

Submission to the Victorian Family and Community Development Committee Inquiry into Abuse in Disability Services (Stage 2)

Australian Psychological Society

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Executive Summary and Recommendations

Abuse of people in disability services is under-reported, and when abuse is reported, action is often inadequate or inappropriate. Under-reporting and inadequate actions are likely due to a range of interrelated factors including the multiple barriers people face in disclosing incidents and the lack of appropriate systems in place to support formal reporting.

The APS believes that two overarching approaches are required in tandem to address the violence, abuse and neglect experienced by people with disabilities in within the disability service system. The first approach addresses the culture of disability services. The second focuses on having specific guidelines about how to address abuse and trauma.

Recommendations:

The APS draws attention to the APS publication: *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*, along with a wide range of therapeutic and systemic responses designed and delivered by psychologists to support optimal service delivery.

The APS recommends that:

- as part of the development of a safety and quality framework for the NDIS, an external entity such as a Disability Complaints Office within an Office of a National Disability Service Commissioner be established. The Office should have sufficient power to investigate and respond to complaints/incidents of violence, abuse or neglect that occur both in NDIS-funded and non-funded disability services
- as part of the development of a safety and quality framework for the NDIS, a *national* vetting system for people seeking to work with people with disabilities be established that includes national referee and police checks as part of a national vulnerable people clearance. As part of this process, a national barred-persons list should also be established
- action be taken to ensure that national safety mechanisms developed as part of the safety and quality framework for the NDIS align with and complement existing state/territory-based mechanisms, to avoid new gaps in safety mechanisms emerging. This task may be appropriate for the Council of Australian Governments
- policy initiatives focus on evidence-based interventions that support people with disabilities, their carers and families, in order to enhance their quality of life within disability services

- policy be developed and practices implemented that ensure workers and mentors are protected and supported on the front line
- the numbers of registered health professionals be increased so that expertise is readily available to assist NGOs to be part of the solution and not the problem
- preventive action be taken in five areas: raising community awareness about violence, abuse and neglect against people within disability services; identification of situational risks and indicators; effective screening and recruitment procedures for employment of staff in relevant service organisations; provision of targeted, evidence-based training on preventive and protective strategies to staff, clients, carers and families, as well as other service providers and community members likely to come into contact with clients with a disability; and creating positive organisational cultures that facilitate disclosure
- service providers develop a common set of guidelines about the questioning and interviewing of people with disabilities who decide to disclose an alleged abuse, including the provision of information regarding access to independent legal advice
- the Victorian Government (as well as all other Australian states and territories) develop and adopt processes for the protection of people with disabilities in disability services where allegations of violence, abuse or neglect can be disclosed and reported safely and confidentially, preferably via an independent party
- Victoria (and all other Australian states and territories) comply with its international obligations as a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD), and that all of the relevant Articles are used as a basis for developing legislation, policy, standards or guidelines for the protection of people within disability services from violence, abuse and neglect
- particular consideration be given to the respective situations of Aboriginal and Torres Strait Islander people with disability, and people with disability from culturally and linguistically diverse backgrounds

1. Introduction

The Australian Psychological Society (APS) welcomes the opportunity to make a submission regarding abuse in disability services in Victoria.

The APS is well placed to contribute to this Inquiry by identifying psychological research and best practice relating to violence, abuse and neglect of people with disabilities. Recent APS engagement on issues relating to people with disabilities includes several submissions regarding the NDIS, as well as development of a practice guide aimed at reducing the need for restrictive practices in the disability sector. The APS has also been actively involved in the Royal Commission into Institutional Responses to Child Sexual Abuse (see Appendix for details of submissions).

Many psychologists work with people with disability in their everyday work across a range of settings including schools, hospitals and in private practice. Psychologists have much to offer people with disability, including specialised assessment, mental health intervention, skills training, pain management, positive behaviour support, communication techniques, and environmental strategies. There is strong evidence supporting the benefits of psychological interventions in autism and intellectual disability, the two most prominent diagnoses amongst participants in the NDIS thus far, and also in aged-care settings (Matthews, InPsych, 2014).

The negative impact of abuse on the health and wellbeing of individuals, groups and communities is of great concern to the APS and its members. Psychologists often work as researchers and/or service providers with individuals and groups who experience or use violence, seeking to both prevent violent behaviour and address its impacts.

The APS Code of Ethics states that:

A.1.1. *Psychologists* avoid discriminating unfairly against people on the basis of age, religion, sexuality, ethnicity, gender, disability, or any other basis proscribed by law.

A.1.2. *Psychologists* demonstrate an understanding of the consequences for people of unfair discrimination and stereotyping related to their age, religion, sexuality, ethnicity, gender, or disability.

In addition, the APS *Ethical Guidelines on reporting abuse and neglect, and criminal activity* (2010) includes a section specifically related to reporting the abuse of persons from "vulnerable groups other than children", such as older adults in aged care facilities, people with an intellectual disability, people covered by guardianship Acts, and people covered by mental health Acts. The guidelines state that "In the absence of any statutory requirement, if

psychologists who provide services for vulnerable *clients* notice indicators of abuse or neglect, they consider the welfare of the *client* as paramount and take appropriate action". (p.151)

The APS also acknowledges that abuse of people with disabilities is a human rights issue. The UN Convention on the Rights of Persons with Disabilities (CRPD) states that individuals should be free from "torture or to cruel, inhuman or degrading treatment or punishment" (Article 15) and have "a right to respect for his or her physical and mental integrity on an equal basis with others" (Article 17). Furthermore, State Parties "shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects" (Article 16). Unfortunately, given the evidence, there appears to be a discrepancy between the aspirations of the UN Convention and the lived experience of people who access disability services.

2. Responding to the Inquiry

The APS commends the Committee on its interim report written in response to Stage 1 of this Inquiry.

In particular, the APS welcomes the recommendation of a single independent oversight body, as well as the recognition of the importance of a workforce culture which embeds supportive attitudes towards complainants and whistleblowers and promotes proactive responses to allegations of abuse.

The APS is not in a position to respond extensively to this Inquiry, but offers a brief response to each of the Terms of Reference below. The APS response draws on evidence-based psychological research and practice as much as possible but is limited by what is available. The submission has also been informed by contributions from APS members working in the mental health and disability sectors in Victoria and other states.

Given the APS did not respond to Stage 1 of this Inquiry, the following section provides an overview of the APS position in relation to the key elements required for appropriate quality and safeguards for the National Disability Insurance Scheme (NDIS).

Quality and Safeguards for the National Disability Insurance Scheme

In 2015, the Consultation Paper: *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework* was released which described the framework being proposed for the NDIS:

<https://engage.dss.gov.au/ndis-qsf/consultation-paper/>. The APS supports the acknowledgment and importance of the five key elements of the

framework (NDIA provider registration; Safeguards for participants who manage their own plans; Systems for handling complaints; Ensuring staff are safe to work with participants; and reducing and eliminating restrictive practices in NDIS funded supports). The APS submission in response to this Consultation Paper recommended that the highest level of standards be implemented (see attached submission).

Although a raft of safeguards needs to be implemented at both the national and jurisdictional level, the reality is that the development of safeguards alone will not protect people with disabilities. Nor can the development and implementation of a safety framework be a one-off exercise. Rather, organisations need to build continual appraisal and constant vigilance into their systems in order to develop a culture that mitigates against violence and abuse of people with disabilities. The response to the Winterbourne View Enquiry in the United Kingdom may provide some examples of good practice (see <https://www.gov.uk/government/publications/winterbourne-view-hospital-department-of-health-review-and-response>). The APS also draws the attention of the Committee to the extensive research program undertaken by the Royal Commission into Institutional Responses to Child Sexual Abuse that provides a range of lessons from the experience of children in institutional settings and the strategies that have been found to be effective in addressing their safety (see <http://www.childabuseroyalcommission.gov.au/policy-and-research>).

The Terms of Reference (Stage 2)

The Terms of Reference in Stage 2 consider any further systemic issues that impact on why abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 are not reported or acted upon.

Abuse of people in disability services is under-reported, and when abuse is reported, action is often inadequate or inappropriate. Under-reporting and inadequate actions are likely due to a range of interrelated factors including the multiple barriers people face in disclosing incidents and the lack of appropriate systems in place to support formal reporting.

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

The APS response to this issue focuses specifically around the safety structures that will be required to support the introduction of the NDIS in Australia. The NDIS provides a relatively new national landscape for the prevention of violence and abuse against people with disability who are

receiving services. The introduction of a national approach provides a significant opportunity for improvements in safety structures and policies, particularly in terms of the potential to address the problem of perpetrators of violence, abuse or neglect against people with a disability slipping through gaps by moving across jurisdictions. For example, as part of the NDIS safety and quality framework, a national approach to vetting people who apply to work with people with a disability could be established. The vetting should include referee and police checks as part of the establishment of a national vulnerable people clearance, along with the compilation of a nationally-held register of barred persons. A national approach also has the potential to provide significant impetus for the development of a Charter of Rights for all people with disabilities in institutional and residential settings.

The requirement for a safety and quality framework for the NDIS also provides an opportunity for the appointment of a key national external entity such as a Disability Complaints Office within the Office of a National Disability Service Commissioner. Disability Service Commissioners exist in some jurisdictions (e.g., Victoria) but could work collaboratively with a national entity and have sufficient power (in addition to the required forensic response) to investigate and respond to complaints/incidents of violence, abuse or neglect that occur both in NDIS-funded and non-funded disability services. The Office could also play a significant role in preventive education.

It is critical that a national approach, most likely associated with the NDIS, aligns with and complements existing state/territory-based mechanisms to avoid new gaps in safety mechanisms emerging, such as the loss of specialist expertise (e.g., psychologists working in behaviour assessment and management) from the disability sector. For example, in New South Wales (NSW), the response by the State government to the implementation of the NDIS has been to commence the closure of the Ageing, Disability and Home Care section of the Department of Family and Community Services that will result in the tendering-out of formerly government-operated services to people with a disability, including residential facilities. The new *Disability Inclusion Act 2014* (NSW) does place greater emphasis on the right of people with disability to be in control of their lives and to make or be involved in key decisions, respecting the independence of people with disability, and ensuring people with disability can participate fully in the community. However, in NSW there will be less direct oversight by government of disability services, making it unique amongst the jurisdictions. Under these anomalous conditions, it is unclear if the national safety framework that is developed for the NDIS will provide sufficient protection for people with a disability.

It must be noted that it will also be important to ensure that the newly emerging safety frameworks and mechanisms associated with the NDIS do not duplicate or undermine work already being conducted in the jurisdictions. The systems need to operate in tandem to provide the safest possible services for people with a disability and to avoid people falling through the gaps. There may be a role for the Council of Australian Governments (COAG) to provide oversight to this process.

Recommendations:

The APS recommends that:

- as part of the development of a safety and quality framework for the NDIS, an external entity such as a Disability Complaints Office within an Office of a National Disability Service Commissioner be established. The Office should have sufficient power to investigate and respond to complaints/incidents of violence, abuse or neglect that occur both in NDIS-funded and non-funded disability services
 - as part of the development of a safety and quality framework for the NDIS, a *national* vetting system for people seeking to work with people with disabilities be established that includes national referee and police checks as part of a national vulnerable people clearance. As part of this process, a national barred-persons list should also be established
 - action be taken to ensure that national safety mechanisms developed as part of the safety and quality framework for the NDIS align with and complement existing-state/territory-based mechanisms, to avoid new gaps in safety mechanisms emerging, such as the loss of specialist expertise (e.g., psychologists working in behaviour assessment and management) from the disability sector. This task may be appropriate for the Council of Australian Governments
 - policy initiatives focus on evidence-based interventions that support people with disabilities, their carers and families, in order to enhance their quality of life within disability services
- ii. any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme**

The APS acknowledges the following concerns about systemic workforce issues that may contribute to the violence, abuse and neglect of people with disability, most of which have been identified in the interim report:

- Many organisational cultures allow violence, abuse and neglect to be silenced and ignored.
- The increasing casualisation of the workforce means that strangers may be caring for people with disabilities.
- Appropriate staff training and education is important, but violence, abuse and neglect have been shown to occur in situations involving both trained and untrained staff. In the former, perhaps inadequate or absent supervision may also play an important part.
- Using an unregistered workforce can also be problematic. However while qualifications and registration can give a degree of accountability, they can also increase the power of staff which is problematic when misused/abused.
- The privatisation of the disability sector, as is underway in NSW, is likely to result in more occurrences of violence, abuse and neglect due to a lack of accountability.

Moreover, as described in a recent APS submission to the Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings (2015), a psychologist working in a state outside Victoria was able to identify seven incidents of neglect of people within disability services that she had witnessed first-hand. To her knowledge, only one of these incidents was reported as a "serious incident" to the respective state-based agency. What the incidents were able to demonstrate was that a lack of staff knowledge, training and time, sometimes combined with a blatant abuse of power, has resulted in people with disabilities enduring unacceptable, horrific and importantly, avoidable experiences.

Reducing the use of restrictive practices

The APS commends the Committee on highlighting the need to attend to the issue of restrictive practices. While the APS cannot comment in detail on how the independence of a Senior Practitioner is best established, it would seem advisable at minimum that the role be independent from the Department of Health and Human Services, that in turn the role should incorporate appropriate statutory powers, and that a timely evaluation of the role and effectiveness of the position be undertaken.

The APS has particular expertise in relation to the use of restrictive practices. In 2011 the APS released *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*.

Restrictive practices include the use of restraint (physical, mechanical, and chemical) and seclusion. As stated in the 2011 APS Guidelines:

Restrictive practices are applied in a range of service settings with varying degrees of appropriateness. There is now substantial evidence demonstrating that inappropriate use of these practices can result in physical and psychological injuries that have long-term implications. Furthermore, these practices can adversely affect the therapeutic relationship between clients and clinicians. In many cases, the decision to use restrictive procedures is made in the absence of adequate consideration of alternative psychological interventions that might mitigate their use. (p.5)

It is the perception of an APS member with extensive experience working in the disability sector that unjustified, unauthorised and unethical restrictive and arguably illegal practices constitute a large proportion of abuse toward people with disability. Moreover, the 'challenging' behaviours which these practices are often used to address are likely to occur as a result of violent, abusive and neglectful behaviour towards an individual in the first place.

Participatory research that has involved people with disabilities themselves in the research process has examined experiences of restrictive practices (Ramcharan, Nankervis, Strong, & Robertson, 2009). This research found that:

- feeling safe is a priority for people with disabilities and their family carers; yet many people feel unsafe
- many behaviours seen as being 'of concern' can be understood better as adaptive behaviours to maladaptive environments. These behaviours can be seen as forms of 'resistance' or 'protest'
- behaviours of 'resistance' and 'protest' should be seen as legitimate responses to difficult environments and situations, and not a reason for restrictions designed to change the person and their behaviour
- restrictive practices challenge human rights and give rise to concerns over social justice. Changing the person and their behaviour should not be the starting point. Rather, it is necessary initially to examine how to change services, systems and environments as a means of changing behaviour. (p.2)

Eliminating barriers for responding to abuse

There are a number of resources that can assist in eliminating the barriers for responding to incidents of abuse. In relation to restraint, for example, research about the experience of restrictive practices has resulted in the development of a Road Map for Achieving Dignity without Restraint (Victorian Department of Human Services, 2012). In addition, the 2011 APS Guidelines, along with a wide range of therapeutic and systemic responses designed and delivered by psychologists, have been designed to support optimal service delivery.

The aim of the APS Guidelines was to promote the use of positive behaviour support programs, and as such they incorporate recommendations for a number of aspects of practice, including:

- person-centred planning
- determining an appropriate physical environment
- ethical considerations relevant to working with people who display challenging behaviours
- assessment of challenging behaviour in the disability field
- managing concerns related to staffing
- psychological interventions for clients presenting with challenging behaviour
- working with an interdisciplinary approach
- working with children and adolescents who have a disability
- working with people who have persistent self-injurious behaviours
- legislative and policy issues.

As outlined in recent research by Ottmann and colleagues (2014) at Deakin University, disability service organisations are not equipped to detect and address abuse and neglect committed by staff. Ottmann and colleagues conducted a Delphi study to examine the barriers and facilitators associated with implementing effective safeguards within the disability service sector. The research found that 30% of 249 care workers were not confident in their ability to identify and respond to allegations of abuse and neglect, and 40% were not confident in working with clients who experienced trauma. This research identified 291 recommendations for action.

Based on work previously done for the Royal Commission into Institutional Responses to Child Sexual Abuse, the APS recommends five key areas for action around responses to violence, abuse and neglect. These are: the need to raise community awareness about the issue (index of suspicion); effective screening and recruitment of aged care and disability workers; provision of targeted, evidence-based training on preventive and protective strategies to staff, clients, carers and families; identification of situational risks and indicators (e.g. grooming behaviour and employees working alone); and creating positive institutional cultures that facilitate and encourage disclosure. Of greatest importance is encouraging organisations to prioritise duty of care for their clients, above and beyond their organisational reputation.

Of course adults with disabilities are not children, and their protection needs to be balanced with rights to autonomy and freedom. However, the conceptual underpinnings of all these areas are useful and relevant to refer to in thinking about responses to violence against people with disability in institutions. The APS refers the Committee to our submission (<http://www.psychology.org.au/Assets/Files/2013-APS-Submission-Royal-Commission-Issues-Paper3-October.pdf>) as well as the work of the Royal Commission more broadly. A key message is that all these strategies need to be enacted in tandem as part of a multi-faceted approach.

Despite access to justice and safety being basic human rights, “people with disabilities in Victoria are routinely denied these because police and other parts of our criminal justice system are ill equipped to meet their needs” (Victorian Equal Opportunity and Human Rights Commission, 2014, p.12). The VEOHRC report sets out a comprehensive list of recommendations directed towards not only the Victorian Police, but also the Victorian Government and Court Services. Underpinning the recommendations is the need for the criminal justice system to have a better understanding of disability, and to take victims and their reports seriously.

Recommendation:

- The APS draws attention to the APS publication: *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*, along with a wide range of therapeutic and systemic responses designed and delivered by psychologists to support optimal service delivery.

Promoting a workforce culture that that does not tolerate abuse, neglect and exploitation

In response to the Committee's questions (4.7 and 4.8 in the interim report) the APS has several suggestions about what the Victorian Government and disability service providers can do to promote a workforce culture that that does not tolerate abuse, neglect and exploitation.

The APS argues first and foremost that managing situational risks places the focus of attention on creating safe environments rather than safe individuals. Higgins (2013) explains that making institutions safe involves:

- identifying organisational risk factors
- changing risky environments where possible
- closer monitoring of inherent risks.

Furthermore, the opportunity to perpetrate violence without being caught is a critical determinant of its occurrence and reoccurrence. Thus, increased organisational awareness and understanding of what affords people such opportunities is needed to inform effective prevention strategies.

It is important to note that abuse often occurs through interactions with people who have incidental or occasional contact with a person with a disability (e.g., the taxi driver, the hairdresser). In addition to appropriate vetting and training of staff within the organisation, and awareness-raising education for members of the community generally, there should be training targeted at particular professions likely to interact with, or offer services to, a person with a disability.

A final point worth noting is in relation to grooming tactics. These are strategies used by abusers to get close to a victim, develop a relationship, and create opportunities to perpetrate abuse without getting caught. While grooming tactics may be different for children than for adults, it warrants further investigation about what the predominant strategies might be and therefore how to minimise the risks. Grooming may also comprise strategies to allay suspicions of colleagues, supervisors and managers et cetera.

Safe environments create positive institutional cultures. Higgins (2013) notes strategies to minimise opportunities for undetected grooming and abuse as:

- clarifying unacceptable behaviour
- encouraging disclosure
- involving police and child protection authorities.

In tandem with a message from the respective institution that it has zero tolerance for any act of violence, abuse or neglect by an employee (or any other person) towards a resident/client, there needs to be a clear, transparent and trustworthy process in place, independent of the institution,

that encourages people with disabilities to disclose abuse safely and confidentially. An independent process will enable stronger legal options for victims and the facilitation of immediate referral of all complaints directly to the police for investigation. People who make an allegation of violence, abuse or neglect by an employee should be given information about and access to independent legal advice, as soon as practicable after making the allegation. Information could include advice about:

- the Australian Centre for Disability Law:
<http://disabilitylaw.org.au/services/legal-advice>
- The National Association of Community Legal Centres for more specific legal advice or to contact a local legal community centre:
http://www.naclc.org.au/need_legal_help.php

This process could be supplemented by the adoption by institutions of a common set of guidelines about the questioning and interviewing of residents/clients if they disclose an alleged abuse. These guidelines could include: consideration of properly trained people to do the interviews/questioning; minimising the need for a victim to repeat their story to numerous parties; strategies to avoid contamination of any evidence which might later be part of a court process; and independent support for the person in the process and where necessary, access to independent legal advice as stated above.

Once abuse of a resident/client is alleged, a clear and transparent process about what should be considered by an institution is required. Where the alleged perpetrator of the abuse is a person engaged or employed by the organisation, considerations need to address what should occur in relation to that person until allegations/proceedings/investigations are finalised. Further considerations are also required regarding how to ensure the immediate and ongoing safety of the person who has disclosed abuse, and other residents'/clients' immediate and ongoing safety once allegations of abuse are raised.

In relation to advocacy, the Victorian Advocacy League for Individuals with Disability (VALID) has developed guidelines to inform disability service agencies in managing and supporting the advocacy role of support staff (http://www.valid.org.au/positions/advocacy_role_staff.pdf). Likewise, the APS has produced a set of ethical guidelines to assist psychologists on when and how to report abuse and neglect, and criminal activity. However, there are concerns about the extent to which psychologists feel free to speak out, and differing perspectives about the extent to which psychologists should be involved in advocacy.

Recommendations:

The APS recommends that:

- policy be developed and practices implemented that ensure workers and mentors are protected and supported on the front line
- the numbers of registered health professionals be increased so that expertise is readily available to assist NGOs to be part of the solution and not the problem
- preventive action be taken in five areas: raising community awareness about violence, abuse and neglect against people within disability services; identification of situational risks and indicators; effective screening and recruitment procedures for employment of staff in relevant service organisations; provision of targeted, evidence-based training on preventive and protective strategies to staff, clients, carers and families, as well as other service providers and community members likely to come into contact with clients with a disability; and creating positive organisational cultures which facilitate disclosure
- service providers develop a common set of guidelines about the questioning and interviewing of people with disabilities who decide to disclose an alleged abuse, including the provision of information regarding access to independent legal advice
- the Victorian Government (as well as all other Australian states and territories) develop and adopt processes for the protection of people with disabilities in disability services where allegations of violence, abuse or neglect can be disclosed and reported safely and confidentially, preferably via an independent party.

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

Of great concern to the APS is the negative impact of violence, abuse and neglect on the health and wellbeing of not only the victims of abuse, but also their families, advocates, support persons, and communities, and on society as a whole.

Violence has a significant impact on the mental health and wellbeing of victims (who are predominantly women and children). It can result in psychological distress and trauma, mental illness, reduced quality of life, injury and death (American Psychological Association, n.d.). Furthermore, individuals are at further risk of behaviour that may amount to a criminal offence being inflicted upon them, and/or of re-traumatisation if and when violence and abuse is disclosed.

A growing body of evidence suggests that women with a disability both in the home and in institutional or residential care settings are more likely than other women to experience violence, and that the impact of this violence may be more severe (Women with Disabilities Australia, 2013). This highlights the need for the Committee to consider gender as a significant systemic issue.

An important component in the experience of abuse by people with disabilities is the evidence indicating the barriers relating to disclosure. Barriers exist at individual, organisational and societal levels (Higgins, 2010). Non-disclosure, or delayed disclosure, may be related to feelings of shame and blame, difficulties in communication, not knowing that an experience should be disclosed, poor organisational policies and procedures, inappropriate organisational responses, societal myths and attitudes about abuse and disability (Murray & Powell, 2008).

The APS supports the rights of people with disabilities to report abuse and seek an adequate response, which may include the possibility of criminal charges being brought against an alleged perpetrator, where relevant. As with the APS response to the Royal Commission, however, the APS is concerned about the potential of such a process to retraumatise victims. While there is limited research evidence, anecdotal evidence about the distressing nature of reliving one's story, negative reactions about not being believed, being blamed and judged, or punished and not supported may compound the impact of the original abuse. On this basis, it is clearly relevant to consider how victims may be empowered during the process, beyond the helplessness that was part of their traumatic experience.

Even if people can and do disclose their experiences, there is a lack of access to appropriate treatment and counselling. One reason for this is the lack of sufficiently trained health professionals.

Meeting Australia's international obligations as they apply to the rights of people with disability

As indicated on the Attorney General's Department website, Australia ratified the United Nations Rights of Persons with Disabilities (CRPD) on 17 July 2008. The UN Convention is highly relevant to this Inquiry and in particular, the following Articles are relevant to supporting people with a disability, their families and informal supports to identify, report and respond to abuse:

- **Children with disabilities:** States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other

children. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. (Article 7)

- **Freedom from torture or cruel, inhuman or degrading treatment or punishment** (Article 15)
- **Freedom from exploitation, violence and abuse:** State Parties "shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects". (Article 16)
- **Protecting the integrity of the person:** Each individual has "a right to respect for his or her physical and mental integrity on an equal basis with others". (Article 17)
- **Living independently and being included in the community:** States should support individuals to live independently and be included in the community. (Article 19)
- **Health:** Persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States' Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. (Article 25)
- **Adequate standard of living and social protection:** That States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability. (Article 28)

Unfortunately, there appears to be a discrepancy between the aspirations of the Convention and the lived experience of many Australian people with disabilities in institutional and residential settings. This is evidenced by a number of case studies which describe various incidents of neglect as reported by an APS member (See APS Submission to Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, 2015).

A useful resource to provide some context for this issue is the Australian Law Reform Commission Report from the Inquiry into Equality, Capacity and Disability in Commonwealth Laws (ALRC 124 Summary). The Inquiry examined laws and legal frameworks within the Commonwealth jurisdiction that deny or diminish the equal recognition of people with disability as persons before the law, and the report highlights a number of issues in need of reform.

Recommendations:

The APS recommends that

- Victoria (and all other Australian states and territories) comply with its international obligations as a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD), and that all of the relevant Articles are used as a basis for developing legislation, policy, standards or guidelines for the protection of people within disability services from violence, abuse and neglect
- particular consideration be given to the respective situations of Aboriginal and Torres Strait Islander people with disability, and people with disability from culturally and linguistically diverse backgrounds

Role and challenges of formal and informal disability advocacy

Many people with disabilities do not have a voice. Even if they do literally speak up, they are often not believed and silenced. Similarly, whistleblowers are typically ostracised (e.g., Gerard Butler at Yooralla, ABC Four Corners, 2014). Given the high rates and prolific under-reporting of violence, abuse and neglect against people with disabilities, there is clearly a role for formal and informal advocacy in both prevention and response.

The APS acknowledges that formal and informal advocacy can occur at a range of levels. Advocacy can be undertaken on behalf of specific individuals (e.g. an advocate may report abuse to the police on behalf of a client or assist them to access legal advice when required), or in support of a cause, and can encompass a range of activities (e.g. lobbying government, gathering data, or increasing community awareness of the occurrence of violence, abuse and neglect against people with disability).

An important question when considering the role of disability advocacy is whether a person or group of people want advocacy or to be spoken for, or prefer to speak/advocate for themselves. This invites the question of the extent in each case to which people are capable of advocating for themselves or with assistance (self-advocacy).

It is the lack of control that people with disabilities have over their lives that is consistently reported as being problematic. Supporting and promoting opportunities for self-advocacy provides a way in which people with disabilities can increase their sense of control. This can be done by increasing access to appropriate information and support for complainants, and ensuring they are informed of their rights.

The Victorian Advocacy League for Individuals with Disability (VALID) has developed a position statement on the advocacy role of support staff

(http://www.valid.org.au/positions/advocacy_role_staff.pdf . Underpinning the statement are the principles of self-determination and self-advocacy. Similarly, psychologists have a role to “assist their clients to address unfair discrimination or prejudice that is directed against the clients” (*APS Code of Ethics: A.1.3.*).

Some people may not want to advocate for themselves, but the critical issue is that they have a choice.

About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing more than 22,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing.

Psychologists apply their skills and knowledge to enhance understandings of the individual, family and systemic issues that contribute to social problems, and to find better ways of addressing such problems. Psychology in the Public Interest is the section of the APS dedicated to the application and communication of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.

APS submissions and resources relating to disability

- Submission to the Senate Inquiry regarding the violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability – May 2015 - <https://www.psychology.org.au/Assets/Files/2015-APS-Submission-institutional-abuse-against-PWD-April.pdf>
- Australian Psychological Society (2011). Evidence-based guidelines to reduce the need for restrictive practices in the disability sector. <https://www.psychology.org.au/practitioner/resources/restrictive/>
- *APS Interest Group on People with Intellectual and Developmental Disability and Psychology*. The Interest Group was integral in the development of the restrictive practice guidelines. More information about the Interest Group can be gathered from the APS website www.groups.psychology.org.au/piddp/.
- Response to the National Disability Insurance Scheme Public Consultation Paper *Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework* - 30 April 2015 - <https://www.psychology.org.au/Assets/Files/2015-APSSubmission-Response-NDIS-April.pdf> (SEE ATTACHED)
- Senate Community Affairs References Committee Inquiry into the adequacy of existing residential care arrangements available for young

people with severe physical, mental or intellectual disabilities in Australia Inquiry 2015 – February 2015 - <https://www.psychology.org.au/Assets/Files/2015-APS-Submission-into-the-adequacy-of-residential-care-arrangements-for-young-people-with-disabilities.pdf>

- Senate Community Affairs Legislation Committee National Disability Insurance Scheme Bill 2012 – January 2013 - <https://www.psychology.org.au/Assets/Files/2013-NDIS-National-Disability-Insurance-January.pdf>
- National Disability Insurance Scheme Rules Consultation Paper – January 2013 - <https://www.psychology.org.au/Assets/Files/2013-APS-Submission-to-NDIS-Rules.pdf>
- Forming a National Disability Workforce Strategy: National Disability Services Discussion Paper (April 2014) - May 2014 - https://www.psychology.org.au/Assets/Files/2014-APS_Submission_NDS_Discussion%20Paper_May%202014.pdf

***InPsych* articles**

- Rebecca Matthews, The opportunities and challenges of the National Disability Insurance Scheme, *InPsych* August 2014 – <https://www.psychology.org.au/inpsych/2014/august/ndis/>
- Harry Lovelock, Guidelines for interventions that reduce the need for restrictive practices in the disability sector, *InPsych* December 2009 - https://www.psychology.org.au/inpsych/guidelines_diability/

APS submissions and resources relating to violence, abuse and neglect

- <http://www.psychology.org.au/community/public-interest/violence/>
- APS submission into the Finance and Public Administration References Committee Inquiry into Domestic Violence in Australia - August 2014 - <http://www.psychology.org.au/Assets/Files/2014-APS-Submission-Domestic-Violence-August%202014.pdf>

***Institutional child sexual abuse* -**

<http://www.psychology.org.au/public/topics/childsexualabuse/>

The APS has made several submissions to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to five Issues Papers and one consultation paper:

- APS Submission to the Royal Commission Issues Paper 9: Child sexual abuse in schools – August 2015
- APS Submission to the Royal Commission Consultation Paper on Redress and Civil Litigation – March 2015
- APS Submission to the Royal Commission Issues Paper 7: Statutory Victims of Crime Compensation Scheme – June 2014
- APS Submission to the Royal Commission Issues Paper 6: Redress Schemes – May 2014
- APS Submission to the Royal Commission Issues Paper 5: Civil Litigation – March 2014
- APS Submission to the Royal Commission Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care – November 2013
- APS Submission to the Royal Commission Issues Paper 3: Child Safe Institutions – October 2013

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Attachments

- Response to the National Disability Insurance Scheme Public Consultation Paper *Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework* - 30 April 2015.