced isolation or segregation for any purpose of a child or young person for 22 or more hours in any day)</p> <p>b) introduce legislation to prohibit the use of isolation (however described) in youth detention centres as punishment in any circumstance</p> <p>c) review legislation, policy and procedures to ensure children with disability are not subjected to isolation practices amounting to solitary confinement</p> <p>d) ensure legislation authorising isolation (including lockdowns) in youth detention centres provides for its use:</p> <ul style="list-style-type: none"> as a temporary response to behaviour that poses a serious and immediate risk of harm to an individual as a last resort after all other measures to address risk have been exhausted for a period that must not exceed a specified number of hours in any day | <p>NSW Response: <u>Accept in part</u></p> <p>Many young people in the NSW youth justice system have a suspected or diagnosed disability. The NSW Government acknowledges the importance of keeping young people with a disability safe in youth justice custodial settings.</p> <p>The NSW Government accepts this recommendation in part, noting that youth detention in NSW has several existing legislative safeguards in place to guide the safe management of young people in custody, including those restrictive practices, such as confinement and segregation (isolation) is a measure of last resort. Legislation also provides for the independent oversight of all detention centres in NSW and a robust complaints mechanism for young people, which is supported by accessible language documents and other supports to make a complaint.</p> <p>The NSW Youth Justice system has been engaged in a process of</p> |

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| <p>e) ensure legislation authorising isolation (including lockdowns) in youth detention centres provides at a minimum the following protections for children with disability:</p> <ul style="list-style-type: none"> • a requirement to take into account the child’s disability needs before any isolation period is authorised • meaningful human contact during the period of isolation • access to the community equivalent standard of health care, including mental health services during the period of isolation • regular review of the order and circumstances authorising isolation • the creation and keeping of detailed records relevant to the period of isolation and the provision of a copy of such records to the relevant body with independent oversight of places of detention (such as the Inspector of Custodial Services). | <p>custodial reform over the last 5 years including targeted work to reduce the use of restrictive practices in youth detention centres.</p> <p>Also, improving safety of young people in detention under the Youth Justice NSW Child Safe Framework, with improvements to detention centre infrastructure, staff training and development and strengthening internal oversight of the use of force. This work will continue.</p> <p>The NSW Government welcomes continued engagement across all youth justice jurisdictions to inform further improvements and harmonisation of practice for young people with a disability in custody.</p> |
| <p>Recommendation 8.4 Screening and assessment for disability in youth detention</p> <p>State and Territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>NSW Health and Youth Justice NSW work in partnership to provide general health and mental health services for young people in custody in NSW. Ensuring timely screening and assessment for cognitive disability remains a priority.</p> <p>The NSW Government acknowledges that improvements can be made and highlights the nature of short-term remand in NSW youth detention which can impact both screening and assessment interventions.</p> <p>In line with commitments under Closing the Gap priority reforms NSW Government is prioritising work to improve outcomes for Aboriginal young people. In particular, the absence of a culturally validated disability screening tool is acknowledged. The NSW Government welcomes partnership in this area with Aboriginal community and Aboriginal health organisations to improve screening and assessment of Aboriginal young people in contact with the youth justice system.</p> |

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| <p>Recommendation 8.5 Disability training for staff in youth detention State and Territory governments should ensure staff and officials in youth detention centres at all levels receive appropriate initial and ongoing training and support in relation to the needs and experiences of children with disability. This includes training and support on trauma-informed care and culturally appropriate and gender responsive approaches to children with disability in detention.</p> | <p>NSW Response: <u>Accept in principle</u> NSW Government recognises the importance of ensuring that the frontline workforce in the youth justice system receives the ongoing training and development required to work with people with suspected and diagnosed disability, which is trauma informed, culturally appropriate and gender responsive.</p> <p>NSW Health and Youth Justice NSW work in partnership to provide a service that is responsive to the needs of people with disability who are in youth detention settings in NSW. Within current resourcing, staffing and budgetary limitations, staff training is delivered to frontline youth justice and clinical health staff. This work will continue.</p> <p>NSW Government recognises mutual commitments under Closing the Gap to improve health outcomes for Aboriginal and Torres Strait Islander people, to work in partnership with community and Aboriginal organisations to improve service responsiveness for vulnerable young people in contact with the youth justice system.</p> |
| <p>Recommendation 8.6 Western Australia youth detention staff retention The Department of Justice of Western Australia should immediately review its youth justice staffing and recruitment model to ensure sufficient, suitably trained staff are available to supervise children and young people to minimise lockdowns and prevent the solitary confinement of detainees. This should include developing and implementing a recruitment and retention strategy that:</p> <ul style="list-style-type: none"> • addresses high staff attrition rates in youth detention • promotes representation at senior management level of staff with disability and First Nations backgrounds • includes measures to help staff access mental health support. | <p>NSW Response for recommendations 8.6 to 8.8: <u>Note</u> This recommendation is directed at Western Australia.</p> |

Recommendation 8.7 Western Australia youth detention operating philosophy

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

- immediately cease confinement practices at youth detention centres amounting to solitary confinement of children with disability
- ensure decisions leading to the isolation of children with disability are made in conformity with legal requirements
- implement a new operating philosophy and service model to manage detainees with disability in a therapeutic, non-punitive, non-adversarial, trauma-informed and culturally competent way
- ensure the operating philosophy and implementation plan are developed in conjunction with people with disability and First Nations people
- release a clear timeline for publication of its new operating philosophy and service model for youth detention in Western Australia and the associated implementation plan
- raise awareness at every level of staff in the youth detention centres concerning the support needs of people with cognitive disability and foster respect for the rights of people with disability
- ensure lawyers representing detained clients are allowed adequate time and assured of confidentiality at youth detention centres to take instructions, especially where their clients have cognitive disability.

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

The Western Australian Government should introduce and support legislation amending the *Inspector of Custodial Services Act 2003 (WA)* to provide the Inspector with a discretion to demand a response from the department or other relevant agency, within a specified time, to recommendations of the Inspector included in a report to Parliament.

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| <p>This should include the steps (if any) taken by the agency in response to the recommendations and an explanation of why steps have not been taken (if that be the case).</p> | |
| <p>Recommendation 8.9 Use of seclusion in New South Wales Justice Health and Forensic Mental Health Network The New South Wales Government should review existing policy regarding the use of seclusion for adults with cognitive disability in the Justice Health and Forensic Mental Health Network, including the use of clearly designated authorisation and mandatory clinical and administrative review.</p> | <p>NSW Response: <u>Accept</u> NSW Health is undertaking a review of Policy Directive, Seclusion and Restraint in NSW Health Settings (PD2020_004), which will examine the circumstances in which seclusion is used, authorised and reviewed. NSW Health expects the revised policy to be released in 2026.</p> <p>Reducing and where possible eliminating the use of seclusion and restraint remains a priority of NSW Health. Seclusion and restraint are only used in accordance with legislation, to manage the risk to the safety of the patient, staff and public.</p> |
| <p>Recommendation 8.10 Transition from custodial supervision in the Northern Territory The Northern Territory Government should provide supported step-down accommodation in community-based settings for people with disability subject to custodial supervision orders.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Northern Territory.</p> |
| <p>Recommendation 8.11 Information for courts and legal practitioners The Commonwealth, State and Territory criminal justice systems should provide information about seeking or making adjustments and supports and services for people with disability, and the circumstances in which they may be required. This information should be made available to judicial officers, legal practitioners and court staff, including through practice notes or bench books.</p> | <p>Joint Response: Commonwealth, ACT, NSW, NT, QLD, SA, TAS, VIC: <u>Accept in principle</u> WA: <u>Accept</u> The Australian Government and state and territory governments are committed to ensuring that people with disability have equal access to justice, and will consider whether changes are required when updating guidance or other relevant information.</p> |
| <p>Recommendation 8.12 Implementation of the National Principles The Australian Government, together with State and Territory governments, should review the National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or</p> | <p>Joint Response: Cth, WA, ACT, TAS, NT, QLD, NSW: <u>Accept in principle</u> SA, VIC: <u>Subject to further consideration</u> The Australian Government and state and territory governments have committed to review the National Principles, including aspects regarding</p> |

Mental Health Impairment (National Principles) through the Standing Council of Attorneys-General.

The National Principles should be revised to include the following:

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

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

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

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

indefinite detention and the availability of step-down accommodation. All governments recognise the rights of persons with cognitive or mental health impairment, noting these rights must be balanced against the need to prevent harm to others and uphold the rights of victims.

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| <p>Recommendation 8.13 Data about people detained in forensic systems</p> <p>The Australian Government and State and Territory governments should support legislation requiring the annual collection and publication of data relating to people found unfit to plead or not guilty by reason of cognitive or mental health impairment. The data collected should include:</p> <ul style="list-style-type: none"> • the number of people under forensic orders in their jurisdiction • the number of people under orders for detention and the numbers subject to: <ul style="list-style-type: none"> - indefinite periods of detention - limiting terms (or equivalent) - orders extending their order for detention • the number of people under orders for detention by sex, disability, disability type and First Nations status • the number of such people detained in: <ul style="list-style-type: none"> - an adult correctional facility - a youth detention facility - a forensic mental health or forensic disability facility - a general psychiatric unit. | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support improving data collection relating to people found unfit to plead or not guilty by reason of cognitive or mental health impairment.</p> <p>Implementation is subject to relevant scoping work to assess existing frameworks and system capability, and personal privacy protections. This work will bolster the ability of governments to evaluate policy settings relating to people with cognitive or mental health impairments in the criminal justice system.</p> |
| <p>Recommendation 8.14 National practice guidelines for screening in custody</p> <p>State and Territory corrective services, youth justice agencies and justice health agencies, through the Corrective Services Administration Council and equivalent youth justice bodies, should develop national practice guidelines and policies relating to screening for disability and identification of support needs in custody.</p> <p>People with disability, including with lived experience of the criminal justice system, and people with expertise in cognitive disability should be involved in the design of the guidelines and contribute to the approaches to implementation. The guidelines and policies should:</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Government is committed to working with other States and Territories to develop national practice guidelines and policies for disability screening in custody.</p> <p>Guidelines and policies developed will need to be culturally appropriate, trauma-informed, consider lived experience of people with a disability and developed in partnership with people with lived experience including Aboriginal communities and Aboriginal led organisations.</p> |

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

NSW Response: Accept in principle

NSW Government is committed to working with other states and

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

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| <p>State and Territory governments should ensure that policies and practices concerning screening, identification and diagnosis of disability in respect of people with disability in custody are consistent with the national practice guidelines.</p> | <p>territories to develop and harmonise national practice standards and guidelines.</p> <p>NSW Government will review policies and practices around screening and diagnosis of disability to align with national practice guidelines once they are finalised.</p> |
| <p>Recommendation 8.16 Support by First Nations organisations to people in custody State and Territory corrective service and youth justice agencies and justice health agencies should engage First Nations organisations, including Aboriginal Community Controlled Health Organisations, to provide culturally safe disability screening and assessment services for First Nations prisoners and detainees.</p> | <p>NSW Response: <u>Accept in principle</u> NSW Government acknowledges that for Aboriginal and Torres Strait Islander people to thrive, we must create a service system that places Aboriginal culture and Aboriginal families at the centre of everything` we do. We must also ensure that all decisions about Aboriginal people in the justice system are made by Aboriginal people.</p> <p>The NSW Government welcomes further collaboration, consultation and partnership with Aboriginal communities and Aboriginal led organisations under this recommendation. Improving screening and assessment of suspected disability remains a shared government priority, aligning with improving more broadly outcomes for Aboriginal and Torres Strait Islander people under Closing the Gap targeted reform.</p> |
| <p>Recommendation 8.17 NDIS Applied Principles and Tables of Support concerning the justice system Through the Disability Reform Ministerial Council, the Australian Government and state and territory governments should:</p> <ul style="list-style-type: none"> • review the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i> (Cth) and the Applied Principles and Tables of Support (APTOS) and operational guidelines to align and provide clear parameters in determining which supports will be funded by the National Disability Insurance Scheme (NDIS) for participants involved in the criminal justice system | <p>Joint Response: <u>Subject to further consideration</u> The Australian Government and State and Territory governments are committed to working together to clarify roles and responsibilities at the interface between the NDIS and justice services.</p> <p>This recommendation requires consideration alongside relevant recommendations of the NDIS Review related to roles and responsibilities within the disability ecosystem.</p> <p>Work over the past five years at the justice/NDIS interface has included the introduction of Justice Liaison Officers (JLOs); increasing awareness</p> |

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| <ul style="list-style-type: none"> • resolve issues related to the interface between the NDIS and the criminal justice system, particularly the distinction between ‘criminogenic-related supports’ and ‘disability-related supports’ • where such issues cannot be resolved, agree on a mechanism for joint-funding of individual supports. <p>Proposed amendments to the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i> (Cth) and the APTOS should be agreed by National Cabinet.</p> | <p>of the roles and responsibilities of the NDIS and justice systems; implementing formal information sharing arrangements; and strengthening relationships between the NDIS and Aboriginal and Torres Strait Islander justice settings.</p> |
| <p>Recommendation 8.18 Timing of NDIA-funded transition supports</p> <p>The National Disability Insurance Agency (NDIA) should issue guidelines stating expressly that a release date is not a precondition for approving funding for transitional supports for participants in custody. The NDIA’s Justice Operational Guidelines and internal practice guides should be amended to make this clear.</p> | <p>NSW Response for recommendations 8.18 to 8.19: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 8.19 Amendment of The <i>Disability Discrimination Act 1992</i> (Cth) to cover police provision of ‘services’</p> <p>The <i>Disability Discrimination Act 1992</i> (Cth) should be amended to expressly include ‘services provided by police officers in the course of performing policing duties and powers’ in the definition of ‘services’ in section 4.</p> | |
| <p>Recommendation 8.20 Improving police responses to people with disability</p> <p>The Australian Government and State and Territory governments and police services should collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability. All police services should introduce adequate numbers of dedicated disability liaison officers. The Australian</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to improving police responses to people with disability and recognise the essential role of law enforcement in promoting and maintaining fundamental human rights.</p> <p>All governments are committed to ensuring that police services are</p> |

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| <p>Government and state and territory governments should introduce an alternative reporting pathway for people with disability to report crimes to police.</p> | <p>adequately equipped to engage with people with disability according to their needs. This can be achieved in multiple ways, including through the introduction of disability liaison officers or broader workforce capability uplift noting implementation must have regard to the unique geographical settings of states and territories.</p> <p>All governments acknowledge the benefits of working with people with disability to design, implement and evaluate strategies to improve police responses to people with disability in respective jurisdictions.</p> |
| <p>Recommendation 8.21 Diversion of people with cognitive disability from criminal proceedings</p> <p>The New South Wales, South Australian, Victorian and Western Australian governments should review and fund their existing court-based diversion programs for people with cognitive disability charged with offences that can be heard in local or magistrates' courts to ensure the programs:</p> <ul style="list-style-type: none"> • are accessible and culturally appropriate, particularly in regional and remote areas • provide support for defendants to access the National Disability Insurance Scheme (NDIS) • satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services. <p>The Australian Capital Territory, Northern Territory, Queensland and Tasmanian governments should develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates' courts which:</p> <ul style="list-style-type: none"> • are accessible and culturally appropriate, particularly in regional and remote areas • provide support for defendants to access the NDIS | <p>NSW Response: <u>Accept</u></p> <p>NSW Government supports evidence-based programs to better support people with disability and reduce inappropriate contact with the criminal justice system.</p> <p>The Justice Advocacy Service (JAS) is funded by the NSW Government to support people with a cognitive impairment in contact with the NSW criminal justice system.</p> <p>The NSW Government is undertaking an evaluation of the JAS diversion program and, subject to the outcome of the evaluation, will explore options to expand the JAS diversion program to more NSW Local Courts.</p> |

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| <ul style="list-style-type: none"> • satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services. <p>All States and Territories should commission independent evaluations of their diversion programs. Any evaluation should assess and, where feasible, quantify economic and social benefits for both individual defendants and the community as a whole.</p> | |
| <p>Recommendation 8.22 Age of criminal responsibility States and Territories that have not already done so should introduce legislation to raise the minimum age of criminal responsibility to 14.</p> | <p>NSW Response: <u>Subject to further consideration</u> Raising the minimum age of criminal responsibility is not currently on the NSW Government's agenda.</p> <p>The NSW Government is considering ways to identify alternative and additional responses needed to maintain community safety, while supporting the diversion from the criminal justice system of children aged 14 years and under who are demonstrating problematic and harmful behaviours.</p> <p>One key consideration for NSW in any future decision about raising the minimum age of criminal responsibility will be the adequacy of existing appropriate intervention and support services for young people who would no longer be considered offenders, but who would continue to cause harm and impact the community. Any change must ensure that young people and communities are safe and adequately supported.</p> |
| <p>Recommendation 8.23 Action plan to end violence against women and children with disability The Australian Government and State and Territory governments should develop a five-year Action Plan for Women and Children with Disability to accompany the National Plan to End Violence against Women and Children 2022–2032. The Action Plan should:</p> | <p>Joint Response: <u>Accept in principle</u> Through the National Plan to End Violence Against Women and Children 2022-2032 (National Plan), all governments agreed that the findings of the Disability Royal Commission would guide future work to end violence against women and girls with disability.</p> |

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

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

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

The Australian Government and State and Territory governments are committed to ending violence against women and girls with disability and acknowledge more needs to be done to address the disproportionate rates of violence experienced, through responding to the drivers of violence and recognising the specific experiences of women with disability across the National Plan's four domains of prevention, early intervention, response and recovery and healing. The National Plan promotes actions across the domains that respond to the diversity of women and children, to ensure access to systems and services are accessible to individual needs.

On 16 August 2023, the Australian Government released the First Action Plan 2023-2027 (Action Plan) to drive delivery of the shared commitment under the National Plan to end gender-based violence in a generation.

Development of the Action Plan drew on the extensive consultation undertaken with diverse stakeholder groups to inform the National Plan. These consultations listened to the diverse lived experiences of people from regional and remote areas, Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, LGBTIQ+ people, people with disability, young people and older people.

The First Action Plan is the first 5-year action plan to drive the work needed to meet the objectives of the National Plan.

Rather than developing a new action plan targeted at women and children with disability, all governments are committed to applying a disability lens to the implementation of the 10 actions within the existing action plan, including ensuring that policy, program and service reform and change is responsive to the needs of women and girls with disability and that associated communication material and resources are accessible.

Recommendation 8.24 Disability-inclusive definition of family and domestic violence

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

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

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

Joint Response: Commonwealth, VIC: Accept in principle
ACT, NSW, NT, QLD, SA, TAS, WA: Subject to further consideration

The Australian Government and State and Territory governments recognise the importance of ensuring that definitions of family and domestic violence are appropriately broad to capture the unique circumstances, relationships, and living arrangements in which people with disability may experience family and domestic violence.

Through the Family, Domestic and Sexual Violence Working Group, under the Standing Council of Attorneys-General, all jurisdictions are committed to working together to improve the family law and family violence systems' response to family violence, which may include future consideration of disability-inclusive definitions.

While the governments of ACT, NSW, NT, QLD, SA, TAS and WA are supportive of disability-inclusive definitions of family and domestic violence, there are a range of challenges with progressing a nationally consistent definition. Jurisdictions are committed to working through these in the context of the work being progressed through the Family, Domestic and Sexual Violence Working Group.

Volume 9: First Nations People with Disability

Volume 9 includes 13 recommendations.

| Recommendation | Response |
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| <p>Recommendation 9.1 Culturally appropriate parenting capacity assessments</p> <p>State and Territory governments should work with First Nations child protection services, peak bodies and First Nations people with disability to co-design clear principles and guidelines for parenting capacity assessments for First Nations parents with disability in their jurisdiction, to ensure assessments are culturally appropriate. The principles and guidelines should include:</p> <ul style="list-style-type: none"> • best practice standards of cultural competence for practitioners conducting parenting capacity assessments of First Nations parents with disability • guidance to assist practitioners conducting parenting capacity assessments of First Nations parents with disability to identify and address assessment test errors that may result from an insufficient understanding of how cultural factors affect assessments of parenting capacity • a requirement that practitioners conducting parenting capacity assessments of First Nations parents with disability complete mandatory training to implement best practice standards of cultural competence, using testing tools that are culturally appropriate and disability appropriate • establishing a review process to ensure the design and implementation of these standards is consistent across States and Territories. | <p>NSW Response: <u>Accept in principle</u></p> <p>NSW agrees it is critical that First Nations parents with disability are assessed in a fair, accessible and culturally appropriate way. NSW Health will work with First Peoples Disability Network, Aboriginal Disability Network advocacy groups and other stakeholders to determine the best way to develop and implement these principles. We will also consult with other States and Territories to promote a consistent approach.</p> <p>In 2020/21, DCJ funded the development of 'Disability Informed Practice in Child Protection: A Guide to Assessing Parenting Capacity with Parents with Intellectual Disability,' which can help inform this work. This guide was developed by the University of Sydney in collaboration with the Children's Court Clinic, Intellectual Disability Rights Service, WASH House, a magistrate and an Aboriginal Elder. The resource has been published as part of the Judicial Commission's guidance for the Children's Court and is aimed at "clinical assessors and experts, judicial officers, Statutory Authorities, caseworkers from government and non-government organisations (NGOs), Independent Legal Representatives, Legal Aid and private solicitors."</p> |

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| <p>Recommendation 9.2 Ages and States Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK)</p> <p>State and Territory governments should ensure all First Nations children up to five years of age coming into out-of-home care are screened using the culturally adapted developmental screening Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK) tool. Children who are vulnerable in two or more of the five domains of communication, gross motor, fine motor, problem solving, and personal-social should be supported by an application for an Early Childhood Early Intervention plan.</p> | <p>NSW Response: <u>Accept</u></p> <p>The NSW Government is committed to ensuring that all Aboriginal children 0-5 entering statutory out-of-home care are screened using this tool.</p> <p>The NSW Health Out-of-home Care Health Pathway Program is a joint initiative with the NSW Department of Communities and Justice. The program enables health screening and planning for all children and young people entering statutory out-of-home care (for at least 90 days). NSW Health local health districts are being supported to use the ASQ-TRAK, including through the provision of additional ASQ-TRAK kits and access to ASQ-TRAK training. NSW Health has commenced a scoping exercise to understand the extent of the use of the ASQ-TRAK tool and will address any gaps in its use once identified.</p> |
| <p>Recommendation 9.3 Cultural safety of First Nations people in criminal justice settings</p> <p>By the end of 2024, State and Territory governments should review the effectiveness of their strategies, if any, directed to providing and ensuring the cultural safety of First Nations people with disability in criminal justice settings and in doing so take into consideration what the Royal Commission has heard about that issue. The review findings and recommendations should be made public.</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>NSW Government is committed to the targets under the Closing the Gap implementation plan and acknowledges that for Aboriginal and Torres Strait Islander people to thrive, we must create a service system that places Aboriginal culture and Aboriginal families at the centre of everything we do. We must also ensure that all decisions about Aboriginal people in the justice system are made by Aboriginal people. In recognition of the importance and shared commitment to increase cultural safety for Aboriginal and Torres Strait Islander people in custody, this work must involve Aboriginal communities and Aboriginal led organisations, to ensure a partnership approach to meet this recommendation.</p> <p>The NSW Government does not support a finite end date of 2024 as this work is viewed as a process of continuous improvement and to be effective and meaningful, must be designed and led with Aboriginal people.</p> |

Recommendation 9.4 Expand community connector programs

The National Disability Insurance Agency should increase the number and coverage of the community connector programs for First Nations people with disability in remote areas. The implementation of the programs should be community-led and delivered. This expansion must be accompanied by adequate long-term funding for the programs and organisations delivering the programs, with sufficient training for staff delivering the programs. In regions where English is not the preferred language for First Nations people, the programs should focus on recruiting staff who speak local languages.

Recommendation 9.5 Block funding the community-controlled sector

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

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

Recommendation 9.6 National Disability Insurance Agency Board

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

NSW Response for recommendations 9.4 to 9.9: Note

This recommendation is directed at the Australian Government.

Recommendation 9.7 Participation in cultural life

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

Recommendation 9.8 Return to Country

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

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

Recommendation 9.9 Criteria for funding family supports

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

- the risk of financial exploitation, the need for a regulatory framework and oversight, and whether a similar approach would apply to non-First Nations carers in remote communities in similar situations
- the availability of suitable services, including culturally safe services
- training for NDIA staff on how to apply the policy guidelines, including how staff can support family to apply to be paid for the care provided

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| <ul style="list-style-type: none"> • building awareness of the circumstances in which participants and their families can apply to be paid • how to build the capacity of family and community members to become part of the local workforce, such as trained support or community workers, which may include connecting family members with a First Nations Community Controlled Organisation. | |
| <p>Recommendation 9.10 First Nations Disability Forum</p> <p>The Australian Government and State and Territory governments should support the establishment of a First Nations Disability Forum to lead further development and implementation of the Disability Sector Strengthening Plan (DSSP) by the end of March 2024. The Forum should consist of representatives of:</p> <ul style="list-style-type: none"> • First Peoples Disability Network • First Nations Community Controlled Organisations • both Aboriginal and Torres Strait Islander peak bodies • First Nations people with disability. <p>The Forum should be supported by a First Nations disability investment fund, with the purpose of:</p> <ul style="list-style-type: none"> • supporting the operation of, and participation in, the Forum • implementing the DSSP • developing the First Nations Disability Workforce. <p>The Forum should have the capacity to direct funding under the DSSP to:</p> <ul style="list-style-type: none"> • enable First Nations people with disability to provide advice and guidance from their lived experience to the Forum • enable community-controlled organisations to develop their capacity to design and deliver disability-specific services and supports • enable community-controlled organisations to work with other organisations to drive national leadership in disability policy and services reform | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments recognise the value of shared decision-making mechanisms and formal partnerships in line with Priority Reform One under the National Agreement on Closing the Gap.</p> <p>All governments will work in partnership with First Nations people with disability, their families, carers and representatives, the Joint Council on Closing the Gap, peak bodies, and other key stakeholders through 2024 to develop options for the establishment of a First Nations Disability Forum or other an appropriate shared decision-making mechanism for the cross-cutting outcome of disability under Closing the Gap.</p> <p>Additional NSW comment:</p> <p>At the NSW DRC First Nations Stakeholder forum on 1 February 2024, the NSW Government heard there is strong support amongst NSW Aboriginal stakeholders for an ongoing forum that gives voice to First Nations people with disability and the organisations that support them.</p> |

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| <ul style="list-style-type: none"> • enable community-controlled organisations to deliver on specific priority areas as identified in the DSSP • enable the participation of community-controlled organisations not engaged in the Coalition of Aboriginal Peaks process • support First Nations community-based organisations across the health, criminal justice and early childhood sectors to improve workforce disability competency to ensure First Nations people with disability receive appropriate disability support • take into consideration the recommendations of the Royal Commission. <p>The Forum should develop and implement a strategy, supported by the First Nations disability investment fund, to build disability-specific expertise into First Nations Community Controlled Organisations.</p> | |
| <p>Recommendation 9.11 Building on the Disability Sector Strengthening Plan</p> <p>Parties to the National Agreement on Closing the Gap should commit to releasing a revised Disability Sector Strengthening Plan (DSSP) in partnership with the First Nations Disability Forum by the end September of 2024. The revised DSSP should have:</p> <ul style="list-style-type: none"> • agreed priority areas, determined through consultation with the community-controlled sector under the guidance of First People’s Disability Network • a commitment to future funding and longer timeframes • agreed timeframes for delivering actions and achieving outcomes • annual reporting requirements for government parties to the National Agreement on Closing the Gap. | <p>Joint Response: <u>Accept in principle</u></p> <p>As a first step towards further consideration of this recommendation, governments have committed to work with First Peoples Disability Network through 2024 to strengthen implementation of the current Disability Sector Strengthening Plan (DSSP) to enable improved outcomes against the existing actions. The proposed shared decision-making mechanism in respect of disability (see Recommendation 9.10) would also support the response to this recommendation.</p> |
| <p>Recommendation 9.12 Disability-inclusive cultural safety standards</p> <p>The Australian Government in partnership with the First Nations Disability Forum should develop disability-inclusive cultural safety standards for the provision of services for First Nations people with</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>disability. Disability service providers that support and have a responsibility for First Nations people with disability, including in the health, criminal justice and early childhood sectors, should incorporate these disability-inclusive cultural safety standards in their practices and organisations.</p> | |
| <p>Recommendation 9.13 Remote workforce development The First Nations Disability Forum and parties to the Disability Sector Strengthening Plan (DSSP) should collaborate to develop a strategy to develop First Nations local workforces in remote communities. The strategy should consider:</p> <ul style="list-style-type: none"> • funding for community-level assessments to determine: <ul style="list-style-type: none"> - existing infrastructure and resources - the capacity and willingness of the First Nations community-controlled sector to support local workforce development - the level of demand within the community • that allocation of funding for local workforce development should include funding to build the capacity of family members to provide care • the strategy should be co-developed and co-implemented with First Nations Community Controlled Organisations, noting their capacity, expertise and willingness to be involved. The involvement of First Nations Community Controlled Organisations must be adequately supported and funded. | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support in principle the development of a strategy to develop First Nations local workforces in remote communities that is co-developed and co-implemented with First Nations Community Controlled Organisations. First Nations communities will play a key role in the flexible design and delivery of supports and services to First Nations people with disability and people living in remote areas.</p> |

Volume 10: Disability Services

Volume 10 includes 33 recommendations, split across two parts dealing with disability service providers and the NDIS Commission.

Part A – Disability Service Providers

Volume 10 Part A includes 10 recommendations.

| Recommendation | Response |
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| <p>Recommendation 10.1 Embedding human rights The NDIS Quality and Safeguards Commission (NDIS Commission) should commission a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services. The program should be co-designed with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies. The program should:</p> <ul style="list-style-type: none"> • develop opportunities for dialogue between providers and people with disability to address challenges and share promising practices • develop tools, resources and training packages that reflect the diversity of people with disability and disability service providers across Australia • focus on practical, implementable strategies that lead to better outcomes for people with disability • be grounded in the principles of the <i>Convention on the Rights of Persons with Disabilities</i>, and reflect our findings, the NDIS Review, and the NDIS Commission’s own motion inquiries and recent Safeguarding Policy Implementation Plan • enable providers to prepare for, or demonstrate compliance with, current and future legislative and registration requirements associated with the rights of people with disability. This includes | <p>Joint Response: <u>Accept in principle</u> The Australian Government and state and territory governments support the development of a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services.</p> <p>The NDIS Commission will work with people with disability, providers, workers and states and territories to develop the program, which will build on the NDIS Commission’s existing suite of practical human rights capacity-building products and training for NDIS providers and workers that were developed with people with disability.</p> |

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| <p>responsibilities under The <i>Disability Discrimination Act 1992</i> (Cth) and the Disability Rights Act (if enacted).</p> <p>The National Disability Insurance Agency, and State and Territory governments involved in providing, regulating or conducting oversight of disability services not funded under the National Disability Insurance Scheme, should actively participate in all stages of the program. The program should begin by 1 July 2025.</p> | |
| <p>Recommendation 10.2 Independent support coordination</p> <p>To address potential conflicts of interest, the Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, create or amend an NDIS Rule to make clear that it is not appropriate for a provider of support coordination to be the provider of any other funded supports in an NDIS participant’s plan.</p> <p>Exceptions to the Rule should be developed in consultation with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.</p> <p>Exceptions may include situations where there are limited alternative service options for NDIS participants due to thin disability service markets, or where there are limited culturally appropriate or specialised services available.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to improving safeguards for people with disability in the provision of disability support services, including greater controls around conflicts of interest.</p> <p>Governments will work together with people with disability, their families, carers, representative organisations, First Nations Community Controlled Organisations and peak bodies to consider the most appropriate approach to preventing conflicts of interest in support coordination. This will include consideration of the potential need for exceptions in limited circumstances.</p> |
| <p>Recommendation 10.3 Adequate support coordination</p> <p>The National Disability Insurance Agency should ensure that participants in the National Disability Insurance Scheme (NDIS) identified as being at heightened risk of violence, abuse, neglect or exploitation, particularly those living in supported accommodation, have funding for support coordination included in their NDIS plans. Funding for support coordination should reflect the NDIS participant’s support and communication needs.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>Funding for hours of support coordination should also be sufficient to facilitate face-to-face contact at least monthly. NDIS participant plans should be updated by 30 September 2025.</p> | |
| <p>Recommendation 10.4 Quality of support coordination The NDIS Quality and Safeguards Commission should examine the quality and consistency of support coordination, with a particular focus on National Disability Insurance Scheme participants who:</p> <ul style="list-style-type: none"> • live in remote and very remote locations • are First Nations people with disability • are culturally and linguistically diverse • are navigating State or Territory housing, health or criminal justice systems • are experiencing housing insecurity or homelessness • are living in supported accommodation • are attending day programs or working in Australian Disability Enterprises. <p>The examination may be part of the proposed own motion inquiry on support coordination.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 10.5 Advocacy a) The National Disability Insurance Agency (NDIA) should develop a program to connect National Disability Insurance Scheme (NDIS) participants living in supported accommodation with an appropriate disability advocacy organisation. The program should be co-designed with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies. The program should:</p> <ul style="list-style-type: none"> • promote advocacy in the course of NDIS planning processes • increase awareness of the role of advocacy in disability services among NDIS participants and their families and supporters | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> • strengthen advocacy referral processes when participants and their families and supporters raise concerns, make complaints or report incidents • foster relationships between NDIS participants, their families and supporters, and disability advocacy organisations • strengthen collaboration between disability service providers and disability advocacy organisations to enable advocates to maintain periodic contact with people with disability so they can identify potential or emerging issues. <p>The program should commence by January 2025.</p> <p>Following an evaluation of the program’s impact and outcomes, the NDIA should consider expanding the program to reach other groups of people with disability who are identified as being at heightened risk of violence, abuse, neglect or exploitation.</p> <p>b) The NDIS Quality and Safeguards Commission, when reviewing complaints and reportable incidents, should also actively promote the value of independent advocacy for NDIS participants identified as being at heightened risk of violence, abuse, neglect or exploitation, and/or those who live in supported accommodation.</p> | |
| <p>Recommendation 10.6 Supported decision-making in disability services</p> <p>The NDIS Quality and Safeguards Commissioner should amend the <i>National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018</i> (Cth) to reflect that each participant:</p> <ul style="list-style-type: none"> • is entitled to support to make everyday life decisions including what services they receive, in what way and from whom • has opportunities to make decisions about their goals and aspirations • is supported to develop their decision-making skills • is supported to communicate their will and preferences • has the right to choose their own supporter. <p>Amendments should be completed by 30 June 2025.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>Recommendation 10.7 Practical guidance on supported decision-making</p> <p>The NDIS Quality and Safeguards Commission should co-design –with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies –a practice guide on supported decision-making for service providers. This should be consistent with the NDIS Supported Decision Making Policy and the supported decision-making principles outlined in Recommendation 6.6.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 10.8 A national disability support worker registration scheme</p> <p>The Australian Government should establish a national disability support worker registration scheme by 1 July 2028.</p> <p>Consultation about the scope and elements of the national disability support worker registration scheme should begin as soon as possible. The consultations should include people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, support workers and their representative bodies, disability service providers, State and Territory governments, and peak and regulatory bodies. The design of the scheme should consider:</p> <ul style="list-style-type: none"> • the definition of ‘disability support worker’ • a code of conduct and minimum standards for registered disability support workers, including support coordinators • mandating the NDIS Worker Screening Check for all disability support workers • recognition and accreditation of workers’ qualifications, experience, capabilities and skills • continuing professional development requirements for disability support workers • automatic registration for disability support workers who are registered with other relevant professional bodies | <p>NSW Response 10 recommendations 10.8.10.9: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> • a First Nations workforce pathway to address barriers to First Nations workers entering the sector • an accessible portal to enable people with disability and their supporters to view the profiles and registration status of disability support workers • portable training and leave entitlements. | |
| <p>Recommendation 10.9 The Social, Community, Home Care and Disability Services Industry Award</p> <p>Organisations entitled to represent the industrial interests of members of the disability support workforce covered by the Social, Community, Home Care and Disability Services (SCHADS) Industry Award 2010, along with the Australian Government and employers, should consider a joint application to vary the modern award in accordance with section 158 of the <i>Fair Work Act 2009</i> (Cth). This would seek to ensure equal remuneration of workers for work of equal or comparable value in accordance with section 302 of the <i>Fair Work Act 2009</i> (Cth), paying particular attention to employers' continued use of Schedule E and the 'work value' of contemporary disability support work.</p> | |
| <p>Recommendation 10.10 Provider of last resort</p> <p>The Australian Government should urgently engage with State and Territory governments about funding and arrangements for a provider of last resort scheme. It should also consult with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies about how such a scheme could operate. The scheme should be designed to address:</p> <ul style="list-style-type: none"> • failed or thin markets, particularly for First Nations people with disability in remote or very remote areas, and consider the use of block funding to guarantee service provision in those communities | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments acknowledge that there are gaps when a NDIS provider or the NDIS market fails which can prevent a person with disability in certain areas or with certain needs from accessing the supports and services they need, when they need them.</p> <p>A provider of last resort scheme could be one mechanism to address failed and critically thin markets, particularly for First Nations people in remote communities, as well as regional and remote communities more broadly, and participants with complex needs.</p> |

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| <ul style="list-style-type: none"> • access to services for: <ul style="list-style-type: none"> – people in crisis situations – people at risk of losing their accommodation and disability services – people whose needs cannot be adequately met by existing services. • access to case management for people with disability at heightened risk of violence, abuse, neglect or exploitation • clarity about which agency has the lead coordinating role. <p>The Australian Government should put forward a proposal for discussion to the Disability Reform Ministers Council in 2024.</p> | <p>It could also be a mechanism to support people in crisis situations, such as those at risk of losing their accommodation, or access to disability supports.</p> <p>All governments support the policy intent of this recommendation and are committed to working together through the Disability Reform Ministerial Council to consider reform options alongside Recommendation 13 and Action 13.4 of the NDIS Review, in consultation with people with disability, their families, carers, representative organisations, First Nations Community Controlled Organisations, peak bodies, and other key stakeholders.</p> |
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Part B – NDIS Commission

Volume 10 Part B includes 23 recommendations.

| Recommendation | Response |
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| <p>Recommendation 10.11 Internal procedures for monitoring reportable incidents</p> <p>The NDIS Quality and Safeguards Commission should improve its internal procedures for monitoring reportable incidents, paying particular attention to:</p> <p>a) communicating feedback about the quality of providers’ handling of incidents</p> <p>b) seeking clarification from providers, National Disability Insurance Scheme participants and their families when deficiencies or evidentiary gaps are identified, particularly where participants have been harmed or are at immediate risk of harm</p> <p>c) the efficiency of the online portal used by providers to report incidents.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>Recommendation 10.12 Introduction of class or kind determinations The Minister for the National Disability Insurance Scheme should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i> (Cth) to:</p> <p>a) introduce ‘class or kind’ determinations exempting certain registered providers from notifying less serious types or categories of reportable incidents where they have demonstrated a satisfactory level of competence in managing and investigating incidents</p> <p>b) enable the NDIS Quality and Safeguards Commission to conduct audits to assess compliance with class or kind determinations.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support in principle the NDIS Quality and Safeguards Commission (NDIS Commission) having access to ‘class or kind’ determinations to enable it to effectively manage the volume of reportable incidents it receives.</p> <p>The NDIS Commission will work with people with disability and the NDIS sector to determine an approach to, ‘class or kind,’ determinations where a satisfactory level of competence in managing and investigating incidents has been demonstrated by providers. Strategies for assessing compliance by the NDIS Commission will be included in considerations.</p> <p>The NDIS Commissioner is able to amend the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i> (Cth) in consultation with States and Territories.</p> <p>In addition, the Australian Government has established the NDIS Provider and Worker Registration Taskforce to provide advice on the design and implementation of the new graduated risk-proportionate regulatory model proposed in the NDIS Review Final Report. The Taskforce will report in 2024. Final decisions on the registration model may have implications for the response to this recommendation.</p> |
| <p>Recommendation 10.13 Creating an independent investigators panel The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a panel of independent investigators with strong credentials in relation to safeguarding, human rights and investigative practice. The NDIS Commission should seek regular feedback from providers about the quality of independent investigators’ work.</p> | <p>NSW Response to recommendations 10.13 to 10.14: <u>Note</u> This recommendation is directed at the Australian Government</p> |
| <p>Recommendation 10.14 Developing model policies and procedures The NDIS Quality and Safeguards Commission should develop model</p> | |

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| <p>procedures for National Disability Insurance Scheme (NDIS) providers, including:</p> <p>a) for frontline workers about recognising and reporting incidents, with clear definitions around what incidents must be reported and when</p> <p>b) for incident management incorporating guidance on undertaking causal reviews of incidents and preventive action, as well as implementing wider system improvements</p> <p>c) for complaints articulating person-centred approaches for managing and resolving complaints and providing feedback, and requiring supports for a participant who needs to participate in a complaints process</p> <p>d) that address the need to consider the impact or harm caused to a participant and provide guidance on forms of redress that should be offered to people with disability involved in incidents and complaints. These procedures should be developed in consultation with people with disability, family members, advocates and NDIS providers.</p> | |
| <p>Recommendation 10.15 Complaint handling and investigative practice guideline</p> <p>a) The NDIS Quality and Safeguards Commissioner should issue a guideline, by notifiable instrument, addressing accessible and responsive complaint handling and investigative practice. The guideline should:</p> <ul style="list-style-type: none"> • outline the core components of an accessible and responsive complaint handling and investigative practice involving people with disability, consistent with Recommendation 11.5 • be co-designed by people with disability and their representative organisations and involve consultation with National Disability Insurance Scheme (NDIS) provider representatives. <p>b) The Minister for the NDIS should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i> (Cth) and <i>National Disability Insurance Scheme (Complaints Management and Resolution)</i></p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and state and territory governments recognise and support the importance of having an accessible and responsive complaints handling system to uphold the rights of people with disability in complaints and incident investigation processes associated with NDIS providers.</p> <p>The NDIS Quality and Safeguards Commission will work with states and territories to develop and issue a guideline, co-designed with people with disability, outlining the core components of an accessible and responsible complaints handling and investigative practice involving people with disability.</p> |

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| <p><i>Rules 2018 (Cth) to include recognition of, and a requirement for compliance with, the guideline.</i></p> | |
| <p>Recommendation 10.16 Requirement to consider redress</p> <p>a) The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)</i> and <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)</i> to include a requirement for NDIS providers to consider redress and forms of support to an NDIS participant where the NDIS Quality and Safeguards Commission (NDIS Commission) forms the view that the service provider bears responsibility for the violence, abuse, neglect or exploitation experienced by the NDIS participant.</p> <p>b) The NDIS Commission should:</p> <ul style="list-style-type: none"> • provide practical advice on suitable forms of redress when making the guideline on accessible and responsive complaint handling and investigative practice (see Recommendation 10.15) • consider whether it has power to incorporate in enforceable undertakings a requirement that service providers afford redress to NDIS participants in appropriate cases. If not, it should seek the necessary powers and be prepared to use them where appropriate. | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments acknowledge the Disability Royal Commission’s findings that NDIS providers have failed to provide a written apology or discuss any form of redress when people with disability, for whom they were responsible, experienced violence, abuse, neglect or exploitation.</p> <p>The NDIS Commission will work with States and Territories, people with disability, NDIS providers and other key stakeholders to investigate the practical application of this recommendation, including consideration of legal and regulatory implications.</p> |
| <p>Recommendation 10.17 Access to safeguarding indicators and expertise</p> <p>In developing and publishing guidance about best practice governance models for National Disability Insurance Scheme (NDIS) providers, the NDIS Quality and Safeguards Commission should:</p> <p>a) include safeguarding indicators for use by NDIS providers based on the sample indicators outlined in Table 10.8.3</p> <p>b) provide guidance encouraging governing bodies of NDIS providers to</p> | <p>NSW Response to recommendations 10.17 to 10.18: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>have regular access to specialist safeguarding advice in considering issues arising from complaints and incidents.</p> | |
| <p>Recommendation 10.18 Improved complaint handling procedures and responses The NDIS Quality and Safeguards Commission should:</p> <ul style="list-style-type: none"> a) ensure complainants are updated appropriately throughout key stages of the complaint process and their expectations managed b) ensure triage and streamlining models effectively prioritise complaints requiring a more immediate response c) clearly define risk categories, timeframes and procedures for handling these complaints d) establish realistic and achievable metrics for measuring its performance with respect to timeframes. | |
| <p>Recommendation 10.19 Requirement to investigate certain complaints The Minister for the National Disability Insurance Scheme should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i> (Cth) to empower the NDIS Quality and Safeguards Commission to require a provider to carry out an investigation into a complaint and report on its contact with the complainant and its findings.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments agree NDIS Rules should enable the NDIS Commission to require a provider to carry out an investigation into a complaint and report on its contact with the complainant and findings.</p> <p>The NDIS Commission will work with States and Territories, people with disability, and the broader NDIS sector to identify and implement required NDIS Rules changes.</p> |
| <p>Recommendation 10.20 Making complaint processes accessible The NDIS Quality and Safeguards Commission should further enhance the accessibility of its complaint handling processes, having regard to the following steps:</p> <ul style="list-style-type: none"> a) making information simple and easy to navigate b) adopting a ‘no wrong door’ approach c) accommodating people’s preferred means of communication and | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |

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| <p>making other adjustments as needed</p> <p>d) assisting people to secure advocacy and other supports</p> <p>e) identifying people at risk of abuse</p> <p>f) implementing a strategy for ‘hard to reach’ groups</p> <p>g) ensuring complainants are involved in complaint processes and when this is not possible, recording the reasons for their non-involvement</p> <p>h) examining whether providers are supporting people with disability to access advocates when they make a complaint and where providers conduct investigations.</p> | |
| <p>Recommendation 10.21 Registration and audit process</p> <p>a) To enhance the registration process, the NDIS Quality and Safeguards Commission (NDIS Commission) should:</p> <ul style="list-style-type: none"> • develop and implement a framework for sharing relevant information with quality auditors • conduct a comprehensive review of the provider registration process focused on: <ul style="list-style-type: none"> – simplifying the process for smaller providers seeking to renew their registration – improving the NDIS Commission’s operating system (COS) portal and online application forms used to submit registration applications – removing any duplication of requirements for cohorts of practitioners or organisations working within multiple schemes and for recognising other forms of accreditation – identifying areas where there are workforce shortages or ‘thin provider markets’, and encouraging the use of easier and more cost-effective certification audit processes in these areas – assessing whether the number of approved quality auditors accredited for remote auditing and assessment should be increased | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and state and territory governments support reform to the registration and audit process to enable a strengthened but risk-proportionate approach to regulating and monitoring the quality and safety of services delivered by NDIS providers.</p> <p>On 12 February 2024, the Minister for the NDIS announced the establishment of the NDIS Provider and Worker Registration Taskforce to provide advice on the design and implementation of a new graduated risk-proportionate regulatory model for all providers and workers in consultation with the disability community. The Taskforce will report in 2024.</p> <p>All governments also support appropriate changes to clarify that the NDIS Commission is able to share relevant information with quality auditors and will consider appropriate rule or guideline changes following receipt of the Taskforce’s report.</p> <p>Approaches to implementing this recommendation are being considered alongside Recommendation 17 of the NDIS Review to develop and deliver a risk-proportionate model for the visibility and regulation of all providers</p> |

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| <ul style="list-style-type: none"> • collect and publish de-identified data about quality audit outcomes to inform best practice • alert quality auditors to known systemic issues across the NDIS provider market. <p>b) The Minister for the National Disability Insurance Scheme should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Protection and Disclosure of Information – Commissioner) Rules 2018</i> (Cth) to clarify the NDIS Commission is able to share relevant information with quality auditors.</p> | <p>and workers, and to strengthen the regulatory response to long-standing and emerging quality and safeguards issues.</p> |
| <p>Recommendation 10.22 Strengthened regulatory requirements</p> <p>a) The Minister for the National Disability Insurance Scheme should, in consultation with States and Territories, amend the Core Module of the <i>National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018</i> (Cth) to issue further standards that address complaint handling and incident management.</p> <p>b) The NDIS Quality and Safeguards Commissioner should amend the Core Module of the <i>National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018</i> (Cth) to strengthen the requirements relating to complaints and incidents (see Table 10.10.2), accountable governance (see Table 10.10.3), and worker capacity and training (see Table 10.10.4).</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support strengthening complaint handling and incident management requirements to better protect people with disability.</p> <p>The NDIS Quality and Safeguards Commission will commence a review of the NDIS Practice Standards, which form part of the <i>National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018</i>, in consultation with people with disability, NDIS providers and States and Territories in 2024. The outcomes of the review will inform the issuing of further standards that address complaint handling and incident management.</p> |
| <p>Recommendation 10.23 Publishing data about the unregistered provider market</p> <p>The NDIS Quality and Safeguards Commission (NDIS Commission) should collect and publish data relating to trends and risks identified within the unregistered provider market, including a breakdown of:</p> <ul style="list-style-type: none"> • the number of complaints received involving unregistered providers | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <ul style="list-style-type: none"> • quality and safety issues identified by the NDIS Commission through its oversight of complaints in relation to unregistered providers • the number of compliance matters and investigations commenced by the NDIS Commission in relation to unregistered providers • the number of unregistered providers involved in contraventions identified by the NDIS Commission and the type of breach identified • the number and type of compliance and enforcement actions taken in relation to unregistered providers • the number of workers engaged by unregistered providers involved in complaints, compliance matters or investigations without a worker screening clearance at the time of the alleged conduct or issue. | |
| <p>Recommendation 10.24 Improved access to behaviour support practitioners</p> <p>The NDIS Quality and Safeguards Commission should, by December 2024, improve access to behaviour support practitioners by:</p> <ol style="list-style-type: none"> a) providing incentives for practitioners and National Disability Insurance Scheme providers to provide behaviour support services, including in regional and remote areas in which ‘thin markets’ operate b) forming a partnership with First Nations leaders from the disability and employment services sectors to develop a recruitment strategy targeting First Nations people and others with experience in working with First Nations communities to address behaviour support shortages in regional and remote areas c) exploring with behaviour support practitioners, service providers and people with disability, the merits of an ‘on-the-job’ professional development and accreditation model for behaviour support practitioners | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |

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| <p>d) creating a publicly accessible list of all individual behaviour support practitioners.</p> | |
| <p>Recommendation 10.25 Strengthened monitoring, compliance and enforcement The NDIS Quality and Safeguards Commission should review its compliance and enforcement policy and in doing so have regard to:</p> <p>a) where appropriate, transitioning its primary compliance approach from educational and capacity building strategies to stronger compliance and enforcement activities</p> <p>b) increasing its face-to-face engagement with National Disability Insurance Scheme (NDIS) participants who are at greater risk of experiencing violence, abuse, neglect and exploitation, and site visits to speak with providers and workers</p> <p>c) increasing the use of its enforcement powers and monitoring tools in relation to NDIS providers that:</p> <ul style="list-style-type: none"> • have a history of non-compliance or repeatedly fail to meet their obligations to provide safe and quality supports and services • have demonstrated a disregard for the safety of people with disability • have caused serious harm to a person or people with disability <p>d) the availability of enforceable undertakings and compliance notices to address non-compliance by NDIS providers.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 10.26 Expanded data reporting and publication</p> <p>a) In addition to data currently published, the NDIS Quality and Safeguards Commission should publish in quarterly activity reports and annual reports:</p> <ul style="list-style-type: none"> • disaggregated data' relating to complaints, reportable incidents and behaviour support, having regard to suggested data in Table 10.13.1 | <p>Joint Response: <u>Accept in principle</u> The Australian Government and state and territory governments recognise the value and importance of data in proactively identifying issues, monitoring trends, improving collaboration and responses between relevant regulatory bodies, and better safeguarding people with disability from violence, abuse, neglect and exploitation.</p> <p>The NDIS Commission will work with people with disability, their</p> |

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| <ul style="list-style-type: none"> • a comprehensive analysis of data trends, identifying systemic issues relating to the quality and safety of National Disability Insurance Scheme (NDIS) supports and services • ‘operational performance data’ relating to complaints, reportable incidents, compliance and enforcement, having regard to the suggestions in Table 10.13.2. <p>b) The Minister for the NDIS should, in consultation with States and Territories, amend the reporting requirements in the <i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i> (Cth) to enable provider investigation outcome data to be collected on a routine basis from NDIS providers.</p> | <p>representatives, and NDIS service providers to identify potential approaches to the collection of provider investigation outcome data on a routine basis from NDIS providers and publication. Changes to NDIS systems and development of provider guidance will be required to support this recommendation.</p> |
| <p>Recommendation 10.27 Strengthened intelligence capacity The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a dedicated intelligence unit within the NDIS Commission to enhance its capacity to collect intelligence, identify and respond to higher risk participants, take action relating to providers where necessary and identify systemic issues.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 10.28 Information sharing between prescribed bodies a) The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with States and Territories, amend the <i>National Disability Insurance Scheme (Protection and Disclosure of Information – Commissioner) Rules 7.37 2018</i> (Cth) to include safeguarding bodies with the type of functions described in Table 10.13.3 as ‘prescribed bodies’ for the purposes of section 67A(1)(db) of the <i>National Disability Insurance Scheme Act 2013</i> (Cth). b) States and Territories should introduce legislative and administrative arrangements that would allow prescribed bodies in each jurisdiction to exchange risk-related information with the NDIS Quality and Safeguards Commission, where the exchange of information will promote the safety</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support increased and robust risk-related information sharing between safeguarding bodies in each State and Territory and the NDIS Commission to facilitate the harmonious and effective oversight of services provided to people with disability. All governments are committed to considering relevant rule or legislative changes to ensure safeguarding bodies in each jurisdiction can exchange risk-related information with the NDIS Commission. A key aspect of implementation of any legislative changes for this recommendation will be protecting personal and private information.</p> |

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| <p>of NDIS participants who may be at risk of experiencing violence, abuse, neglect or exploitation.</p> | |
| <p>Recommendation 10.29 Establishing a First Nations Unit The NDIS Quality and Safeguards Commission should establish a dedicated First Nations Unit to develop its engagement with and understanding of the issues facing First Nations participants in the National Disability Insurance Scheme, particularly in regional and remote communities.</p> | <p>NSW Response to recommendations 10.29 to 10.30: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 10.30 Engagement and capacity building activities The NDIS Quality and Safeguards Commission should enhance its engagement and capacity building activities with National Disability Insurance Scheme (NDIS) providers by:</p> <ul style="list-style-type: none"> a) routinely sharing data analysis and insights from its oversight activities with NDIS providers to promote improvements in the quality and safety of services b) facilitating regular industry forums and communities of practice to raise and address critical safeguarding practice issues and share best practice c) expanding its training offerings to NDIS providers, particularly in relation to fulfilling their obligations to recognise, report and investigate incidents and deal appropriately with complaints d) developing a training and resources hub for use by people with disability and their supporters, as well as the NDIS provider workforce. | |
| <p>Recommendation 10.31 Continuous monitoring of criminal charges The Australian Government and State and Territory governments should amend the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme to clarify the role of the Australian Federal Police (or other national bodies) in monitoring new charges relating to disability support workers who hold a</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments are committed to protecting the safety of people with disability, including through strong workforce screening processes.</p> |

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| <p>clearance, and sharing information with State and Territory worker screening units.</p> | <p>All governments will work together to consider options to clarify the role of the Australian Federal Police and other national bodies in monitoring new charges related to NDIS workers and sharing information with state and territory worker screening units.</p> <p>The <i>National Disability Insurance Scheme Act 2013</i> allows the NDIS Commission to disclose protected NDIS Commission information to worker screening units for the purposes of carrying out an NDIS worker screening check.</p> <p>All governments are committed to working together to review the adequacy of information sharing arrangements. The NDIS Commission and State and Territory Worker Screening Units will also continue working closely together to improve content and practice elements of reciprocal information sharing processes.</p> <p>The Australian Government is also taking steps, in consultation with States and Territories, to pilot a process for national continuous monitoring of criminal charges and a move towards a nationally consistent worker screening model across the care and support economy.</p> |
| <p>Recommendation 10.32 Operational framework to guide worker screening</p> <p>The NDIS Quality and Safeguards Commission (NDIS Commission) should, in consultation with State and Territory worker screening units, develop an operational framework to guide the efficient and effective provision of information to worker screening units to inform their assessments.</p> <p>In doing so, it should establish criteria to inform the provision of initial monitoring advice to screening bodies to promote consistency and help better inform initial screening actions. Such advice could include:</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>See Rec 10.31</p> |

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| <ul style="list-style-type: none"> • date of the incident • duration of alleged conduct (if applicable) • description, nature and circumstances of the matter • whether the police are involved (noting that the screening unit will only be alerted via the monitoring system at the point at which charges are laid) • critical information relating to the available evidence (for example, an investigation report from an employer) • relevant information relating to the NDIS Commission's oversight of the matter (for example, whether the matter is open, closed, substantiated or not and whether further outcomes are pending). | |
| <p>Recommendation 10.33 Reviewing information sharing arrangements</p> <p>As part of the National Disability Insurance Scheme worker screening review, the Australian Government, and State and Territory governments, should consider the adequacy of information sharing arrangements with regard to:</p> <p>a) the ability of worker screening units to obtain relevant risk-related information from bodies outside of their operating jurisdiction to inform their assessments</p> <p>b) the ability of the NDIS Quality and Safeguards Commission and worker screening units to obtain and share relevant risk-related information (such as misconduct and disciplinary investigation outcomes) held by other safeguarding and complaint handling bodies to inform worker screening decisions.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>See Rec 10.31</p> |

Volume 11: Independent Oversight and Compliance Mechanisms

Volume 11 includes 18 recommendations.

| Recommendation | Response |
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| <p>Recommendation 11.1 Nationally consistent adult safeguarding functions States and Territories should each:</p> <p>a) introduce legislation to establish nationally consistent adult safeguarding functions, including:</p> <ul style="list-style-type: none"> • definitions of ‘adult with disability’, ‘violence’, ‘abuse’, ‘neglect’, and ‘exploitation’ • at a minimum, the principles, functions and powers outlined in Table 11.1.1 • data collection and public reporting, including demographic data (for example, relating to First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability) • a mechanism to review the legislation after a reasonable period to examine its efficacy. <p>b) ensure adult safeguarding functions are operated by adequately resourced independent statutory bodies</p> <p>c) develop a National Adult Safeguarding Framework led by the appointed adult safeguarding bodies</p> <p>d) consider whether to co-locate the adult safeguarding function with the ‘one-stop shop’ independent complaint reporting, referral and support mechanism (see Recommendation 11.3).</p> | <p>Joint Response: <u>Subject to further consideration</u></p> <p>The Australian Government and State and Territory governments support a strong, connected safeguarding system to reduce the risk of harm to people with disability and will work together through the Disability Reform Ministerial Council to consider reform options to develop a nationally consistent and a unified approach.</p> <p>As a first step, the Commonwealth will work with States and Territories to develop a framework that sets out the standards and culture of how the disability ecosystem will work to strengthen safeguarding for people with disability.</p> <p>Additional NSW comment: As highlighted by the Royal Commission, the NSW Ageing and Disability Commission established under the <i>Ageing and Disability Commissioner Act 2019</i> (NSW) provides a model for adult safeguarding by an independent statutory body that other States and Territories should adopt. The ADC receives, investigates and responds to allegations of abuse, neglect and exploitation of older people and adults with disability in NSW. The ADC has been providing national leadership around articulating a national adult safeguarding policy framework.</p> |
| <p>Recommendation 11.2 An integrated national adult safeguarding framework The Australian Government should incorporate the National Adult Safeguarding Framework proposed in Recommendation 11.1 into the Safety Targeted Action Plan within Australia’s Disability Strategy or another suitable authorising document.</p> | <p>Joint Response: <u>Subject to further consideration</u> See Rec 11.1</p> |

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| <p>Recommendation 11.3 ‘One-stop shop’ complaint reporting, referral and support</p> <p>States and Territories should each establish or maintain an independent ‘one-stop shop’ complaint reporting, referral and support mechanism to receive reports of violence, abuse, neglect and exploitation of people with disability. This mechanism should perform the following functions:</p> <p>a) receive complaints or reports from anyone concerned about violence, abuse, neglect and exploitation involving a person with disability in any setting</p> <p>b) provide advice and information to people with disability, representative organisations and other interested parties about appropriate reporting options</p> <p>c) with a person’s consent:</p> <ul style="list-style-type: none"> • make warm referrals to appropriate complaints bodies • make warm referrals to advocacy and other services who can support them in the complaint process <p>d) refer ‘third party’ reports to police, including anonymous reports</p> <p>e) collect, analyse and publicly report annual data on complaints and reports received and on referrals.</p> <p>The mechanism should be co-designed with people with disability to ensure entry points are accessible to and effective for people with a range of abilities, language and communication needs. The mechanism should be placed, if possible, within an existing independent organisation which has appropriate expertise and relationships with services to perform its functions.</p> | <p>NSW Response: <u>Accept in principle</u></p> <p>The NSW Government supports the availability of appropriate and accessible pathways for reporting concerns about violence, abuse, neglect and exploitation of people with disability.</p> <p>The NSW Ageing and Disability Commission currently fulfills many of the proposed functions set out in recommendation 11.3. The NSW Government will collaborate with the Australian Government, other States and Territories, the disability community and other stakeholders in implementing both this recommendation and Recommendation 11.4.</p> |
| <p>Recommendation 11.4 Creating accessible complaint pathways</p> <p>The Australian Government should work with states and territories to establish a national 1800 number, website and other accessible reporting</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments are committed to working together to embed more accessible and integrated complaints reporting pathways.</p> |

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| <p>tools to direct people to the independent complaint and referral mechanism in their State or Territory.</p> | <p>All governments will work together through the Disability Reform Ministerial Council to consider a coordinated approach to this reform.</p> <p>The Australian Government will continue to operate the existing National Disability Abuse and Neglect Hotline and will work with states and territories as they consider recommendation 11.3 and complementary approaches to ensuring people with disability can access help when they need it most.</p> |
| <p>Recommendation 11.5 Complaint handling and investigative practice guidelines</p> <p>The Commonwealth Ombudsman should lead a co-design process with the NDIS Quality and Safeguards Commission, State and Territory ombudsmen and other bodies with complaint handling and investigation expertise, to develop guidelines for organisations on implementing complaint handling systems that are accessible and responsive to people with disability. The guidelines should reflect the ten core components:</p> <ul style="list-style-type: none"> • creating a rights-focused complaints culture • encouraging people with disability and others to speak up • making adjustments to enable participation • supporting the person with disability, their family and others in complaint processes • respecting complexity, diversity and cultural difference • providing clear information about how to complain and multiple pathways to complain • working respectfully and effectively alongside police • conducting safe and inclusive investigations that are trauma-informed • providing tailored outcomes and redress | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments support the development of guidelines for organisations on implementing complaint handling systems that are accessible and responsive to people with disability.</p> <p>Governments are committed to supporting organisations to ensure complaints processes are accessible, culturally safe, user friendly and more streamlined to ensure instances of violence, abuse, neglect and exploitation are reported and responded to.</p> <p>Governments will work together to consider appropriate approaches and timeframes to implementing this recommendation and the related recommendation 10.15 and 10.16.</p> |

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| <ul style="list-style-type: none"> • using complaints data to drive continuous improvement in service provision and complaint handling. | |
| <p>Recommendation 11.6 Enshrining key provisions of OPCAT in legislation The Australian Government should revisit the Australian Human Rights Commission’s recommendation and introduce legislation enshrining the key provisions of the Optional Protocol to the <i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (OPCAT) and facilitate the national coordination of Australia’s OPCAT response.</p> | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 11.7 Resourcing and wider definition of places of detention The Australian Government and State and Territory governments should: a) agree to provide resources to enable National Preventive Mechanism bodies in all jurisdictions to fulfil the Optional Protocol to the <i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>’s core functions, including the ‘preventive package’ b) enact legislation incorporating a broader definition of ‘places of detention’ to enable all places where people with disability may be deprived of their liberty to be monitored by National Preventive Mechanism bodies.</p> | <p>Commonwealth, ACT, NT, TAS: <u>Accept in principle</u> NSW, QLD, SA, VIC, WA: <u>Subject to further consideration</u></p> <p><i>The following response is provided by the Commonwealth, ACT, NT, SA, TAS and WA:</i></p> <p>The Australian Government and State and Territory governments recognise the importance of ensuring National Preventive Mechanisms in all jurisdictions are enabled to fulfil their core functions with respect to all places of detention, and will continue to work to resolve funding arrangements.</p> <p>National Preventive Mechanisms have been nominated in the Commonwealth, the Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia. Legislation in the Commonwealth, Tasmania and the Northern Territory already enable National Preventive Mechanisms access to places of detention covered by the <i>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (OPCAT), noting Northern Territory legislation has not yet commenced, and with legislation introduced in the ACT on 16 May 2024.</p> |

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| | <p><i>The following response is provided by NSW, QLD and VIC:</i></p> <p>All governments continue to cooperatively and progressively work towards implementation of OPCAT, subject to the resolution of sufficient and ongoing funding from the Commonwealth and the resolution of implementation issues, including the Commonwealth leading work in consultation with States and Territories to reach agreement on the definition and scope of places of detention.</p> |
| <p>Recommendation 11.8 Legislating National Preventative Mechanisms All State and Territory governments should introduce legislation to establish the functions of their National Preventive Mechanism bodies and facilitate inspections by the United Nations Subcommittee on the Prevention of Torture.</p> | <p>NSW Response: <u>Subject to further consideration</u> States and Territories are committed to continuing to work together towards full implementation of obligations under the Optional Protocol to the Convention Against Torture (OPCAT).</p> <p>NSW supports OPCAT in principle, subject to funding and implementation considerations being resolved.</p> <p>This recommendation should be considered after the resolution of these funding and implementation considerations.</p> |
| <p>Recommendation 11.9 Designating National Preventative Mechanism bodies The governments of New South Wales, Victoria and Queensland should designate National Preventive Mechanism bodies in their jurisdictions.</p> | <p>NSW Response: <u>Subject to further consideration</u> At this stage, most jurisdictions have not fully implemented OPCAT in accordance with the Commonwealth’s proposal to establish Federal and State based National Preventive Mechanisms to visit and report on primary places of detention.</p> <p>The Commonwealth’s proposal for National Preventive Mechanisms to visit and report on primary places of detention does not cover all places where people with disability may be deprived of their liberty for the purposes of OPCAT, such as disability group homes.</p> <p>NSW supports OPCAT in principle subject to the resolution of funding</p> |

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| | <p>and implementation considerations being resolved. No action is being taken to implement NPMs in NSW pending resolution of these issues.</p> <p>States and Territories are committed to continuing to work together towards full implementation of OPCAT obligations. Implementation of OPCAT sits under the Standing Council of Attorneys-General. NSW is engaging constructively in this process.</p> <p>Accordingly this recommendation should be considered after the resolution of funding and implementation considerations and once the NSW Government has decided whether to implement a NSW National Preventive Mechanism.</p> |
| <p>Recommendation 11.10 Improved consistency and coordination The Commonwealth Ombudsman should:</p> <p>a) ensure the OPCAT Advisory Group includes people with disability</p> <p>b) lead work with the National Preventive Mechanism Network to:</p> <ul style="list-style-type: none"> • develop a consistent methodology for determining National Preventive Mechanism inspection priorities • implement a coordinated approach to prioritising inspections of places of detention that pose a high risk to people with disability, focusing on particular practices affecting people with disability across detention settings • develop and adopt common disability inspection standards for use in all jurisdictions • commit to nationally consistent collection and reporting of data about monitoring places of detention. | <p>NSW Response: <u>Note</u> This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 11.11 Disability inclusive approach to implementing OPCAT National Preventive Mechanism (NPM) bodies in all Australian</p> | <p>Commonwealth, ACT, NT, TAS: <u>Accept in principle</u> NSW, QLD, SA, VIC, WA: <u>Subject to further consideration</u></p> |

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| <p>jurisdictions should implement their functions in a disability-inclusive way by:</p> <ul style="list-style-type: none"> • enabling people with disability in places of detention to share information and experiences with the NPM using a variety of communication forms • ensuring staff participate in ongoing education and training about the Optional Protocol to the <i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>, human rights and issues affecting people with disability in places of detention • ensuring staff conducting NPM inspections have the skills and experience to provide reasonable adjustments, communication supports and supported decision-making to people with disability when required • involving people with disability in the inspection of places of detention • collecting and publishing data about people with disability in places of detention, aligned with disability inspection standards. | <p><i>The following response is provided by the Commonwealth, ACT, NT, SA, TAS and WA:</i></p> <p>The Australian Government and State and Territory governments will continue to work together collaboratively to ensure National Preventive Mechanisms are appropriately supported and funded to implement their functions in a disability-inclusive way.</p> <p>National Preventive Mechanisms have been nominated in the Commonwealth, the Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia. The Tasmanian National Preventive Mechanisms 2024 the <i>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (OPCAT) symposium, open to all people including nominated National Preventive Mechanisms, comprehensively considered a disability inclusive approach to implementing OPCAT.</p> <p><i>The following response is provided by NSW, QLD and VIC:</i></p> <p>All governments continue to cooperatively and progressively work towards implementation of OPCAT, subject to the resolution of sufficient and ongoing funding from the Commonwealth and the resolution of implementation issues, including the Commonwealth leading work in consultation with States and Territories to reach agreement on the definition and scope of places of detention.</p> |
| <p>Recommendation 11.12 Nationally consistent community visitor schemes States and Territories should:</p> <p>a) urgently implement community visitor schemes (CVS) for people with disability, if they have not done so already</p> <p>b) ensure CVS are resourced to conduct frequent visits to individuals who may be at elevated risk of abuse or harm</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments recognise the important role that community visitors scheme (CVS) can have in promoting and protecting the rights and wellbeing of people with disability.</p> |

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| <p>c) agree to make CVS nationally consistent regarding people with disability, including in relation to:</p> <ul style="list-style-type: none"> • the scope of schemes (who community visitors should visit) • powers to visit people with disability, inspect records and provide information to other relevant bodies • common monitoring standards • the type of data that CVS should capture and report on <p>d) as a priority, define the scope of CVS with reference to:</p> <ul style="list-style-type: none"> • ‘visitable services’ • mechanisms for identifying factors that may place a person with disability at increased risk of violence, abuse, neglect or exploitation <p>e) ensure CVS legislation enables relevant information to be shared between CVS, the NDIS Quality and Safeguards Commission and the National Disability Insurance Agency.</p> | <p>Having a nationally consistent approach will provide the foundations for the expected level of care, oversight and monitoring the community can receive from disability community visitors.</p> <p>All governments support the intent of a nationally consistent approach to CVS and will work together to consider the best approach to ensuring people with disability have access to CVS as a safeguarding mechanism.</p> |
| <p>Recommendation 11.13 Integration of CVS with the NDIS</p> <p>a) The Commonwealth should amend the <i>National Disability Insurance Scheme Act 2013</i> (Cth) to formally recognise community visitor schemes (CVS) as a safeguard for people with disability and provide the authorising environment for information-sharing between the NDIS Quality and Safeguards Commission (NDIS Commission) and CVS.</p> <p>b) The Australian Government should:</p> <ul style="list-style-type: none"> • enter into a national agreement with States and Territories that commits CVS and the NDIS Commission to: <ul style="list-style-type: none"> - sharing relevant information to effectively exercise their respective functions - developing common standards for guiding the work of CVS relating to people with disability. • update the NDIS Quality and Safeguarding Framework to formally recognise the important safeguarding role played by CVS. | <p>Joint Response: <u>Accept in principle</u></p> <p>See Rec 11.12</p> |

Recommendation 11.14 Establishing disability death review schemes

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

a) functions to:

- receive, assess and record ‘reviewable deaths’ of people with disability, as defined in recommendation 11.15
- monitor and review reviewable deaths
- formulate recommendations about policies and practices to prevent or reduce reviewable deaths
- maintain a register of reviewable deaths
- formulate strategies to reduce or remove potentially avoidable risk factors for reviewable deaths
- establish and support the work of an expert advisory committee

b) powers to:

- scrutinise systems for reporting reviewable deaths
- undertake detailed reviews of information relating to reviewable deaths
- conduct own motion investigations into individual or groups of deaths
- analyse data on the causes of reviewable deaths to identify patterns and trends
- consult with, and obtain information from, any person or body with relevant information or appropriate expertise
- invite and consider information from the deceased person’s family or guardian or advocate when reviewing and/or investigating a death
- notify the NDIS Quality and Safeguards Commission of matters relevant to the exercise of its functions
- refer identified concerns about conduct or service provision to relevant regulatory bodies for their consideration and appropriate action

NSW Response to 11.14 and 11.15: Subject to further consideration

The NSW Government shares the Royal Commission’s concerns about the disproportionate rate of preventable deaths for people with disability.

The NSW Government will carefully consider the recommendations for a Disability Death Review scheme to provide for systemic death reviews in collaboration with other governments, the disability community and other stakeholders.

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| <ul style="list-style-type: none"> • publish reports periodically on systemic findings and recommendations arising from all reviewable deaths • make a special report to the relevant State or Territory parliament about any matter that the scheme operator considers to be in the public interest. | |
| <p>Recommendation 11.15 Disability death review scheme requirements States and Territories should ensure legislation establishing disability death review schemes:</p> <p>a) defines ‘reviewable deaths’ to include:</p> <ul style="list-style-type: none"> • deaths subject to mandatory notification • deaths that a person or body with legitimate interest requests a scheme to review <p>b) requires deaths that are subject to a mandatory notification requirement include the death of a person with disability:</p> <ul style="list-style-type: none"> • living in supported accommodation at the time of their death • residing in a licensed boarding house (or equivalent) at the time of their death • residing in custody or in an acute health facility at the time of their death (after the disability death review scheme has operated for a period). | <p>NSW Response: <u>Subject to further consideration</u> See Rec 11.14</p> |
| <p>Recommendation 11.16 National agreement on disability death reviews The Australian Government and State and Territory governments should enter into a national agreement that:</p> <p>a) reflects the functions, powers and definitions outlined in recommendations 11.14 and 11.15</p> <p>b) defines the respective roles of State and Territory death review schemes and the NDIS Quality and Safeguards Commission (NDIS Commission) in relation to the deaths of people with disability</p> <p>c) articulates the relationship between the functions of the disability death review schemes and the NDIS Commission and ensures the</p> | <p>Joint Response: <u>Subject to further consideration</u> The Australian Government and State and Territory governments recognise the importance of systemic reviews of the deaths of people with disability in understanding and addressing factors that contribute to the disproportionate rates of deaths and potentially avoidable deaths of people with disability.</p> <p>All governments will work together to further consider the appropriateness of a national agreement on disability death reviews alongside State and Territory consideration and development of disability</p> |

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| <p>appropriate operational processes are in place to facilitate this</p> <p>d) provides for information sharing between the death review schemes and the NDIS Commission</p> <p>e) commits to nationally consistent disability death data collection and reporting requirements, and the inclusion of disability death data within the proposed National Disability Data Asset.</p> | <p>death review schemes consistent with recommendations 11.14 and 11.15 of the Disability Royal Commission.</p> |
| <p>Recommendation 11.17 Nationally consistent reportable conduct schemes States and Territories should:</p> <p>a) establish reportable conduct schemes, where not already in place, in accordance with Recommendation 7.9 of the Royal Commission into Institutional Responses to Child Sexual Abuse and make public their intended timeframe for doing so</p> <p>b) take action to harmonise their reportable conduct schemes</p> <p>c) introduce or amend existing legislation to:</p> <ul style="list-style-type: none"> • ensure disability service providers that deliver supports or services to children with disability, including NDIS providers, are included in their reportable conduct scheme • include ‘ill-treatment’ in the definition of reportable conduct • enable reportable conduct scheme operators to adopt a common definition of disability • require reportable conduct scheme operators to collect and publicly report consistent data about reportable conduct notifications and outcomes relating to children with disability. | <p>NSW Response: <u>Accept</u></p> <p>NSW has had a robust reportable conduct scheme in place since 1999. The NSW scheme was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse as the model to adopt across jurisdictions.</p> <p>NSW supports the need to enhance reportable conduct schemes to better respond to children and young people with disability by pursuing national consistency in relation to key aspects of the scheme.</p> <p>NSW continues to lead discussions with the Commonwealth, States and Territories about harmonising reportable conduct schemes to improve child safety across Australia, most recently at the National Ministerial Forum on Child Safety on 23 October 2023. At this forum, NSW facilitated jurisdictions’ agreement to improve information sharing across agencies and jurisdictions, as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.</p> <p>The NSW scheme already applies to conduct that constitutes ‘ill-treatment’ of a child (ss 20 and 23, <i>Children’s Guardian Act 2019</i>). In addition, many disability services are already captured through other reportable conduct categories e.g. if the service provides out-of-home care (OOHC), specialised substitute residential care (previously known as voluntary OOHC), or are within the health, education, child care/early education sector, or are a religious body. The NSW Government will</p> |

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| | <p>consult with the disability sector, Children’s Guardian, Australian Government, NDIA and NDIS Commission about the recommendation to amend our reportable conduct legislation to explicitly include organisations that provide disability services to children, including NDIS providers.</p> <p>We will progress the elements of this recommendation that relate to improving data collection and reporting as part of our joint efforts with other jurisdictions to progress the broader data-related recommendations in Volume 12, Beyond the Royal Commission with other jurisdictions.</p> |
| <p>Recommendation 11.18 Dual oversight of reportable conduct and incidents State and Territory reportable conduct scheme operators and the NDIS Quality and Safeguards Commission should:</p> <ul style="list-style-type: none"> a) jointly develop guiding principles to support the efficient and effective handling of reportable incidents that are also allegations of reportable conduct b) develop broadly consistent guidance material to assist organisations to better understand key issues relevant to notifying, managing and investigating allegations of reportable conduct and incidents involving children with disability. | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments agree on the fundamental importance of robust oversight of reportable conduct schemes that provide clear reporting pathways to help prevent and respond to allegations of abuse against all children, including children with disability.</p> <p>All governments will work together with the NDIS Commission to develop consistent processes that support the efficient and effective handling of reportable incidents.</p> |

Volume 12: Beyond the Royal Commission

Volume 12 includes 8 recommendations.

| Recommendation | Response |
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| <p>Recommendation 12.1 Government responses to the Final report The Australian Government and State and Territory governments should each publish a written response to the Royal Commission’s Final report by 31 March 2024. Their responses should indicate whether the recommendations are accepted, rejected or subject to further consideration. They should include a plan for how the accepted recommendations will be implemented, the reasons for rejecting any recommendations, and a timeframe for any further consideration required. The Australian Government and State and Territory governments should table their responses in their respective parliaments and legislative assemblies.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support the transparent publication of responses to Disability Royal Commission recommendations.</p> <p>On 5 March 2024, the Australian Government and State and Territory governments, except Tasmania due to being in caretaker, released a joint statement committing to responding to joint Disability Royal Commission recommendations by mid-2024. This joint response fulfils that commitment.</p> |
| <p>Recommendation 12.2 Implementation of the Final report recommendations The Disability Reform Ministerial Council should oversee the implementation of the Royal Commission’s recommendations across the Australian Government and State and Territory governments. The Australian Government and each State and Territory government should report to the Disability Reform Ministerial Council every six months. Their reports should detail the implementation status of each recommendation and raise any issues and risks. In its 2024 report to National Cabinet, the Disability Reform Ministerial Council should identify the implementation of the Royal Commission’s recommendations as one of its priorities and include it in its workplan.</p> | <p>Joint Response: <u>Accept in principle</u> The Australian Government and State and Territory governments support the Disability Reform Ministerial Council (DRMC) having responsibility for monitoring and overseeing the implementation of Disability Royal Commission recommendations.</p> <p>Disability Ministers have identified the development of responses to the Disability Royal Commission as a priority focus and have agreed to include consideration of reform in response to the Disability Royal Commission as a standing agenda item for all DRMC meetings in 2024.</p> <p>The issues raised in the Disability Royal Commission’s final report, and change required, traverse the responsibilities of several portfolios and Ministerial Councils, and require a significant and sustained national effort from all governments and all parts of our community.</p> |

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| | <p>DRMC will report annually to National Cabinet on the implementation of Disability Royal Commission recommendations, with input from other Ministerial Councils on progress made on recommendations within their responsibility.</p> <p>Disability Ministers have also agreed to a reporting and monitoring framework to support ongoing and transparent updates on progress of implementation of recommendations.</p> |
| <p>Recommendation 12.3 Progress reporting on implementation of recommendations</p> <p>Commencing in 2025, the National Disability Commission should table an annual report in the Australian Parliament reporting on the progress of the Australian Government and State and Territory governments in implementing the recommendations of the Royal Commission. The report should compare progress across jurisdictions. (For details of the National Disability Commission, see Volume 5, Governing for inclusion, Recommendation 5.5.)</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments will consider appropriate independent reporting arrangements on implementation of Disability Royal Commission recommendations. Disability Ministers will consider possible arrangements and mechanisms for agreement and publication in 2024.</p> |
| <p>Recommendation 12.4 Evaluation of effectiveness in improving outcomes</p> <p>The National Disability Commission should lead independent evaluations of the implementation of the Royal Commission’s recommendations and their effectiveness in improving outcomes for people with disability. The evaluations should examine barriers to and drivers of effective implementation and suggest measures for improvement. The evaluations should be conducted five and 10 years after the delivery of the Final report, with reports tabled in the Australian Parliament.</p> | <p>NSW Response: <u>Note</u></p> <p>This recommendation is directed at the Australian Government.</p> |
| <p>Recommendation 12.5 A nationally consistent approach to data collection</p> <p>The Australian Government and State and Territory governments, through the Disability Reform Ministerial Council, should address the</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>Australian Government and State and Territory governments acknowledge the importance of data collection and publication and its</p> |

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| <p>lack of consistent disability data by developing a nationally consistent approach to collecting disability information.</p> <p>By December 2024, the Australian Government and State and Territory governments should agree to a core set of questions to identify disability status to be used across all mainstream services and population surveys. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare. The questions should be co-designed with people with disability and their representative organisations, and with First Nations subject matter experts.</p> | <p>role in safeguarding against violence, abuse, neglect and exploitation and informing an evidence-based approach to ongoing reform to support better outcomes for people with disability.</p> <p>In January 2024, Disability Ministers agreed Commonwealth, State and Territory officials focus and accelerate work to resolve data gaps in relation to the reporting requirements under Australia’s Disability Strategy 2021-2031 Outcomes Framework by the end of 2024. All governments are also working together to develop an action plan, with agreed timeframes, to drive data collection (including gender disaggregated data) and reporting on data-related Disability Royal Commission recommendations. The action plan is expected to be published in 2024.</p> <p>All governments have also committed to deliver the enduring National Disability Data Asset and contribute to ongoing costs through the National Disability Data Asset Memorandum of Understanding, signed by Disability Ministers in mid-2023. Ongoing work to deliver the National Disability Data Asset will also support implementation of these recommendations over time.</p> |
| <p>Recommendation 12.6 Disability flags in data collection for mainstream services</p> <p>The Australian Government and State and Territory governments, through the Disability Reform Ministerial Council, should address the lack of available disability data by implementing disability flags in data collections for key mainstream services.</p> <p>By June 2025, the Australian Government and State and Territory governments should publish an implementation plan outlining how the core set of questions will be integrated into data collections of priority mainstream services. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare.</p> | <p>Joint Response: <u>Accept in principle</u> See Rec 12.5.</p> |

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| <p>Recommendation 12.7 Improving disability data collection</p> <p>The Australian Government and State and Territory governments should support a strategy, led by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare, to extend disability data collection:</p> <ul style="list-style-type: none"> a) to include people with disability in closed and segregated settings and those with communication support needs b) to improve data on types of impairment c) to improve data for intersectional analysis by enhancing data on women with disability; children and young people with disability; and First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability. <p>This strategy should form part of the Australia’s Disability Strategy 2021–2031 Data Improvement Plan.</p> | <p>Joint Response: <u>Accept in principle</u></p> <p>See Rec 12.5.</p> |
| <p>Recommendation 12.8 Long-term support for the National Disability Data Asset</p> <p>The Australian Government and State and Territory governments, through the Disability Reform Ministerial Council, should commit to long-term support to the National Disability Data Asset (NDDA). All governments should:</p> <ul style="list-style-type: none"> a) by June 2024, commit to continuing funding to establish the NDDA as a national resource for longitudinal analysis of linked data across service systems b) commit to publishing an annual statistical summary of the analyses of the NDDA’s linked data. This should focus on data insights not available from other sources and provide transparency on projects underway. All reported data should be disaggregated as far as possible to enable intersectional analysis c) by December 2024, commence specific data projects using the NDDA that: | <p>Joint Response: <u>Accept in principle</u></p> <p>The Australian Government and State and Territory governments have committed to deliver the enduring National Disability Data Asset and contribute to ongoing costs through the National Disability Data Asset Memorandum of Understanding, signed by Disability Ministers in mid-2023.</p> <p>The National Disability Data Asset will be in operation in 2024-25. All governments are working together to determine costs and funding arrangements beyond 2025.</p> |

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| <ul style="list-style-type: none">• identify the factors that put people with disability at greatest risk of violence, abuse, neglect or exploitation• demonstrate the outcomes and experiences of people with disability transitioning between systems, including:<ul style="list-style-type: none">– education and employment, child protection and justice systems, and housing and health– the National Disability Insurance Scheme and mainstream services• evaluate the accuracy of disability status collection in various service settings. | |
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