

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

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Executive Summary and Recommendations

Violence against people with disabilities within institutional settings can be broadly understood as being either an act of malicious intent or one of ignorance.

The APS believes that two approaches are required in unison to address the violence, abuse and neglect experienced by people with disabilities in institutions. The first approach addresses the culture of residential and institutional settings. The second focuses on having specific guidelines about how to address abuse and trauma.

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 institutional or residential arrangements.

Recommendations:

The APS recommends:

- that a universal working definition of violence, abuse and neglect be developed and adopted by all Australian states and territories, and that examples of behaviour which may amount to violence, abuse and neglect of a person with a disability be provided that support the accepted working definitions
- better data collection, collation and reporting of incidents of violence, abuse and neglect against people with disabilities in institutional and residential settings
- that attention also be paid to the implications of the projected increase in numbers of people with disabilities reporting violence, abuse and neglect – both in relation to the immediate response and support for the victims, but also the systemic response
- policy and practice that ensures workers and mentors are protected and supported on the front line
- that NGOs employ registered health professionals so that expertise is readily available to assist NGOs to be part of the solution and not the problem
- that attention be paid to the learnings from international initiatives (e.g. the Winterbourne Review)
- action in four areas – raising community awareness about violence, abuse and neglect against people with disabilities in institutions, identification of situational risks and indicators, effective screening and recruitment procedures for employment of staff in relevant

institutions, and creating positive institutional cultures which facilitate disclosure

- that institutions 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
- that all Australian states and territories develop and adopt processes for the protection of people with disabilities in institutional and residential settings where allegations of violence, abuse or neglect can be disclosed and reported safely and confidentially, preferably via an independent party
- that Australia 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 with a disability in institutional and residential settings from violence, abuse and neglect. In particular, that consideration is given to the appropriate considerations for the respective situations of Aboriginal and Torres Strait Islander people with disability, and people with disability from culturally and linguistically diverse backgrounds
- 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
- that 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
- that attention be drawn to the need to ensure that national safety mechanisms that develop 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
- that 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 institutional and residential settings.

Introduction

The Australian Psychological Society (APS) welcomes the opportunity to make a submission regarding 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.

The negative impact of violence, abuse and neglect on the health and wellbeing of individuals, groups and communities is of great concern to the APS. 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) comprises a section specifically related to reporting the abuse of persons from "vulnerable groups other than children" which include 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 violence, abuse and neglect of people with disabilities are human rights issues. 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 convention and

the lived experience of people with disabilities in institutional and residential settings.

The APS recognises that it is not the impairment itself that creates vulnerability, but rather the inequitable structures and systems within which people with disabilities are embedded. This perspective is commonly known as the social model of disability and is well articulated in the WHO World Report on Disability (2011). With the imminent rollout of the National Disability Insurance Scheme (NDIS), adequate institutional and residential care arrangements for people with disabilities are as important as ever.

Responding to the Inquiry

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 several states, most notably Western Australia and New South Wales.

Scope

The APS acknowledges the enormous scope of this Inquiry, particularly the comprehensive concepts of 'violence, abuse and neglect' and 'institutional and residential settings' as stated below. Further, depending on the impairment, age, ethnicity and cultural background of a person, the issues that emerge can vary greatly. For example, this Inquiry must address the experiences of a person with dementia living in a residential aged care facility, as well as those of a child with autistic spectrum disorder attending a special school.

Definition of 'disability'

Disabilities are commonly referred to as being physical, mental and/or intellectual, which relate to the type of impairment an individual has (e.g. physical, psychiatric, or cognitive). In accordance with the social model of disability, the APS acknowledges that while individuals may have psychological and physical impairments, it is often the environment itself (built and social) that contributes significantly to the experience of disability in that it is unable to accommodate for people with impairments.

The APS has particular expertise in relation to the experiences of people who have an acquired brain injury (ABI), intellectual disability, psychiatric disability, and post-traumatic stress disorder.

Definition of 'violence, abuse and neglect'

As stated by the Community Affairs References Committee 'violence, abuse and neglect' is broadly understood to include, but is not limited to: domestic, family and interpersonal violence; physical and sexual violence and abuse; psychological or emotional harm and abuse; constraints and restrictive practices; forced treatments and interventions; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; physical and emotional neglect; passive neglect; and wilful deprivation.

The APS has particular expertise in relation to the use of restrictive practices, as well as the psychological harm potentially caused by the disclosure of abuse and associated re-traumatisation.

Definition of 'institutional and residential settings'

As stated by the Community Affairs References Committee 'institutional and residential settings' is broadly defined to include the types of institutions that people with disability often experience, including, but not restricted to: residential institutions; boarding houses; group homes; workplaces; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out-of-home care; special schools; boarding schools; school buses; hospitals; juvenile justice facilities; disability services; and aged care facilities.

Given the focus on institutional and residential settings, this submission does not directly address domestic or family violence which occurs in private homes. However, when there is suspicion or evidence of domestic or family violence (including economic abuse) towards people with disabilities who may be attending institutional or residential settings, it is deemed relevant to this Inquiry.

The Terms of Reference

a. the experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts;

The experiences of people both directly affected (e.g. people with disabilities) or indirectly affected (e.g. staff, carers, family) are likely to be grossly under-reported in the literature. Under-reporting is likely due to a range of factors including the multiple barriers people face in disclosing incidents and the lack of appropriate systems in place to support formal reporting.

The National People with Disabilities and Carer Council (2012) produced a report documenting the National Disability Strategy Consultation which received in excess of 750 submissions. The most prevalent barrier identified to full participation in the economic and social life of the community was a lack of social inclusion. "More than half the submissions received (56 per cent) identified exclusion and negative social attitudes as critical issues. People with disabilities and their families, friends and carers reported daily instances of being segregated, excluded, marginalised and ignored. At best they reported being treated as different. At worst they reported experiencing exclusion and abuse, and being the subject of fear, ignorance and prejudice." (p.3)

Women with disabilities face "triple jeopardy" on account of the risks associated with gender, disability and violence (Astbury & Walji, 2014). The Voices against Violence research revealed that women with disabilities experience similar kinds of violence to other women but in addition, experience impairment-related violence (Woodlock et al, 2014). This violence includes denigration, restriction, withholding aids, and unethical practices in care service settings. As reported in the Women with Disabilities Victoria submission to the Inquiry into Domestic Violence in Australia (2014, p.11):

- The most common forms of violence reported were psychological, physical, controlling behaviour and economic abuse.
- Women reported impairment-related abuse including withholding medication and aids. (also see Saxton et al., 2001)
- Women were aged between 18 and 97. Some women had experienced violence for long periods, even since childhood.
- Many women experienced social isolation as both a risk factor for, and a consequence of, violence. Some perpetrators used social isolation as a form of violent behaviour in itself.
- Aboriginal women with disabilities experienced additional barriers to escaping violence and accessing appropriate supports.

Of specific interest to the APS is the use of restrictive practices. Restrictive practices include the use of restraint (physical, mechanical, and chemical) and seclusion. As stated in the 2011 APS publication *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*:

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 very large proportion of violence and 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, which 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)

There is more evidence about violence and abuse in the literature, as compared to neglect. In acknowledgement of this, another APS member chose to share some alarming examples of neglect which were only uncovered in the process of providing clinical intervention:

1. Three young men in their early 20s, all with severe intellectual disability (ID), and non-verbal, left alone overnight in their group home while the only staff member on shift went out on a date.
2. Elderly man with moderate-severe ID and early dementia became incontinent. Staff attributed this to the dementia and failed to follow advice to have a GP check to rule out infection. Man developed a serious kidney infection.

3. Staff failure to heed a 'difficult' parent's request to have a mole on her intellectually disabled daughter's back checked by a doctor. Mole turned out to be a melanoma which resulted in the young woman's eventual death.
4. Staff in a high support needs group home spending most of their shifts chatting and drinking coffee while the residents were left to their own devices.
5. Young woman with severe ID and non-verbal tied to a chair when she became agitated and started to throw objects around in her 24/7 staff-supported individual option. (NGO)
6. Woman with mild – moderate ID being given prescribed medications not in accordance with medical directions – medications stopped and started depending on staff opinion. In same group home, staff 'borrowed' money from client's bank accounts to tide themselves over to pay day. Also large amount of prescription sleeping pills (Temazepam) unaccounted for. (NGO)
7. Teenager with severe ID, non-verbal and incontinent stripped naked and forcibly held on toilet for up to 30 minutes while she screamed. Investigation revealed that she had a 'mechanical' bladder problem which prevented her urinating unless she was extremely relaxed e.g. travelling in a vehicle or going to sleep at night. (NGO)

To her knowledge, only one of these was reported as a "serious incident" to the respective state-based agency. What these examples show is 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. Further, there is growing concern over the legalities of some of these approaches.

Another important component in the experience of violence, abuse and neglect 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).

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.

Recommendation:

- The APS recommends that a universal working definition of violence, abuse and neglect be developed and adopted by all Australian states and territories, and that examples of behaviour which may amount to violence, abuse and neglect of a person with a disability be provided that support the accepted working definitions.

b. the impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole;

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 to 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 behavior that may amount to possible criminal offences being inflicted upon them and re-traumatisation if and when violence and abuse is disclosed.

While violence obviously has detrimental effects on the immediate victims, it is an issue which impacts more broadly on families and communities. Being assaulted by or witnessing assaults increases the likelihood of mental health problems, substance abuse, and involvement in abusive relationships for both women and men (APA). Family violence, in particular, has also been linked to unemployment, homelessness and significant costs to the Australian economy.

A growing body of evidence suggests that women with a disability 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 (WWDA, 2013).

c. the incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings;

While there is clear evidence about the widespread nature and prevalence of violence, abuse and neglect of people with disabilities, it is also widely acknowledged that the current statistics underestimate what often remains an invisible or hidden crime. While other organisations are best placed to

report on most recent incidence and prevalence data, suffice to say that people with disabilities are at far greater risk of violence, abuse and neglect than others in the population. People with multiple comorbidities, such as people with Intellectual Disability as well as mental health problems, are at even greater risk. It is also apparent that risk increases for people with disabilities who are also female, from an ethnic minority background, and/or Aboriginal or Torres Strait Islander.

Despite evidence of high incidence of violence, abuse and neglect, there is no standard national data collection that includes the experiences of people with a disability (Murray & Powell, 2008).

Recommendations:

- The APS recommends better data collection, collation and reporting of incidents of violence, abuse and neglect against people with disabilities in institutional and residential settings.
- The APS recommends that attention also be paid to the implications of the projected increase in numbers of people with disabilities reporting violence, abuse and neglect – both in relation to the immediate response and support for the victims, but also the systemic response.

d. the responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices;

Goetz Ottmann and colleagues (2014) 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.

The Disability Services Commissioner (2012) produced a paper *Safeguarding People's Right to be Free from Abuse* outlining the key considerations for preventing and responding to alleged staff to client abuse in disability services. The comprehensive considerations, which are based on key literature and research as well as complaints received, represent a rights based person centred framework and outline strategies at multiple levels of intervention and prevention.

In response to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 3 about child safe institutions, the APS identified four key areas for action:

- Effective screening and recruitment
- Identification of situational risks and indicators
- Creating positive institutional cultures, in particular facilitating disclosure
- Raising community awareness and the index of suspicion.

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

[\(2013-APS-Submission-Royal-Commission-Issues-Paper3-October.pdf\)](#) 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.

Of particular note in the APS submission is the argument that managing situational risks places the focus of attention on creating safe environments rather than safe individuals. Higgins (2013b) 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 important to inform effective prevention strategies.

A final point worth noting is in relation to grooming tactics. These are strategies used by perpetrators 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. Strategies to promote safe environments include (Higgins, 2013b):

- 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 and 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 policy and practice that ensures workers and mentors are protected and supported on the front line.
- The APS recommends that NGOs employ registered health professionals so that expertise is readily available to assist NGOs to be part of the solution and not the problem.
- The APS recommends that attention be paid to the learnings from international initiatives (e.g. the Winterbourne Review)
- The APS recommends action in four areas – raising community awareness about violence, abuse and neglect against people with disabilities in institutions, identification of situational risks and indicators, effective screening and recruitment procedures for employment of staff in relevant institutions, and creating positive institutional cultures which facilitate disclosure.
- The APS recommends that institutions 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 APS recommends that all Australian states and territories develop and adopt processes for the protection of people with disabilities in institutional and residential settings where allegations of violence, abuse or neglect can be disclosed and reported safely and confidentially, preferably via an independent party.

e. the different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability;

Some states coordinate a Serious Incident Reporting process whereby all disability organisations must report 'serious incidents' (including death). While these incidents may be reported to Parliament, there is a lack of transparency and it is not clear how such incidents are dealt with.

There are different legislative requirements for different institutions. For example, Disability Act 2006 in Victoria informs disability services for adults. For children with disability, restrictive practices are not included in a

legislative framework, the implications of which were well illustrated by a recent incident in Canberra where a 10 year old boy with autism was locked in a cage in his public school (ABC, 3 April 2015).

In their letter to Prime Minister Abbott, Women with Disabilities Australia (2015) identify how a lack of legislative cohesion means that people with disabilities in institutions fall through the gaps and are left to fend for themselves:

Regrettably, current national frameworks and strategies such as the *National Plan to Reduce Violence against Women and their Children 2010-2022* and the *National Disability Strategy 2010-2020* fail to include or address violence perpetrated against people with disability in institutional and residential settings. In addition, with no national, legal, administrative or policy framework for the protection, investigation and prosecution of violence against people with disability, we are left with piecemeal frameworks at state and territory levels (such as domestic and/or family violence legislation) which exclude people with disability who live in residential and institutional settings due to limiting and restrictive definitions and understandings. (pp.1-2)

In general, the APS supports the rights of victims/survivors of institutional abuse to seek compensation and pursue civil litigation if desired and to consider the possibility of criminal charges being brought against an alleged perpetrator, where relevant. For people with disabilities, both verbal and non-verbal victims need to be supported in ways appropriate to their needs to access compensation. In the case of adult survivors of child sexual abuse, victims may be looking for a range of outcomes, including understanding and compassion, acceptance of responsibility, and some means of restitution (Cashmore & Shackel, 2013). As with the 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.

A number of recent and important initiatives have been conducted in attempts to minimise the risk of violence, abuse, and neglect within the disability sector. In 2013, the Victorian Office of the Public Advocate produced an Interagency Guideline

(<http://www.publicadvocate.vic.gov.au/publications/539/>) to assist organisations, staff members and volunteers working with adults with a disability who are at risk of violence, abuse and neglect. The guideline outlines the seven key steps staff and volunteers are expected to take as well as some actions for the head of the organisation.

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

(<https://engage.dss.gov.au/ndis-qsf/consultation-paper/>). The five key elements of the framework are: NDIA provider registration; Systems for handling complaints; Ensuring staff are safe to work with participants; Safeguards for participants who manage their own plans; and reducing and eliminating restrictive practices in NDIS funded supports. The APS supports the acknowledgment and importance of these elements.

f. Australia’s compliance with its 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 submission and in particular, the following Articles are relevant:

- **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:** That individuals should be free 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:** That individuals have “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:** Recognises that 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 documented here under TOR (a) which describe various incidents of neglect as reported by an APS member.

A useful resource to provide some context for this issue is the [Australian Law Reform Commission Report about 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 the issues in need of reform.

Recommendation:

- The APS recommends that Australia 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 with a disability in institutional and residential settings from violence, abuse and neglect. In particular, that consideration is given to the appropriate considerations for the respective situations of Aboriginal and Torres Strait Islander people with disability, and people with disability from culturally and linguistically diverse backgrounds.

g. role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability;

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). Advocacy can also be undertaken in support of a cause and comprise a range of activities (e.g. lobbying government, gathering data, or increasing community awareness of 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 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.

h. what should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse;

There are a number of resources that can assist in eliminating the barriers for responding to incidents of violence, abuse and neglect. In relation to restraint, research about the experience of restrictive practices has resulted in the development of a Road Map for Achieving Dignity without Restraint (Ramcharan). In addition, 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, have been designed to support optimal institutional or residential arrangements.

The aim of the guidelines was to promote the use of positive behaviour support programs, and as such made 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 have 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, and
- legislative and policy issues.

As outlined in recent research by Ottman and colleagues (2014) at Deakin University, disability service organisations are not equipped to detect and address abuse and neglect committed by staff. This research will be more comprehensively documented in a submission by the authors; suffice to say here that they have identified 291 recommendations for action.

Our response to TOR(d) addresses the APS perspective on responses to violence, abuse and neglect, which incorporates ideas for action. The APS recommendations are based on work previously done for the Royal Commission into Institutional Responses to Child Sexual Abuse. They include the need to raise community awareness about the issue (index of suspicion), effective screening and recruitment of aged care and disability workers, 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.

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 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 institutional or residential arrangements.

i. what needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses;

The Sexual Assault in Disability and Aged Care (SADA) Project website (<http://www.aifs.gov.au/acssa/pubs/issue/i9.html>), developed in 2005, is an excellent resource. The website has lots of information, tools and resources about sexuality and sexual assault of people with disabilities in disability and aged care – both relating to response and prevention. In particular, it has at the end a list of best practice examples from across Australia: <http://www.aifs.gov.au/acssa/pubs/issue/i9.html#bestpractice>.

The National Disability Services, through their Zero Tolerance initiative, have also contributed much wisdom in relation to what needs to be done to protect people with disability: <http://www.nds.org.au/projects/article/194>.

The development of guidelines about promoting safe institutions, which promote positive behaviours and create role models, may also prove to be of great value. By way of example, the APS has identified some useful resources to promote child safe institutions, as part of the work done for the Royal Commission (http://www.psychology.org.au/public/topics/childsexualabuse/practice_resources/).

As stated elsewhere, the implementation of an independent complaints procedure appropriate to people with disabilities may also be an important avenue to promote the protection of people with disability from violence, abuse and neglect.

j. identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed;

The APS has identified the following concerns about systemic workforce issues that may contribute to the violence, abuse and neglect of people with disability:

- 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 it is acknowledged that violence, abuse and neglect can and does 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, such as is happening in NSW (see TOR (k)), is likely to result in more occurrences of violence, abuse and neglect due to a lack of accountability.

k. the role of the Commonwealth, states and territories in preventing violence and abuse against people with disability;

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. 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 unison 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.
- The APS recommends that, 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.
- The APS draws attention to the need to ensure that national safety mechanisms that develop 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.
- The APS recommends that 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 institutional and residential settings.

l. the challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability; and

Please see response to TOR (k).

m. what elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings.

The Disability Reform Council recently released a *Consultation Paper: Proposal for a National Disability Insurance Scheme Quality & Safeguarding Framework* [the Proposal] (see <https://engage.dss.gov.au/ndis-qsfc/consultation-paper/>). The Proposal posited a number of options to be included in a framework. The APS submission in response to the Proposal recommended 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 the 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 Senate 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>).

About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing more than 21,000 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.

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 below 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 the provision of interventions such as 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)

APS submissions and resources relating to disability

Australian Psychological Society (2011). Evidence-based guidelines to reduce the need for restrictive practices in the disability sector. Available at <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 - Jan 2013 - <https://www.psychology.org.au/Assets/Files/2013-NDIS-Nationa-Disability-Insurance-January.pdf>

National Disability Insurance Scheme Rules Consultation Paper - Jan 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* Aug 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* Dec 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

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 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.