



**Royal Commission**  
into Violence, Abuse, Neglect and Exploitation  
of People with Disability

# Inclusive education, employment and housing

## Summary and recommendations



**Final Report**  
Volume 7

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September 2023

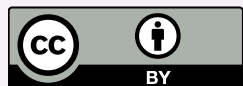
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# Final Report

## Volume 7

Inclusive education,  
employment and housing

### Summary and recommendations

\*Due to the size of this Volume, it has been broken into four parts.



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# Acknowledgement of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) acknowledges Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pays respect to all First Nations Elders past, present and emerging.

We recognise their care for people and country. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Gadigal people of the Eora Nation where our Sydney office stands, the Jagera and Turrbal people as Traditional Owners and Custodians of the lands on which the city of Brisbane is located and the Ngunnawal and Ngambri peoples upon whose land the city of Canberra is located.

We pay our respects to all First Nations people with disability and recognise the distinct contributions they make to Australian life and to the outcome of this inquiry.

## Acknowledgement of people with disability

The Royal Commission acknowledges people with disability who fought and campaigned long and hard for the establishment of this Royal Commission.

We acknowledge the courage and generosity of people with lived experience of disability who shared their knowledge and experiences of violence, abuse, neglect and exploitation with the Royal Commission. Their contributions to the Royal Commission have been indispensable in framing recommendations designed to achieve a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

### Content warnings

This report contains information about violence, abuse, neglect and exploitation that may be distressing to readers.

The report contains first-hand accounts of violence, abuse, neglect and exploitation. As a result, some direct quotes in the report may contain language that may be offensive to some people.

First Nations readers should be aware that some information in this report may have been provided by or refer to First Nations people who have passed away.



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# Key terms

## adjustment (in the education context)

A measure or action (or a group of measures or actions) taken by an education provider that has the effect of assisting a student with disability to:<sup>1</sup>

- apply for admission or enrolment
- participate in a course or program
- use facilities or services, on the same basis as a student without disability.

## Australian Curriculum

The Australian Curriculum describes to teachers, parents, students and others in the wider community what is to be taught and the quality of learning expected of young people as they progress through school, regardless of where they live in Australia or their background. It is endorsed by all education ministers.<sup>2</sup>

## Australian Curriculum, Assessment and Reporting Authority (ACARA)

An independent statutory authority, the functions of which include developing a national school curriculum for specified school subjects, and collecting and analysing student assessment data.<sup>3</sup>

## Australian Disability Enterprise (ADE)

Generally a not-for-profit organisation that provides employment for people with moderate to high support needs who need significant support to work.

## Australian Education Research Organisation (AERO)

A corporation jointly owned and funded by the Australian Government and the state and territory governments. It generates and presents high-quality evidence on education-related matters, including addressing educational disadvantage.<sup>4</sup>

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## Australian Institute for Teaching and School Leadership (AITSL)

A Commonwealth-owned corporation. Its role is to lead national education reform and to promote excellence in teaching, initial teacher education and school leadership. It works with the education communities in all states and territories, systems and sectors in building, enhancing and sustaining effective teaching and leadership, and supporting the professional education community to make evidence-based decisions.<sup>5</sup>

### autonomy

A person's right and freedom to make decisions, control their life, and exercise choice.

### cognitive disability

Cognitive disability arises from the interaction between a person with cognitive impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

'Cognitive impairment' is an umbrella term to encompass actual or perceived differences in cognition, including concentration, processing, remembering, or communicating information, learning, awareness, and/or decision-making.

People with cognitive disability may include, but are not limited to, people with intellectual disability, learning disability, dementia or acquired brain injuries, and some autistic people.

### community visitors

Community visitors independently monitor accommodation facilities where people with disability live, such as group homes, boarding houses and Supported Residential Facilities. They report on the adequacy of services provided and whether human rights standards are being met. The role and title of this position may vary between jurisdictions. Community visitors include both paid visitors and volunteers appointed by statute. Some community visitor schemes include visiting people in prisons, forensic disability facilities, mental health units or children in out-of-home care.

### decision-making ability

The ability of a person to make a particular decision with the provision of relevant and appropriate support at a time when a decision needs to be made.

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## dignity of risk

Affording a person the right and dignity to take reasonable risks.<sup>6</sup>

## Education Ministers Meeting (formerly the Education Council)

A ministerial forum for national collaboration and decision-making on educational matters including school education.

## education provider

An educational authority, an educational institution or an organisation that develops or accredits training courses used by other education providers.<sup>7</sup>

## educational authority

A body or person administering an educational institution,<sup>8</sup> or educational institutions within a particular category. For government and Catholic schools, the state or territory education department or Catholic educational authority is the responsible authority. Independent schools are typically administered on an individual basis.

## educational institution

A school, college or other institution at which education or training is provided.<sup>9</sup>

## educational neglect

Students with disability not being provided with equitable access to an inclusive, quality education, for example because they do not receive reasonable adjustments.

## educator

A person involved in educating students in educational institutions. They may be a teacher, specialist teacher, lead teacher, deputy principal or teacher's assistant.

## exclusionary discipline

Actions by an educational authority or educational institution that results in the withdrawal of education or training from students with disability, including suspensions and expulsion.

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## full minimum wage

The minimum adult wage payable under an award or agreement to employees in classifications covered by that award or agreement, or the national minimum wage for employees who are not covered by an award or agreement.

## gatekeeping

Preventing or discouraging, whether formally or informally, a child or young person from applying to, or enrolling in, an educational institution, other than for a lawful and proper reason.

## group home

A house that accommodates a number of people with disability as their residential home. The term 'group home' may also be used to refer collectively to the physical accommodation and the provision of specialist disability supports to residents in the home.

## health professional

A medical practitioner or an allied health practitioner who provides supports, including behavioural supports, to students with disability.

## Individualised Living Options (ILO) funding

ILO funding is a category of funding provided by the National Disability Insurance Scheme (NDIS) to people who need either informal or formal support for at least six hours each day, but do not require regular overnight support or 24-hour rostered support.<sup>10</sup> ILO funding is designed to enable people with disability to explore, plan for and move into a home of their choosing with the appropriate supports.

## mainstream school

A school that is open to all students who meet geographic and residency criteria, and that does not consider disability status as a precondition of entry.

## mainstream teacher

A teacher who teaches students in mainstream classes in a mainstream school.

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## medical model of disability

A deficit approach that views impairment or disability as an individual inadequacy that must be fixed or remediated.

## National Disability Data Asset (NDDA)

The National Disability Data Asset (NDDA) comprises linked, de identified data about people with disability from multiple Australian Government and state and territory government services and agencies over time. It is being developed to better use data to understand the experiences of people with disability.

## National School Reform Agreement

An intergovernmental agreement between the Australian Government and state and territory governments, currently in force until December 2024. The agreement aims to improve academic achievement, enhance student engagement in school and ensure students gain the skills needed for post-school life. It operates for the benefit of all students, including priority equity cohorts, which are defined to include students with disability.<sup>11</sup>

## Nationally Consistent Collection of Data on School Students with Disability (NCCD)

An annual collection of information about Australian school students with disability. The *Australian Education Regulation 2013* (Cth) requires all schools to report the data collected for the NCCD to the Australian Government on an annual basis.

## open employment (also mainstream employment)

‘Open’ or ‘mainstream’ employment settings refer to work settings where people with and without disability are employed.

## reasonable adjustment (in an education context)

As defined in the *Disability Discrimination Act 1992* (Cth) s 4(1), an adjustment to be made by an education provider is considered reasonable unless making the adjustment would impose an unjustifiable hardship on the education provider.



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## restrictive practice (in an education context)

Any practice or intervention that has the effect of restricting the rights or freedom of a student with disability.<sup>12</sup> It includes:<sup>13</sup>

- *seclusion*, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted
- *physical restraint*, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person
- *chemical restraint*, which is the use of medication or chemical substances for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment, or to enable treatment, of a diagnosed mental disorder, a physical illness or a physical condition
- *mechanical restraint*, which is the use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing a person's behaviour, but does not include the use of devices for therapeutic or non-behavioural purposes
- *environmental restraint*, which restricts a person's free access to all parts of their environment, including items or activities.

## school leadership

All persons in a leadership role within an educational institution, including principals, deputy principals, head teachers, teaching principals and assistant principals.

## school workforce

All persons involved in the practice of teaching. This includes school leadership, administrative staff, teaching staff, teaching assistants and health professionals.<sup>14</sup>

## segregated employment

A work setting that is exclusively for people with disability, such as an Australian Disability Enterprise.

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## segregation

Describes the circumstances where people with disability live, learn, work or socialise in environments designed specifically for people with disability and are separate from people without disability. Segregation occurs when people with disability are separated and excluded from the places where the community live, work, socialise or learn, because of the person's disability.

Segregation does not occur in spaces where people with disability choose to come together, share culture and values, seek support for their individual needs, or are encouraged and supported to engage with the broader community. These are the same choices available to people without disability.

## special/segregated class

A school or learning environment exclusively for students with disability that may take the form of a 'special school',<sup>15</sup> 'special class',<sup>16</sup> 'disability unit',<sup>17</sup> or 'education support centres',<sup>18</sup> which may or may not be co-located with the campus of a 'mainstream' school. Admission to a special/segregated class depends on a student being assessed as having particular disabilities and support requirements.

## special/segregated school

A school exclusively for students with disability, which is not located within a mainstream school. Admission depends on students being assessed as having particular disabilities and support requirements.

## Specialist Disability Accommodation (SDA)

A type of National Disability Insurance Scheme (NDIS) funding in a participant's plan for specialist housing, not supports. SDA funding is paid directly to SDA providers to cover building and maintenance costs.

## specialist teacher

A person who teaches students with a disability in a special/segregated school or a special/segregated class.

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## state and territory curriculum bodies

School authorities responsible for the implementation of the Australian Curriculum in their schools, in line with jurisdictional policies and requirements.

## subminimum wage (also ‘supported wage’)

A wage paid to a person with disability that is under the national minimum wage and is determined by a wage assessment tool or by reference to the special national minimum wage.

## supported accommodation

A type of service that provides housing, care and support.

## supported decision-making

Supported decision-making refers to processes and approaches that assist people to make a decision, including by giving them the tools they need to make the decision for themselves. Supported decision-making does not mean making a decision for or on behalf of another person.

## supported employment

Describes how employees working in Australian Disability Enterprises (ADEs) or other settings are provided with ongoing additional assistance from support workers and managers to complete their work tasks. Supports provided to people with disability in ADEs and other settings to help them work are called ‘supported employment services’.<sup>19</sup>

## Supported Independent Living (SIL) funding

A type of National Disability Insurance Scheme (NDIS) funding for home and living supports. SIL is for people with higher support needs who need some level of help at home all the time.

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# Summary

*Our vision for an inclusive Australia* describes our aspirations for an inclusive society that enables people with disability to live, learn, work and engage alongside people without disability. However, both mainstream and special/segregated education, employment and housing systems, settings and services in Australia are failing to realise this vision for some people with disability. This is especially the case for individuals with higher or more complex support needs, including people with cognitive disability. We have heard how both mainstream settings and those where people are segregated on the basis of their disability can expose people with disability to various forms of violence, abuse, neglect and exploitation.

We believe that mainstream systems must be significantly reformed, and in some cases transformed, to remove multiple barriers to access and enable meaningful inclusion. In this volume, we make recommendations to set in motion the long-term transformation of mainstream education, and to open up employment and housing markets in Australia to support greater access, choice and security for people with disability to live and work within the community. We acknowledge the challenges of reimagining these complex service systems. The voices and experiences of people with disability must be at the centre of these reforms.

Commissioners have differing views about the future role of contemporary segregated settings for education, employment and housing, and whether these should be phased out definitively over time. Segregation describes the circumstances where people with disability live, learn, work or socialise in environments designed specifically to cater for people with disability and separate from people without disability. Segregation occurs when people with disability are separated and excluded from the places where the community lives, works, socialises or learns because of the person's disability. Segregation does not occur in spaces where people with disability choose to come together, share culture and values, seek support for their individual needs, or are encouraged and supported to engage with the broader community. These are the same choices available to people without disability.

Alternative or additional recommendations regarding these settings are made in some instances to reflect the different positions of specific Commissioners.

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## Part A: Inclusive education

There is an increasing number and proportion of students with disability in our schools and increasing demand for higher levels of adjustment.

In examining inclusive education, we discuss how a rights-based approach requires a safe, quality and inclusive school system for all students with disability. Students must be provided with effective school supports that meet a diversity of needs. Schools must promote positive attitudes and behaviours that embrace diversity and inclusion. Students should be able to achieve their individual educational goals, and positive social outcomes in and beyond school.

Today, Australian schools do not consistently deliver an inclusive education that protects students with disability from violence, abuse and neglect. Students with disability face multiple barriers to inclusive education, underpinned by negative attitudes and low expectations. Schools systematically exclude students with disability. They do this by not providing appropriate adjustments and supports to enable their participation in classrooms and in the broader school community. In many cases, through gatekeeping, students with disability are channelled into special/segregated schools and classes. Schools fail to engage students with disability and their parents in decision making. They use and misuse exclusionary discipline on students, and fail to plan and support students' transition to further learning and work.

A safe, quality and inclusive education can only be delivered through significant transformation of the school system. In Part A, 'Inclusive Education' we recommend legislative and policy changes, improved procedures and support services, and changes to culture, capability and practice 'on the ground'. We recommend that these changes are embedded in school practices through enhanced workforce training and support, improved data collection and use, stronger oversight, and greater accountability. Reform at the scale we are proposing requires careful prioritisation and a coordinated approach.

All Commissioners agree that mainstream schools need major reforms to overcome the barriers to safe, equal and inclusive education. However, Commissioners have different views on whether inclusive education is consistent with maintaining systems of special/segregated education settings, separate from mainstream schools. The Commissioners explain their differing views.

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## Part B: Inclusive employment

The opportunity to work, earn a living and participate as an economic citizen is a key component of an inclusive Australia. Access to employment has flow-on effects on a person's ability to access services, support themselves and their family, and achieve financial security. Having a rewarding occupation can give people a sense of purpose and personal development, foster social connection and community, and create opportunities.<sup>20</sup> These can act as safeguards against violence, abuse, neglect and exploitation.

Employment is also about human rights. Article 27 of the *Convention on the Rights of Persons with Disabilities (CRPD)* recognises the 'right of persons with disabilities to work, on an equal basis with others'.<sup>21</sup>

During our inquiry, we held four public hearings examining issues of employment and economic participation for people with disability.<sup>22</sup> People with disability appearing at those hearings shared their experiences of seeking employment and working in both open and segregated settings, and the significant barriers to inclusion they faced.

In Part B, 'Inclusive employment', we consider how to increase the pathways and opportunities for people with disability in the workforce. Consistent with our vision for inclusion, we believe people with disability should have genuine choice and control over where and how they work. This should include a range of supported employment options in integrated, open and community-facing settings. This may include Australian Disability Enterprises (ADEs), for as long as they exist, but should not be limited to ADEs. People with disability should be paid fair wages.

We make recommendations to increase open employment and for the Australian Government to develop a plan to transition Australia away from segregated forms of employment and the payment of subminimum wages to people with disability. Commissioners have a shared commitment to inclusive employment for people with disability. However, Commissioners have set out different perspectives and recommendations in some areas.

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## Part C: Inclusive housing

A person's home is the place where they should be safe, secure and free from exposure to violence, abuse, neglect and exploitation. It is central to their dignity, autonomy, independence and wellbeing. They should be able to choose where they live, who they live with and how they live. Articles 19 and 28 of the *CRPD* recognise that people with disability have a fundamental human right to live in suitable housing, and to be connected to the community.<sup>23</sup>

The Royal Commission held two hearings that specifically looked into the housing experiences of people with disability.<sup>24</sup> We also heard about these issues in a number of our other hearings and received many accounts in private sessions and submissions about the experiences of people with disability in relation to housing.

In Part C, 'Inclusive housing', we consider the multiple barriers that people with disability can face in securing housing that is accessible, is affordable, supports meaningful inclusion in the community, and provides safeguards against exposure to violence, abuse, neglect and exploitation. We also identify key issues that could lead to and prolong homelessness for people with disability. We discuss how the institutionalised nature of group homes can deny people with disability autonomy and choice in their daily lives and severely limit opportunities for social connection and active participation in the community.

We recommend fundamental changes to address these issues and provide more inclusive housing that supports substantive and inclusive equality for people with disability. These include:

- reforming housing policy frameworks to address the invisibility of people with disability
- increasing the supply of accessible and adaptive housing
- providing greater access to social housing and strengthening tenancy rights
- improving standards and increasing oversight in supported accommodation settings
- improving responses to homelessness
- reforming the group home model while increasing access to alternative, inclusive housing options for people with disability with higher support needs.

All Commissioners strongly support the adoption of more inclusive models and practices regarding housing for people with disability. However, Commissioners differ on whether group homes, regardless of reforms, can ever provide the autonomy, choice and independence required for people with disability. These views and recommendations for reform are set out in this part of the volume.



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# Recommendations

## Part A: Inclusive education

### **Recommendation 7.1 Provide equal access to mainstream education and enrolment**

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to ‘unjustifiable hardship’ in the sense used in the *Disability Discrimination Act 1992* (Cth).

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

### **Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability**

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
  - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff

- in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children
- require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.
- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline
- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992* (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.

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

- a. State and territory educational authorities should develop and make available in accessible form:
  - guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
  - guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
  - guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability

- guidelines explaining the nature and content of the obligation under the *Disability Standards for Education 2005* (Cth) (*Education Standards*) to consult with students with disability and their parents, carers and supporters
  - information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose
  - requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
  - guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
  - guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.
- b. State and territory educational authorities should ensure that education providers have greater access to tools and resources to:
- assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992* (Cth))
  - support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.
- c. The Australian Government, through the responsible minister, should consider whether the *Education Standards* should be amended to address the proposals in a. and b.. However, any such consideration should not delay state and territory educational authorities implementing a. and b..

## **Recommendation 7.4 Participation in school communities**

State and territory school educational authorities should:

- wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools
- facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools
- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting.

## **Recommendation 7.5 Careers guidance and transition support services**

State and territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:

- commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school
- take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds
- provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities
- provide students with opportunities to undertake work experience in open employment aligned with their goals and interests
- provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators).

## Recommendation 7.6 Student and parental communication and relationships

- a. State and territory educational authorities should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships. These should:
  - include clear, accessible material for students with disability and their families on their rights and school obligations
  - target decision-making for individual students and at the whole-of-school-level
  - cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes
  - indicate types of decisions that require formal parental agreement, such as approaches to behaviour management
  - be co-designed with people with disability and their families.
- b. State and territory educational authorities should develop material similar to that outlined in a., specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.
- c. School principals should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student's educational experience.
- d. In undertaking c., school principals should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.
- e. The Australian Government, through the responsible minister, should consider updating the *Disability Standards for Education 2005* (Cth) to:
  - ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require
  - entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability.

## **Recommendation 7.7 Inclusive education units and First Nations expertise**

- a. State and territory educational authorities should establish inclusive education units within the relevant departments. These units should provide:
  - advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities
  - resources and advice to schools and teachers about implementing inclusive education.
- b. Educational authorities should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.

## **Recommendation 7.8 Workforce capabilities, expertise and development**

### *Knowledge and skills*

- a. The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights-based approach to inclusive education for students with disability across teachers' careers.
- b. To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.

### *Continuing professional development*

- c. State and territory educational authorities should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.

### *Disability expertise and skills shortages*

- d. The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.
- e. State and territory governments should increase access to expertise in inclusive education in government schools by:

- employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students
- employing skilled and qualified Auslan interpreters
- setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment.

## Recommendation 7.9 Data, evidence and building best practice

### *Data development and collection*

- a. The Education Ministers Meeting should:
  - commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability
  - ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQ+ status) is collected by state and territory departments on:
    - student experiences
    - school outcomes for students with disability
    - progress in addressing barriers to inclusive education practices.
- b. State and territory governments should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.
- c. State and territory school registration authorities should:
  - embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
  - require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child's educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.



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### *Monitoring and reporting*

- d. State and territory education departments should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:
  - the educational experiences of students with disability
  - outcomes of students with disability
  - progress in addressing barriers to inclusive education practices.
- e. To improve reporting of disability data, the Education Ministers Meeting should:
  - publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues
  - commission the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements to enable reporting on National Assessment Program – Literacy and Numeracy results for students with disability
  - include broader school workforce characteristics and information about workforce shortages in state and territory and Australian Government annual inclusive education reporting.

### *Improving the evidence base*

- f. To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:
  - develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
  - conduct and coordinate inclusive education research
  - support schools to translate research into school practices.

## Recommendation 7.10 Complaint management

- a. State and territory governments should create or expand existing complaint management offices that operate within educational authorities at arm's length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:
  - provide students and parents with information about their rights and options when managing complaints
  - request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
  - initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
  - support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
  - work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints
  - work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- b. The Australian Government should include new duties and measures relating to complaint management procedures in the *Disability Standards for Education 2005* (Cth) (*Education Standards*) to help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- c. State and territory school registration authorities should embed new complaint handling duties and measures for compliance, as defined in the *Education Standards*, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.
- d. School principals should ensure their school-level operating policies and procedures for handling complaints:
  - satisfy the *Education Standards* requirements
  - are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate
  - are observed in practice.

### Recommendation 7.11 Stronger oversight and enforcement of school duties

- a. State and territory governments should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:
  - school enrolment policies (see Recommendation 7.1)
  - procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8)
  - procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10)
  - reporting on the use of funding for students with disability (see Recommendation 7.12).
- b. State and territory school registration authorities should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.
- c. The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with appropriate monitoring, compliance and enforcement.

### Recommendation 7.12 Improving funding

- a. The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with disability in response to the findings of the *Student with disability loading settings review*.
- b. The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.
- c. State and territory governments should ensure they are using a disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.

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- d. State and territory education departments should improve transparency on the use of disability funding in the government school sector by:
- developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability
  - applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability
  - publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding.
- e. State and territory school registration authorities should require schools to complete the funding template mentioned at d. and submit the template to the relevant state or territory education department.

### **Recommendation 7.13 National Roadmap to Inclusive Education**

- a. The Education Ministers Meeting should publicly release a 'National Roadmap to Inclusive Education' for students with disability. The roadmap should:
- detail the outcome measures, targets, actions and milestones for delivering the Royal Commission's recommendations for inclusive education
  - provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported.
- b. State and territory education ministers should report annually to the Education Ministers Meeting on progress against agreed milestones and associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.
- c. The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include it in its workplan.

## Recommendation 7.14 Phasing out and ending special/ segregated education

Commissioners Bennett, Galbally and McEwin recommend:

- a. The Australian Government and state and territory governments should recognise that inclusive education as required by article 24 of the *Convention on the Rights of Persons with Disabilities* is not compatible with sustaining special/segregated education as a long-term feature of education systems in Australia.
- b. As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:
  - the phasing out of special/segregated education
  - no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025
  - a process for work on milestones and activities related to ceasing special/segregated education by all jurisdictions.
- c. As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/segregated education settings and financial penalties for failing to meet these milestones, including:
  - no new enrolments of students with disability in special/segregated schools from 2032
  - no new placements of students with disability in special/segregated units or classes from 2041
  - no students remaining in special/segregated schools by the end of 2051.
- d. The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia’s Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.
- e. The Australian Government should consider the design of a ‘Transition Fund’ under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.
- f. Consistent with phasing out and ending special/segregated education, states and territories should implement the following recommendations:

- when no students are in special/segregated schools, the sunsetting of:
  - measures to prevent gatekeeping (see Recommendation 7.1)
  - provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4).
- to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5):
  - is delivered alongside careers guidance for students without disability
  - has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises.

### **Recommendation 7.15 An alternative approach**

The Chair and Commissioners Mason and Ryan recommend:

- a. State and territory educational authorities should implement the following measures:
  - wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
  - create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
  - facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
  - arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
  - establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools

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- provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools
  - assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
  - provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
  - ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.
- b. The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified.



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## Part B: Inclusive employment

### **Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model**

The Australian Government Department of Social Services should ensure that the design of the new Disability Employment Services model:

- is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team
- adopts customised employment models as a core component of service provision
- ensures funding arrangements facilitate flexible employment supports, such as customised employment, and support the progress of Disability Employment Services participants in achieving employment goals and long-term employment outcomes
- considers options to remove the requirement for a person to have a minimum future work capacity of eight hours a week in order to access the Disability Employment Services program, to facilitate access for all people with disability to the new model.

### **Recommendation 7.17 Develop education and training resources for Disability Employment Services staff**

The Australian Government Department of Social Services should develop a suite of accessible education and training resources for providers of Disability Employment Services to upskill their staff.

Resources should be co-designed by people with disability and involve consultation with advocates, employers and Disability Employment Services providers.

Resources should address the gaps we have identified, including in:

- disability awareness
- cultural competence
- human rights
- customised employment
- employer engagement
- Disabilities Employment Services guidelines and procedures.

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### **Recommendation 7.18 Establish specific and disaggregated targets for disability employment in the public sector**

The Australian Government and state and territory governments should adopt specific and disaggregated targets to increase the proportion in the public sector of:

- employees with disability at entry and graduate levels
- employees with disability at executive levels
- employees with cognitive disability.

Public sector targets should be supported by:

- clear employment pathways into the relevant public services for each target cohort
- measures and programs to support the recruitment and progression of each target cohort
- provision of appropriate supports.

The Australian Public Service Commission and state and territory public service commissions should ensure these targets contribute to their existing overall employment targets for people with disability.

### **Recommendation 7.19 Establish specific disability employment targets for new public service hires in agencies and departments**

The Australian Government and state and territory government departments and agencies should be required to set a target to ensure that a proportion of new public service hires to their respective workforce are people with disability.

The target should be at least 7 per cent by 2025.

The target should increase to at least 9 per cent by 2030.

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### **Recommendation 7.20 Clarify the application of the merit principle in public sector recruitment**

The Australian Public Service Commission should incorporate clearer directions in Australian Public Service training and support on applying the merit principle in recruitment. Training and support materials should:

- specifically address the importance of having a diverse public sector workforce that reflects the community it serves
- provide guidance in considering the need for diversity in the application of the merit principle in recruitment.

### **Recommendation 7.21 Introduce consistent adjustment principles and adjustment passports**

The Australian Public Service Commission should:

- a. lead the development of common principles to underpin adjustment policies for providing and managing adjustments in the public sector. This should occur in partnership with state and territory public service commissions. The principles should be used to inform Australian Government and state and territory government department policies and procedures on adjustments. The principles should include:
  - clear and accessible processes for staff to request adjustments
  - timeframes for implementing adjustments and a process for review and seeking feedback on adjustments
  - clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about refusal to provide an adjustment)
  - clear policies on handling and sharing information about a person's disability or adjustments
  - referrals to internal and external supports in relation to requesting and managing adjustments
  - requirements to collect data on applications for, and the implementation of, adjustments.
- b. develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.

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### **Recommendation 7.22 Public reporting on public sector disability employment strategies and targets**

The Australian Public Service Commission and state and territory public service commissions should report annually on the progress of their public sector disability employment strategies, including progress against overall and disaggregated targets for increasing the percentage of employees with disability. These reports should be published and made available in accessible formats.

### **Recommendation 7.23 Strengthen disability employment procurement policies**

The Australian Government and state and territory governments should adopt procurement policies that:

- a. favour businesses and entities able to demonstrate, in accordance with published criteria, they are providing employment opportunities for people with disability in open, inclusive and accessible settings, including people with intellectual disability or cognitive impairments.
- b. require all information and communication technology purchases to comply with the current Australian information and communication technology (ICT) accessibility standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services).

### **Recommendation 7.24 Convene a Disability Employment Rights Council**

The Australian Government should convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.

### **Recommendation 7.25 Amend the *Fair Work Act 2009* (Cth)**

The *Fair Work Act 2009* (Cth) should be amended to:

- a. ensure the definition of ‘disability’ is consistent with the *Disability Discrimination Act 1992* (Cth)
- b. remove the words ‘physical and mental’ preceding ‘disability’ in sections 351 and 772.

### **Recommendation 7.26 Amend the *Disability Discrimination Act 1992* (Cth)**

Section 21A of the *Disability Discrimination Act 1992* (Cth) should be amended to expand the factors to be considered in determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role.

These factors include the:

- nature and extent of any adjustments made
- extent of consultation with any person with disability concerned.

### **Recommendation 7.27 Enable a Fair Work Ombudsman referral mechanism**

The Australian Government should expand the functions of the Fair Work Ombudsman to allow a matter involving an employee with disability to be referred back to the Fair Work Ombudsman by relevant authorities if they:

- consider a complaint may be best addressed by the Fair Work Ombudsman
- have the complainant's consent to do so.

The referral mechanism should be available in instances where a matter was initially referred by the Fair Work Ombudsman to a relevant authority.

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### **Recommendation 7.28 Improve information about wages and the Disability Support Pension**

The Australian Government should fund Disability Representative Organisations to deliver an information campaign for employees with disability in Australian Disability Enterprises. This campaign should provide information about:

- open employment, including wage conditions
- how receipt of the Disability Support Pension (DSP) interacts with a person's wages, including –
  - assistance with financial literacy materials
  - supports for individuals to calculate how changes to their DSP or wages impact their overall income and financial situation
- options for a person to suspend their DSP if they are earning above the threshold
- who to contact to ask questions or obtain further information.

This information should be available in a range of accessible formats.

### **Recommendation 7.29 Embed an 'open employment first' approach in the NDIS Participant Employment Strategy**

Following the conclusion of the NDIS Participant Employment Strategy in 2023, the National Disability Insurance Scheme (NDIS) should adopt an 'open employment first' approach in the next iteration of the strategy. The strategy should:

- ensure the development of employment goals in participants' NDIS plans considers employment in open and integrated employment settings as a first option
- provide training for Local Area Coordinators, National Disability Insurance Agency planners and support coordinators to build knowledge, resources and capacity to encourage participants to –
  - develop employment goals in open and integrated employment settings as a first option
  - identify appropriate supports available to achieve open employment goals
- establish a target to increase the proportion of participants in open and integrated employment settings

- build the knowledge and capacity of NDIS employment support providers to assist participants to –
  - transition from Australian Disability Enterprises to open and integrated employment settings
  - provide ongoing support in open and integrated employment settings.

### **Recommendation 7.30 Support the transition to inclusive employment**

The Australian Government Department of Social Services should develop a plan to support people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment options in a range of settings.

The plan should incorporate:

- the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice. Commissioners Bennett, Galbally, Mason and McEwin provide a recommendation to phase out ADEs by 2034 (Recommendation 7.32). They support this element of Recommendation 7.30 until ADEs are phased out
- action to increase employment opportunities in open and inclusive settings for people with disability (linking with Recommendation 7.29)
- improved information for people with disability about employment supports, opportunities in other settings, wages and the Disability Support Pension (linking with Recommendation 7.28)
- active consultation with people with disability, Disability Representative Organisations and Disabled People's Organisations Australia, and the adoption of inclusive design principles in developing and implementing the plan
- the Australian Government working with industry to support people with disability to access more inclusive, open employment options and to transform their segregated employment services to a more comprehensive service offering
- improved collaboration between the National Disability Insurance Scheme and Disability Employment Services to ensure different employment services work cohesively to deliver supports for people with intellectual disability and others.

### **Recommendation 7.31 Raise subminimum wages**

- a. The Australian Government should introduce a scheme to ensure that employees with disability are paid at least half the minimum wage. The scheme should include:
  - revision of the productivity-based wages calculation to accommodate the move to a new minimum amount of 50 per cent of the current minimum wage
  - a provision for the Australian Government to subsidise employers for the difference between the wages payable under the relevant award or enterprise agreement and the new minimum wage until 2034.
- b. A review of the scheme should be undertaken by the Disability Reform Ministerial Council after five years of operation.
- c. The Australian Government should use the results of the review to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.

### **Recommendation 7.32 End segregated employment by 2034**

- a. Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government Department of Social Services should develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises (ADEs) and eliminate subminimum wages for people with disability by 2034.
- b. The National Inclusive Employment Roadmap should be centred on the following principles:
  - equal access for people with disability to all opportunities for employment, starting with the Australian Public Service and state and territory public services
  - increased availability of jobs for people with disability, especially in:
    - Australian and state and territory public services supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer. This recommendation would operate in advance of Recommendation 7.31 to raise all subminimum wages to the full minimum wage by 2034
    - non-government organisations that receive government grants
    - private companies that receive government procurement contracts



- availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability
  - better pathways to work for people with disability
  - as set out in Recommendation 7.31, lifting wages to 50 per cent of the minimum wage, with all people with disability moving to the full minimum wage by 2034 (noting our expectation that the public sector, as a model employer, will pay full minimum wages to employees with disability before that time)
  - governance and accountability for system change.
- c. The National Inclusive Employment Roadmap should address:
- the reform of ADEs to operate in accordance with the social firm model, providing open workplaces in which employees with disability can receive support in an integrated setting to undertake work tasks, develop skills and transition to further open employment
  - the establishment of a grant-based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs
  - support for people with disability to transition to open employment through programs such as the School Leaver Employment Supports program.
- d. To support the National Inclusive Employment Roadmap as ADEs transform into social firms, government procurement rules should also be amended to give preference to enterprises that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage at the time of the procurement process (this recommendation would operate in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034).
- e. The implementation of the National Inclusive Employment Roadmap should be monitored by the Disability Reform Ministerial Council.

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## Part C: Inclusive housing

### **Recommendation 7.33 Prioritise people with disability in key national housing and homelessness approaches**

- a. The Australian Government should, in collaboration with state and territory governments, expressly identify people with disability in key housing-related agreements and planning including the:
  - National Housing and Homelessness Agreement (NHHA), which should include people with disability as a priority group of housing and homelessness reforms
  - proposed National Housing and Homelessness Plan, which should include people with disability as a priority group, and include the measurement and evaluation of outcomes for people with disability
  - National Housing Supply and Affordability Council, which should include people with disability as a priority group in the development of housing supply and affordability policy advice, data collection and reporting.
- b. All state and territory governments should include people with disability in housing and homelessness strategies, policies and action plans developed under the NHHA. This should include people with disability as a priority group, and the monitoring and evaluation of implementation and outcomes for people with disability.

### **Recommendation 7.34 Include homelessness in Australia's Disability Strategy**

The Australian Government should increase the focus on homelessness in Australia's Disability Strategy by:

- a. ensuring consultations concerning, and reviews of, Australia's Disability Strategy include people with disability at risk of experiencing homelessness and their representative organisations
- b. expressly including homelessness as a policy priority within the 'Inclusive Homes and Communities' key outcomes.

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### **Recommendation 7.35 Increase the availability and supply of accessible and adaptive housing for people with disability through the National Construction Code**

State and territory governments should commit to increasing the availability and supply of accessible and adaptive housing for people with disability by:

- a. immediately adopting the mandatory Australian Building Codes Board (ABCB) Livable Housing Design Standard for all new dwellings if they have not done so already, and developing a plan for the full implementation of the standard, including timeframes and outcomes measures
- b. adopting the voluntary ABCB Livable Housing Design Standard for all new social housing construction
- c. auditing the demand for, and accessibility of, current crisis housing (including domestic family violence shelters and refuges, and natural disaster crisis accommodation) to –
  - determine the appropriate amount, location and cost of crisis housing required to meet the needs of people with disability
  - set appropriate targets for new crisis housing construction and refurbishment that meet the voluntary ABCB Livable Housing Design Standard.

### **Recommendation 7.36 Improve social housing operational policy and processes**

State and territory governments should develop and implement accessible and inclusive processes for allocating and modifying social housing for people with disability, including by:

- a. reviewing and amending application processes to:
  - identify whether applicants have a disability or accessibility needs, including those relating to communication, housing and access to community/support networks and services
  - put processes in place to update this information as needs change
- b. reviewing, amending and publishing (in accessible formats) housing allocation and 'reasonable offer' policies and procedures to ensure these can be easily understood and do not disadvantage people with disability seeking particular adjustments or modifications, or people who decline housing for accessibility reasons

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- c. reviewing, amending and publishing (in accessible formats) housing modification policies. The policies should clearly articulate who is responsible for organising and funding housing modifications, expected timeframes, and contacts for following up and raising concerns.

### **Recommendation 7.37 Increase tenancy and occupancy protections for people with disability**

States and territories should review legislation governing the tenancy and occupancy rights of people with disability and adopt the best regulatory and legislative models currently in force, including:

- a. in the case of tenancies –
  - enacting legislation to replace landlords' 'no-grounds' termination rights with 'reasonable grounds' as currently specified in Victoria, Queensland and Tasmania
  - for both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy or that the tenant give up possession, empowering the tribunal to take the tenant's or a co-occupier's disability and the nature of that disability into account.
- b. in the case of non-tenancy accommodation –
  - adopting the provisions included in the *Residential Tenancies Act 1997* (Vic) Part 12A to protect residents of Specialist Disability Accommodation (SDA) under the National Disability Insurance Scheme
  - introducing 'occupancy principles' similar to those under the *Boarding Houses Act 2012* (NSW), to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria
  - extending these occupancy principles to cover 'general boarding houses' in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction
  - in hearing disputes about eviction, tribunals be required when determining whether to make an eviction order to consider the occupant's disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation.

### **Recommendation 7.38 Minimum service standards and monitoring and oversight of supported residential services and their equivalents**

This recommendation applies to state and territory government entities responsible for regulating privately operated and government-funded board and lodging-type supported accommodation services – including supported residential services (SRS) (in Victoria), assisted boarding houses (in New South Wales), Level 3 residential centres (Queensland), and supported residential facilities (SRF) (in South Australia). The entities should develop and implement minimum service and accommodation standards, strengthen oversight mechanisms, and increase service-level monitoring activities and compliance action, as follows:

- a. Minimum standards should require all SRS providers and their equivalents in other jurisdictions to –
  - develop support plans for each resident, covering personal care, financial management, medication management, and the use of restrictive practices
  - keep up-to-date records of how services are delivered in line with support plans, to allow regulatory bodies to more effectively monitor the quality of supports and services by regulatory bodies
  - establish clear complaint management processes, including how complaints are reported to the central registration body, and a feedback loop for residents, their family and advocates
  - guarantee access to independent advocacy services through advocacy organisations and community visitor schemes
  - support residents to access independent advocacy services focused on identifying alternative, longer term accommodation options in recognition of the transitional nature of these services.
- b. Monitoring and oversight mechanisms for SRS and their equivalents in other jurisdictions should –
  - require central registration for all SRS and equivalent services with the relevant state or territory department responsible for SRS standards
  - require all SRS and their equivalents to undergo an initial audit when seeking registration, as well as ongoing audits (minimum yearly) for monitoring and compliance with all minimum standards. Audits should include direct engagement with people with disability residing in SRS and their equivalents, and should be undertaken centrally by the responsible state or territory department
  - establish procedures to monitor services in response to complaints and incidents, including when and how the relevant state or territory department will undertake investigations

- establish compliance activities in response to audit results and investigations following complaints and incidents, including when registration will be impacted
  - include the specific rights of community visitor programs to attend and report on standards within SRS and their equivalents
  - be developed in consultation with other regulatory systems to identify and close regulatory gaps between schemes and settings including SRS, the National Disability Insurance Scheme, and in aged care and mental health services.
- c. Regulatory entities should have adequate powers to enforce all standards. Up-to-date records of infringements, enforcement action and remedies should be maintained centrally. The regulatory entities should notify substantiated infringements by providers to other oversight bodies with responsibilities for those providers, including the NDIS Quality and Safeguards Commission.
- d. States and territories should consider whether these recommendations should be implemented in relation to other forms of marginal accommodation for people with disability, including general boarding houses and caravan parks.

### **Recommendation 7.39 Preventing homelessness when people with disability transition from service or institutional settings**

The Australian Government (including the National Disability Insurance Agency (NDIA)) and state and territory governments should commit to a policy of 'no leaving into homelessness' for people with disability.

The Australian Government (including the NDIA) and state and territory governments should establish or nominate a lead agency with responsibility for planning and coordinating the transition of people with disability from service or institutional settings (including health services, mental health services, correctional facilities, and out-of-home care) directly into safe and appropriate housing.

The lead agency should be the NDIA when the person is a National Disability Insurance Scheme (NDIS) participant (consistent with the role of the NDIS under Applied Principles and Tables of Support). If the person is not an NDIS participant, the lead agency should be the agency responsible for the service or institutional setting at the time the person leaves.

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The role of the lead agency should include:

- developing and implementing individual plans for people with disability leaving service or institutional settings to identify housing, services and supports for a successful transition into secure housing
- ensuring supports can be put in place before a person with disability leaves the service or institutional setting
- coordinating the implementation of the plan until the person with disability has successfully transitioned to safe and appropriate housing.

#### **Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan**

In developing the National Housing and Homelessness Plan, the Australian Government, working with state and territory governments, should:

- a. identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort or cohorts for intensive homelessness support, recognising their needs, circumstances and diversity
- b. review the adequacy of funding for homelessness, with particular regard to the cost of providing more intensive homelessness support for people with disability and complex needs, and current levels of unmet demand
- c. expand pathways and support for people with disability out of homelessness, including through Housing First programs
- d. consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness to help them navigate the different homelessness supports to which they are entitled at state or territory and Australian Government levels.

### **Recommendation 7.41 Group home reform**

The NDIS Quality and Safeguards Commission should prioritise the implementation of the Own Motion Inquiry into Aspects of Supported Accommodation – Action Plan (the Action Plan) and expand actions to include:

- a. a specific review of mechanisms to transition away from allowing the same provider to provide Supported Independent Living and Specialist Disability Accommodation services, with interim arrangements to strengthen oversight to address and monitor conflicts of interest (under Action 8)
- b. strengthening how disability providers implement models of practice, such as Active Supports, to ensure that people with disability living in group homes are actively supported to have opportunities for greater social interaction and community participation and inclusion (under Action 2)
- c. developing an implementation plan for the Action Plan, with –
  - explicit timeframes for delivery
  - annual reporting on progress and outcomes to the Disability Reform Ministerial Council.

### **Recommendation 7.42 Improve access to alternative housing options**

The National Disability Insurance Agency (NDIA) should work with the Australian Government, and state and territory governments, to expand alternative housing options and support for people with disability to access and transition to these options through a proactive market enablement strategy. This should include:

- a. an increase in innovative housing options, such as by –
  - expanding the NDIA Home and Living Demonstration Projects with additional rounds from 2024. These rounds should –
    - focus on exploring diverse market mechanisms for sustainable housing models
    - include ongoing extensive and independent evaluation and dissemination of emerging best practice to help bring new models to scale
  - establishing a policy unit to co-design, guide and influence the development and implementation of more contemporary accommodation models



- conducting comprehensive market research to assess market demand and understand National Disability Insurance Scheme (NDIS) participants' housing preferences to inform state and local governments, housing authorities and developers, and drive innovation.
- b. reform of NDIS participant funding models, including Supported Independent Living, Specialist Disability Accommodation and Individualised Living Options to provide greater flexibility. In particular, this flexibility should ensure that administrative and pricing mechanisms do not favour group home living over other models of inclusive housing.
  - c. development of clear and supportive transition pathways that provide access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition. This should include –
    - an individualised assessment of a person's housing needs and preferences, with the option for this to be regularly updated
    - an update of a person's NDIS plan to include specific support, including capacity building to support the decision to transition to more independent living
    - where a person is interested in changing housing, the development of an individual transition plan that identifies current available and emerging alternative housing options, beyond the offerings of their current provider
    - access to independent advocacy and an independent support coordinator to provide support for and facilitate the transition.
  - d. prioritisation of the implementation of the NDIA Home and Living Framework, including –
    - establishing explicit timeframes for its implementation that recognise the urgency of these reforms, in relation to realising the rights of people with disability under the *Convention on the Rights of Persons with Disabilities*
    - continuing work with the disability community to identify key outcomes and measures, and developing a comprehensive monitoring and evaluation plan to measure and report on progress
    - ensuring the chosen approaches address the key elements set out above in this recommendation, including –
      - providing a dedicated pathway for participants with a current or anticipated high need for home and living supports
      - ensuring participants taking this pathway have appropriate and timely support to explore and design individualised home and living solutions that work for them.

### **Recommendation 7.43 A roadmap to phase out group homes within 15 years**

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government and state and territory governments develop and implement a comprehensive roadmap to phase out group homes within the next 15 years. This roadmap should address delivering inclusive housing supply to meet demand, transition support for people with disability, and implementation planning for phasing out group homes. It should include:

- a. delivery of inclusive housing supply to meet demand, by –
  - undertaking a comprehensive assessment of existing service demand (including people with disability who are currently living in group homes and current unmet needs) and projected service demand (forecasted demand for supported accommodation over the next 30 years)
  - assessing projected supply of alternative housing to inform planning for the transition of people out of group homes, including conducting a stocktake of existing disability housing assets that may be repurposed or used to increase the supply of inclusive housing
  - piloting alternative housing models with increased investment to roll out successful models in line with supply and demand modelling to meet future housing needs for people with disability (see also Recommendation 7.42).
- b. a review of the current Specialist Disability Accommodation (SDA) Pricing and Payments Framework to ensure it remains fit for purpose, focusing on ensuring that –
  - a data-driven approach is used to direct investment where it has the greatest benefit for participants and the National Disability Insurance Scheme (NDIS)
  - NDIS funding for specialist accommodation is directed to those participants with significant functional impairment or high support needs for whom specialised housing would deliver a measurable benefit
  - the needs of people with disability for affordable and accessible housing are prioritised by state and territory governments
  - prices are set to encourage development of best practice examples of SDA.

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- c. transition support for people currently living in group homes, including through –
    - a transition pathway that provides access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition (see also Recommendation 7.42)
    - interim improvements in group home oversight and practices to ensure that people with disability living in group homes are safe and have greater choice and control during this transition period (see also Recommendation 7.41)
    - grandfathering arrangements for those people who wish to stay in their group home, including consideration of additional financial support to maintain financially viable group home arrangements where necessary
  - d. implementation planning undertaken through co-design with people with disability and the disability community, including –
    - a specific timeframe for ceasing construction of any new group homes (within the next two years)
    - a specific timeframe for ceasing placement of new residents in group homes (within five years)
    - a specific timeframe for completing transition of those residents who wish to move from group homes to alternative housing options (within 15 years)
    - development of an outcomes-based evaluation framework, tool and processes to track short-, medium- and long-term outcomes across the roadmap, and build an understanding of emerging best practice.

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### **Recommendation 7.44 A roadmap to phase out group homes over a generational timeframe**

Commissioner Ryan recommends the Australian Government and state and territory governments commit to phasing out group homes in stages. This commitment should include:

- a. immediate commitments to reduce the reliance on group homes, including –
  - not approving new four-to six-bedroom group home models for Specialist Disability Accommodation
  - only allowing new National Disability Insurance Scheme participants to enter group home accommodation as a last resort
  - prioritising moving existing residents of group homes to move into smaller groups over time on request, subject to need
- b. development of a staged approach to phasing out group homes, including consideration of housing availability, transition logistics and financial impacts.

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

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# Different perspectives on inclusive education, employment and housing

The three parts of this volume – Part A, ‘Inclusive education’, Part B, ‘Inclusive employment’ and Part C, ‘Inclusive housing’ – provide a detailed examination of the issues in education, work and housing settings. They set out the views of all Commissioners, including their agreed recommendations for reform and their divergent views and recommendations about how to achieve inclusion.

Here we provide an overview of the position of the Chair of the Royal Commission and Commissioner Ryan on these issues, followed by the position of Commissioners Bennett, Galbally and McEwin.

## Promoting a more inclusive society: principles and guidelines

### The views of the Chair and Commissioner Ryan

## Introduction

Volume 7 examines inclusive education, equal and inclusive employment and inclusive homes and living. These three areas have been examined together for three main reasons.

First, each area is of profound importance to people with disability and affects them throughout their lives. Second, education, accommodation and work historically have subjected people with disability to discrimination, isolation and exclusion from the broader community. Third, each area is characterised by programs or services designed specifically for people with disability.

It will be apparent from the discussion of the three areas in this volume that Commissioners, although sharing many objectives, do not have a common understanding of the key concepts of ‘inclusion’ and ‘segregation’. In this section, we – the Chair and Commissioner Ryan – briefly explain the principles that inform our approach to bringing about a more inclusive society for people with disability.

This section should be read together with section 5.2: ‘Achieving inclusion and retaining choice’.

## Segregation

There is no doubt that historically the enforced separation and isolation of people with disability resulted in their dehumanisation and exposed them to horrendous levels of violence, abuse, neglect and exploitation. Policies of enforced institutionalisation of people with intellectual disability, for example, had disastrous consequences.

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There is also no doubt that the medical model of disability, dominant until recent times, contributed to entrenched community attitudes that see people with disability as ‘the other’ and not entitled to be respected and included in society, much less entitled to exercise a full suite of human rights.

People with disability and their representative organisations have engaged in a long and difficult struggle to sweep away the prejudices and practices of the past. This struggle has produced many successes, not least the establishment of this Royal Commission. The concept of ‘segregation’ has played a key role in this struggle. It has rightly been employed by people with disability and advocacy groups to advance their legitimate claims to recognition of their human rights and to full participation in the Australian community.

The word ‘segregated’ and its derivatives have been particularly important in the struggle. This is in large part because of the negative connotations associated with the word. It implies that the setting it describes has characteristics in common with morally repugnant systems that deny people’s basic human rights, such as social segregation enforced by law in parts of the United States during the so-called Jim Crow era.

It is entirely appropriate to describe some current settings for people with disability as ‘segregated’. For example, a person with intellectual disability who is allocated to supported accommodation, given no choice about where or with whom to live and virtually no opportunity to engage with their peers or the broader community can fairly be said to live in a segregated setting.

But not all settings exclusively or primarily for people with disability warrant the description. Separation on the basis of disability can take many different forms and have many different objectives. It is necessary to consider carefully the circumstances in which physical separation on the basis of disability takes place.

The terms of reference require us to inquire into what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse neglect and exploitation.<sup>25</sup> This language raises two important questions:

- What principles should govern the answer to the question?
- Is a more inclusive society for people with disability compatible with any settings in which people with disability are separated from their peers or the broader community?

## Areas of agreement

Much has changed for people with disability over the last three decades or so. The *Disability Discrimination Act 1992* (Cth) was enacted in 1992, Australia ratified the *CRPD*<sup>26</sup> in 2008 and the NDIS was rolled out across the country by 2020. Nonetheless, the evidence and information received by the Royal Commission demonstrates that people with disability are a long way short of being valued, respected and included in society. They are also a long way short of achieving full recognition of their human rights. In particular, having regard to our terms of reference,

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people with disability continue to experience unacceptable levels of violence, abuse, neglect and exploitation. Some of these experiences are associated with the settings in which people with disability live, learn and work.

All Commissioners agree on very important measures. They agree that no-one should be forced against their will (or in the case of children, against the will of their parents or guardians) to live, learn or work in settings designed exclusively or primarily for people with disability. To the extent mainstream services or programs effectively force people with disability into separate settings such as group homes, non-mainstream schools or ADEs, reforms should be introduced to ensure mainstream services and programs meet the needs of and provide the supports needed by people with disability.

This means the barriers preventing people with disability entering the open labour market, choosing their own accommodation or being educated in mainstream schools, should be dismantled as soon as far as practicable. People with disability should receive the supports they need and to which they are entitled to live where they choose, gain employment in the open labour force and be educated in mainstream schools.

All Commissioners also agree on the need to strengthen the regulation and monitoring of settings where violence, abuse, neglect and exploitation can take place (see Volume 10, *Disability services*; and Volume 11, *Independent oversight and complaint mechanisms*). They support the enactment of a Disability Rights Act which, for the first time in Australia, will enshrine in domestic law many of the human rights of people with disability recognised in the *CRPD* (see Volume 4, *Realising the human rights of people with disability*).

All of this will take time, resources and concerted action by governments and the Australian community as a whole.

## Terminology

Precisely because ‘segregation’ has been such an important concept in advancing disability rights, care needs to be taken in applying it to contemporary settings. As we have observed, the word is entirely appropriate in some settings. But not all.

The settings in which people with disability live, learn and work differ considerably. Services and programs may be set up and conducted for a variety of reasons and with a variety of aims. Certainly, they do not necessarily involve the complete isolation of people with disability from their peers or the broader community.

In order to determine whether a particular setting should be characterised as ‘segregated’ it is necessary to consider the specific circumstances in which the physical separation of people with disability takes place.

The circumstances relevant to determining whether a program should be described as ‘segregated’ or ‘segregation’ include:

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- whether participants are separated from other people for shorter or longer periods
  - whether people with disability who live, learn, work or engage in leisure activities in those settings do so in the exercise of a free and informed choice (or, in the case of children, the free and informed choice of parents or guardians)
  - whether the participants enjoy regular and significant interaction with their non-disabled peers and the wider community.

Terminology is important because it can influence the understanding of a problem and policy outcomes.

## Terms of reference

Formulating the principles that should inform the makeup of a more inclusive society for people with disability requires careful attention to be paid to the terms of reference. These set out the scope of our inquiry and the responsibilities of the Royal Commission. Five features of the terms of reference are particularly significant.

First, the Royal Commission is directed to investigate how to prevent and protect people with disability from experiencing ‘violence, abuse, neglect and exploitation’ and how governments, institutions and the community should respond to these experiences when they occur.<sup>27</sup>

The expression ‘violence, abuse, neglect or exploitation’, or variations of it, appear thirteen times in the terms of reference. We have not been asked to examine all aspects of the lives of people with disability, beyond their experiences or potential experiences of violence, abuse, neglect or exploitation. That has influenced the scope and content of Public hearings, the evidence presented, and the publications or research produced by or with the support of the Royal Commission.

Second, the preamble to the terms of reference acknowledges that Australia has international obligations to take appropriate legislative and other measures to promote the human rights of people with disability, including to protect people from all forms of exploitation, violence and abuse under the *CRPD*. This language recognises the human rights of people with disability are not confined to those enumerated in the *CRPD*. It also implicitly accepts that an understanding of Australia’s human rights obligations to people with disability must take into account not only the *CRPD*, but other international human rights instruments.

Third, the terms of reference specifically instruct us to establish appropriate arrangements to enable people with disability to engage with the inquiry, provide evidence and share information about their experiences.<sup>28</sup> The preamble further states that it is important to expose violence against and abuse, neglect and exploitation of people with disability in all settings, including through the sharing of individual experiences.<sup>29</sup> The steps we took to fulfil this mandate have been described in Volume 2, *About the Royal Commission*.

The *Royal Commissions Act 1902* (Cth) makes it clear that only material admitted into evidence at Public hearings is ‘evidence’ for the purposes of the inquiry. Information provided in submissions and private sessions is very important, but is not evidence.



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The terms of reference require us to take into account the range of experiences of the people with disability from whom we heard. In this respect, evidence given by people with disability at Public hearings is particularly significant. It is not open to us to select accounts, whether given in evidence or otherwise, that favour one policy perspective to the exclusion of others.

Fourth, the language used in the terms of reference – ‘promote a more inclusive society’ – recognises the common-sense proposition that there are degrees of inclusiveness.<sup>30</sup> We are not directed to inquire into what should be done to bring about a wholly inclusive society.

The reason for the cautious language in the terms of reference is obvious enough. There are some circumstances in which it is either desirable or unavoidable (or both) that some people with disability will be separated by reason of their disability, at least for part of the time, from their non-disabled peers. In Section 5.2 of this volume we explain that the concept of ‘inclusion’ in relation to people with disability, like segregation, can be used in a variety of senses. We also provide examples of circumstances in which separation on the basis of disability may be desirable or desired by people with disability themselves, or unavoidable.

Fifth, the terms of reference do not mention the word ‘segregation’ or any of its derivatives.

## Views of people with disability

It is striking that people with disability report very different experiences in environments that appear to be similar. As we heard in evidence, some people with disability working in ADEs felt supported and enjoyed the companionship of co-workers with disability.<sup>31</sup> Others did not derive satisfaction from their ADE employment and considered that their low wages constituted exploitation.<sup>32</sup>

Some students with disability were subject to bullying and other forms of abuse of such severity at mainstream schools that their parents were obliged to withdraw their enrolment and transfer the student to a non-mainstream school or to home schooling.<sup>33</sup> Other students with disability were welcomed into mainstream schools, provided with the adjustments to which they were entitled and were encouraged to reach their full potential.<sup>34</sup>

Some students with complex support needs who attended non-mainstream schools experienced a supportive environment and opportunities for friendship which, in some cases, contrasted starkly with their prior experiences in mainstream schools.<sup>35</sup> Other students with complex support needs found non-mainstream schools limited their opportunities to develop their academic or vocational potential and, in some cases, exposed them to maltreatment.<sup>36</sup>

We heard many examples of appalling treatment of people with disability living in group homes, often attributable to poor management and deficiencies in the regulatory system.<sup>37</sup> But the evidence did not demonstrate that all group homes exposed residents to a significant risk of maltreatment. The evidence also did not demonstrate that the reforms proposed in this volume, if implemented, will be ineffective in redressing the management and regulatory failures of the past.

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## Human rights

All Commissioners support a human rights approach to the matters within the terms of reference. Giving effect to the human rights of people with disability in accordance with international law is not necessarily a straightforward matter.

Some rights recognised in articles of the *CRPD* are expressed in reasonably clear language. Where this is the case, the evidence may justify a finding that Australia has failed to implement fully its obligations under particular articles of the *CRPD*. The Commissioners' Report for Public hearing 5, *Experiences of people with disability during the ongoing COVID-19 pandemic*, found the Australian Government Department of Health's failure to collect and disseminate national data about rates of infection and death from COVID-19 for people with disability was inconsistent with Australia's obligations under article 31 of the *CRPD*.<sup>38</sup>

However, for reasons explained elsewhere in this *Final report*, many articles in international human rights instruments including the *CRPD* are expressed in broad and aspirational language. This produces ambiguity and uncertainty as to the proper meaning of those articles and, indeed, uncertainty whether there can ever be a consensus on the issue of interpretation. Not surprisingly, the ambiguity generates intractable disagreement among commentators, including international human rights lawyers. It also generates disagreement between some disability advocates and governments concerning the nature and extent of obligations imposed on States Parties by the *CRPD*.

In addition, international human rights instruments sometimes recognise human rights that appear to be in conflict with each other, or at least are not easy to reconcile. An example referred to in Section 5.2 is the difficulty of reconciling article 13(3) of the *International Covenant on Economic, Social and Cultural Rights*<sup>39</sup> (dealing with the rights of parents to choose an education for their children) with an interpretation of article 24 of the *CRPD* requiring States Parties to phase out non-mainstream schools.

It is not uncommon for there to be difficulties in reconciling articles contained within the same human rights instrument. For example, the very first general principle stated in article 3 of the *CRPD* is:

Respect for the inherent dignity, individual autonomy **including the freedom to make one's own choices**, and independence of persons. [Emphasis added.]

This principle, often referred to as 'choice and control', is supported by article 12(3), which imposes an obligation of States Parties to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Individual autonomy, independence and the freedom to make one's own decisions, in our view, are integral to the inclusion of people with disability in Australia. These ideas are at the core of many of the rights recognised in the *CRPD*, such as equality under the law (articles 5 and 12), the right to live independently and participate in all aspects of life (article 9) and the right to live in the community with choices equal to others (article 19).

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It is not easy to reconcile the right of a person with disability to autonomy, independence and freedom to make decisions, with laws, policies or practices curtailing that person's range of choices. It may be appropriate to restrict choice when the potential decision exposes the person concerned to imminent risk of serious harm. But otherwise limiting the freedom of a person with disability to make free and informed decisions is not consistent with the principle of choice and control, rightly regarded as critical to the dignity, independence and inclusion of people with disability.

## Principles and guidelines

Much of this *Final report* is concerned with the principles that should influence the recommendations designed to address the issues identified in the terms of reference. For present purposes, without being exhaustive, these are some of the most important:

- People with disability should be free to make their own decisions, including where they live, work and learn (recognising that the parents or guardians of children with disability will usually make decisions concerning their education).
- People with intellectual disability or cognitive impairment should receive the supports they may require to make decisions for themselves.
- Mainstream services or programs should be accessible to people with disability, including by means of adjustments and supports to which they are entitled.
- People with disability should not be isolated from their peers or the broader community and should have the opportunity to engage regularly with their peers and participate in community life.
- The human rights of people with disability should be protected by law and recognised by the broader community.
- The services and programs in which people with disability participate should never devalue or dehumanise the participants.
- People with disability and their representative organisations should participate in decision-making processes that lead to legislation, policies and practices directly affecting people with disability or any group of people with disability.

Addressing complex policy questions often involves balancing a number of worthy, but competing objectives. Taking into account the principles set out above, the following guidelines assist in developing recommendations to address the policy issues identified in this volume:

- No person with disability should be forced against their will (or, in the case of children, against the will of their parents or guardians) into an environment in which they are physically separated on the basis of disability and isolated from their peers or the community at large.

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- The barriers which currently prevent people with disability participating fully in mainstream settings should be eliminated so far as feasible. These settings include mainstream schools, the open labour market and accommodation options similar to those available to people without disability.
  - Adults with disability should be free to make their own decisions concerning where they live, work, learn, socialise and enjoy leisure time. They should receive such supports as they require to make free and informed decisions affecting their lives and in pursuing their objectives.
  - In making choices, people with disability should be assured that they will receive the supports and adjustments to which they are entitled to enable them to participate as fully as practicable in mainstream settings.
  - All settings in which people with disability live, work, learn, participate in community activities, socialise and enjoy recreation should be subject to rigorous regulatory oversight and programs designed to prevent people with disability experiencing violence, abuse, neglect and exploitation.
  - People with disability should have available a range of options that enable them to choose freely the setting they consider meets their needs and goals and offers them the maximum opportunities for inclusion within the community.
  - People with disability and their representative organisations should participate in decision-making processes involved in implementing these guidelines.

## Conclusion

Earlier in this section, we raised an important question: Is a more inclusive society for people with disability compatible with any setting in which people with disability are separated from their peers or the broader community?

In the light of the principles and guidelines we have set out, the answer to this question we posed is:

Yes, if consistent with the principles and guidelines identified in this section.

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## Ending segregation: the case for change

**The views of Commissioners Bennett, Galbally and McEwin**

### The basis for change

#### Segregation is inherently linked with the devaluation of people with disability

We three Commissioners – Commissioner Bennett, Commissioner Galbally and Commissioner McEwin – have observed that a consistent theme throughout the Royal Commission’s inquiry has been people with disability being devalued and dehumanised, or thought of as ‘other’, ‘deficient’ or ‘less than’. This devaluation underpins and enables violence against, and abuse, neglect and exploitation of, people with disability and has devastating effects.

We know devaluation and ‘othering’ of people with disability lies behind a long history of segregation of people with disability in Australia. This continues to cast many people with disability to the edges of society, to lead lives characterised by limited opportunities and participation, poor outcomes, and isolation from the community.

The Senate Committee that called for this Royal Commission understood this. It said:

a root cause of violence, abuse and neglect of people with disability begins with the devaluing of people with disability. This de-valuing permeates the attitudes of individual disability workers, service delivery organisations and, most disturbingly, government systems designed to protect the rights of individuals.<sup>40</sup>

We have formed the view that segregation describes the deliberate and systemic separation of people with disability to live, learn, work or socialise in environments apart from people without disability. Segregation is a form of exclusion that limits or denies access to places where the community live, work, socialise or learn because of the person’s disability. It also denies full participation on an equal basis in these domains. It is enforced through laws, policies, structures, systems and social norms.

All three Commissioners are clear segregation does not occur in spaces where people with disability choose to come together voluntarily for a common purpose. Whether to share culture and values, seek solidarity, provide peertopeer support to others who relate to their needs and struggles, or share social justice goals, these are the same choices available to people without disability and they do not limit access to, and full participation in, society on an equal basis with others.

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## Human rights basis for change

This Royal Commission was tasked with undertaking its inquiry from a human rights perspective and making recommendations for transformational change so that people with disability can be fully included in Australian society. Addressing the issue of segregation is critical to fulfilling the terms of reference of this Royal Commission.

In this respect, we recognise and understand the concerns expressed during this Royal Commission that the inquiry should not re-prosecute, reinterpret or renegotiate the human rights of people with disability.<sup>41</sup>

We also acknowledge that people with disability have been asked to make their case for change – in essence, to be valued by the society in which they live – repeatedly, inquiry after inquiry, as they also did in fighting for this Royal Commission to be established.

## Use of evidence and information for change

The Royal Commission received a wide range of information and evidence in conducting its inquiry. We three Commissioners have considered this information and evidence in forming our views and conclusions contained in this *Final report*.

In forming our views and making recommendations in this context, we focused on legislative, policy and other measures to promote a more inclusive society consistent with the human rights of people with disability. In so doing, we considered evidence gained from public hearings. We also considered information provided in the research reports and the thousands of submissions and responses to issues papers that were prepared for this inquiry. We also listened closely to what people with disability told us in private sessions and community forums.

## The context for change

### The failure of deinstitutionalisation – from asylums and larger institutions to institutionalised ‘special services’

As outlined in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*, Australia has had a long history of placing people with disability in institutions. As a consequence, many Australians with disability have led lives separated from Australians without disability.

From Australia’s colonisation through to the early 20th century, the prevailing belief was that society needed to be protected from people with disability and mental health conditions. As a result, authorities placed people with disability and mental health conditions in asylums, hospices and other institutional settings.<sup>42</sup> In these institutions, people lived as ‘captives of care’,<sup>43</sup> with little or no choice or control over their life or interaction with the outside world.

As attitudes towards disability changed during the 20th century, this fear shifted to concern for, and protection of, people with disability. In place of asylums and institutions for ‘the incurable

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and weak-minded', new special services were developed for people with disability, who were excluded from, or poorly supported in, mainstream settings.<sup>44</sup> These included special or segregated schools, sheltered workplaces and day programs.

The emergence of the disability rights movement agitated for a shift towards policies of deinstitutionalisation, resulting in many larger institutions starting to close in the 1980s.<sup>45</sup> Many residents were subsequently moved into smaller group homes. However, it became apparent that relocating people from one setting to another did not achieve inclusion.<sup>46</sup> During our inquiry, we heard about previous institutional attitudes and organisational cultures that stripped people with disability of autonomy and power, and were often carried over to these newer settings.<sup>47</sup> Group homes became 'mini-institutions', with similar structures, routines and cultures to that of their predecessors.<sup>48</sup> Other 'special services' for education, housing and work for people with disability retained the characteristics of institutions. As such, these segregated settings did not provide inclusion in living, working and studying.<sup>49</sup>

We also heard the policies and practices in contemporary settings are a legacy of the medical model of disability. The medical model is a deficit model. That is, it looks at what is 'wrong' with the person and not what is needed to change in the environment and in systems and policies to enable full inclusion. In the medical model, the nature of a person's impairment and their deviation from a perceived 'norm' becomes their defining characteristic and can become the basis of their exclusion.<sup>50</sup>

In Public hearing 31, 'Vision for an inclusive Australia', the United Nations (UN) Special Rapporteur on the rights of persons with disabilities, Mr Gerard Quinn, stated that the medical model of disability resulted in public policies where people with 'significant "material differences" in impairment' were provided support 'in separate, segregated or congregated settings or institutions'.<sup>51</sup> Mr Quinn explained that while impairment is not irrelevant, it should not be the primary thing that defines the 'posture of public policy' towards people with disability.<sup>52</sup>

In his evidence to the Royal Commission, Mr Quinn explained that one result of the medical model of disability was a series of public policies to provide support to people with disability in separate, segregated or congregated settings or institutions. This was to such a degree that 'in the public mind, "long term care" became synonymous with institutionalization'.<sup>53</sup> Consistent with its widespread usage, we use the term 'segregated' to encapsulate this description.

## What needs to change

Numbers of people with disability in Australia have remained segregated from the wider community on the basis of their impairment. Segregated settings include special schools and classes, ADEs, group homes and day programs.

We consider that contemporary segregated settings continue to deny people with disability meaningful choice and control over key aspects of their daily lives, and prevent them from being included in mainstream settings.



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## Culture and practices in contemporary segregated settings

### The institutionalised nature of these settings

*General comment no. 5 (2017) on living independently and being included in the community*<sup>54</sup> and the *Guidelines on deinstitutionalization (2022)*<sup>55</sup> (Guidelines) formulated by the Committee on the Rights of Persons with Disabilities (CRPD Committee) set out the defining elements of institutions:<sup>56</sup>

- a lack of control over day-to-day decisions, and a lack of choice about who individuals live with
- an obligation to share assistants with others and having no or limited influence over who provides the assistance
- a rigid routine that does not account for personal will and preferences
- identical activities being held in the same place for a group of individuals under the control of an authority
- a paternalistic approach to providing services, and supervised living arrangements
- isolation and segregation from those who live an independent life in the community
- a number of people with disability congregated in the same environment.

The Guidelines note that the absence, reform or removal of one or more of these institutional elements will not automatically make a setting ‘community-based’. For example, a setting located ‘in the community’ but where service providers set a routine and deny autonomy is still considered an institution. This is the same as ‘homes’ where the same service provider packages housing and support together.<sup>57</sup>

The CRPD Committee notes that ‘States Parties should recognize institutionalisation in all its forms as a multiple violation of the rights enshrined in the Convention [on the Rights of Persons with Disabilities]’.<sup>58</sup> The Guidelines highlight the harmful impact of institutionalisation on the rights and lives of people with disability and its incompatibility with the *CRPD*.<sup>59</sup> The Guidelines also refer to the violence, neglect, abuse and ill treatment that can be experienced by people with disability in institutional settings.<sup>60</sup>

We three Commissioners have concluded that many or all of these elements of institutionalisation are present in Australia’s special or segregated education settings, ADEs, group homes and day programs. As a consequence, we consider that these settings are failing to uphold fundamental human rights for people with disability.

We heard in segregated settings, people with disability have experienced a range of harmful conditions. These include social isolation; denial of moral agency, autonomy, choice and control, including over day-to-day living; limited opportunities for personal growth and development; and various forms of violence, abuse, neglect and exploitation.<sup>61</sup>



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Institutional cultures and practices in these settings can limit choice and control, and create environments that can expose people with disability to risks of harm.<sup>62</sup> We heard, for example, economies of scale take advantage of the congregation of people with disability in group homes with workers caring for numbers of people at once. This leads to a standardisation of care and lack of choice in daily living and care.<sup>63</sup> This can result in individual care needs being denied or neglected in favour of business efficiency. Additionally, disability services continue to be designed and delivered in ways that maintain a power imbalance between providers and residents.<sup>64</sup> This can lead to punitive cultures that adversely affect residents.<sup>65</sup>

## **The segregated pipeline**

We also heard about the long-term impacts of being segregated from an early age. The ‘institutionalisation from cradle to grave’ that used to occur in larger institutions has now become the ‘segregated pipeline’.<sup>66</sup> In the context of education and employment, Ms Catherine McAlpine, CEO of Inclusion Australia, said ‘it is important to note the polished nature of this pathway’.<sup>67</sup> This means people with disability go through early intervention initiatives, schooling, employment workshops and group homes that are all segregated.<sup>68</sup>

We heard that once a student is placed in a special or segregated school or class, they will rarely transition to a mainstream school or classroom.<sup>69</sup> This can contribute to them remaining in other segregated environments throughout their lives.<sup>70</sup> Data analysis undertaken by the Royal Commission concluded that National Disability Insurance Scheme (NDIS) participants who previously attended special/segregated schools and classes were more likely to transition into employment in ADEs than participants who attended mainstream schools.<sup>71</sup>

## **Denial of genuine choice and autonomy**

A significant theme throughout the Royal Commission’s public hearings was that people with disability lack choice and control over which services they can access. People with disability are routinely excluded from accessing or fully participating in mainstream services. We heard across our inquiry how people with higher or more complex support needs are often funnelled, coerced or forced into segregated settings or programs as the only option for education, work, living or socialising.

This occurs for a range of reasons, including:

- decision-makers see segregated services as being the natural default services for people with disability
- decision-makers perceive a risk the non-disabled cohort will be held back or disrupted through the inclusion of people with disability; for example, including children with disability in mainstream schools, sporting events or neighbourhoods
- settings and services available to the general population continue to have significant barriers to access and inclusion for people with disability.

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These barriers to accessing mainstream services are discussed in Volume 3 and later in this volume.

Evidence we received indicates that once people with disability are within segregated settings, they can be denied choice and control in many aspects of their life.<sup>72</sup> This stands in contrast to the stated objects of the *National Disability Insurance Scheme Act 2013* (Cth) (*NDIS Act*), which include to 'enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports'.<sup>73</sup> The *NDIS Act* states:

People with disability are assumed, so far as is reasonable in the circumstances, to have capacity to determine their own best interests and make decisions that affect their own lives.<sup>74</sup>

For example, people with disability already living in supported living arrangements may have their decisions restricted or denied across a range of life domains. This includes in relation to their services and supports,<sup>75</sup> everyday decisions such as when they can come and go from home,<sup>76</sup> and the freedom to pursue friendships and sexual relationships.<sup>77</sup> NDIS Outcomes Data shows that only 23 per cent of participants in segregated living were said to be making most of the decisions in their life. This is in contrast to 60 per cent of participants in mainstream living accommodation.<sup>78</sup>

At Public hearing 3, 'The experience of living in a group home for people with disability', the Royal Commission heard that although the experiences of people with disability in group homes are not uniform, far too many people are denied autonomy. People lack choice about the accommodation allocated to them, and they often cannot choose their co-residents. Dr Peter Gibilisco, a witness who provided evidence at Public hearing 3, spoke about the profound impacts this can have:

I have found the move into supported accommodation resulted in extreme loss of control of my life. I have found it to be a loss to my 'way of life' in a personal and social sense.<sup>79</sup>

We heard from Sam Peterson at both Public hearing 3 and Public hearing 32, 'Service providers revisited'. Sam gave evidence about living in a group home, saying, 'I should have the same power to shape my life as anybody else, but for years I had very little'.<sup>80</sup> Reflecting on her experiences, Sam used the term 'slow violence' to describe when the needs of a person with disability 'are continually not met'.<sup>81</sup>

People with disability may also experience a lack of control over their personal safety. In Public hearing 20, 'Preventing and responding to violence, abuse, neglect and exploitation in disability services (two case studies)', we heard evidence residents had little or no control over their personal care and who provided it. Following sexual misconduct by a Life Without Barriers worker towards Natalie, a resident in a group home, her mother requested that Natalie's personal care be performed only by a female. The trauma already suffered by Natalie and her mother was exacerbated by Life Without Barriers' failure to comply with its assurances that

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it would put this in place.<sup>82</sup> In Public hearing 3, we heard how people had to continue living with residents after they had been exposed to peer-to-peer violence, with no choices available for them to move to a new home.<sup>83</sup>

## **Neglected development of skills for life**

Denial of choice and control in segregated settings also has implications for the personal development of children and adults with disability in segregated settings. We received evidence and information about how some people with disability may have reduced aspirations and opportunities for personal growth, development and nurturing in segregated settings.<sup>84</sup> This involves a lack of opportunities to develop mental and physical abilities, and life skills, along with developing personality, talents and creativity. This form of systemic neglect includes not proactively providing opportunities for development, as well as the passive neglect of a person.

For example, we received evidence to suggest that people living in group homes and other shared residential services may experience a decrease in their life skills, instead of being supported to develop these further.<sup>85</sup>

Similarly, in Public hearing 23, 'Preventing and responding to violence, abuse, neglect and exploitation in disability services (a case study)', the Royal Commission heard evidence about the lack of support for participants in a day program to develop communication and other living and independence skills.<sup>86</sup> We heard from witnesses that adult participants were not shown age-appropriate television content, but instead watched shows designed for children. Participants were not being encouraged or supported to use non-verbal forms of communication and were not supported to build non-verbal communication capacity. Furthermore, we also heard that the independent living skills some participants had developed diminished during their time at the day program.<sup>87</sup>

In a submission, Inclusion Australia referred to what it viewed as 'the abuse that occurs in day programs' as constituting 'acts of omission'. We were told that families describe such programs as 'day custody' where, largely, people are not learning skills but 'just sit around and do nothing'.<sup>88</sup>

## **Denial of the dignity of risk**

Being able to take risks, and to participate in the decision-making process that accompanies this, is a crucial aspect of exercising agency and autonomy. However, we heard that people with disability are also denied the 'dignity of risk' in segregated settings.

In its General comment on article 12 of the *CRPD*, the CRPD Committee highlighted the need to recognise and enable dignity of risk.<sup>89</sup> The CRPD Committee emphasised that while people should be protected from 'undue influence', this protection must 'respect the rights, will and preferences of the person, including the right to take risks and make mistakes'.<sup>90</sup>

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The former UN Special Rapporteur on the rights of persons with disabilities, Ms Catalina Devandas Aguilar, has also emphasised that the safeguards referred to in article 12 are ‘meant to protect individuals in the provision of support, not prevent them from making decisions, or from the possibility of taking risks and making mistakes’.<sup>91</sup>

This issue of ‘protectionism’ was a reoccurring theme in responses to our *Restrictive practices issues paper*. We heard paternalism or a service provider’s duty of care often takes precedence over an individual’s right to the dignity of risk.<sup>92</sup> Limiting a person’s ability to make their own decisions and take risks can hinder them from learning from their actions. This in turn prevents them from developing new strategies to manage their own behaviours and regulate their emotions.<sup>93</sup> These are critical life skills that can support transitions to living outside institutionalised settings.

In Public hearing 3, witness AAI described how her daughter was not permitted to make decisions when she was in her group home. This was despite the fact that these decisions involved a level of risk normally accepted in everyday life.<sup>94</sup> AAI said:

I wanted a place where my daughter might enjoy an ‘ordinary life’. To me, that means a life without restrictions. She should have the ability to decide to do things she wants to do, and to take risks if she wants ...<sup>95</sup>

## Social isolation and lack of meaningful participation

Early and entrenched segregation for people with disability across their life can severely limit their participation in the broader community, and prevent the formation of relationships between people with and without disability. In Public hearing 2, ‘Inclusive education in Queensland – preliminary inquiry’, the mother of a girl with Down syndrome described her vision and concerns for her daughter’s participation and connection in the community:

the opportunity to do what all other students are doing ... Education’s the start. If we don’t include kids in the education system, how can we include them in the community, in the workplace? Kids need to be with their peers who are then going to be, you know, their workmates or their university colleagues or TAFE colleagues or apprenticeship colleagues. It’s really important that my daughter’s known in her community and sits alongside her peers in her community.<sup>96</sup>

In other research, there was some evidence to suggest adults with intellectual disability who had previously attended ‘mainstream schools’ were less lonely than those who had previously attended ‘special schools’.<sup>97</sup>

In his evidence to Public hearing 31, Mr Quinn noted that limitations on people’s social, economic and cultural participation can reduce a person’s humanity.<sup>98</sup> With reference to the critical development of ‘personhood’, Mr Quinn stated that people become who they are because of the range and depth of their immersion in their community.<sup>99</sup> He proposed that applying contemporary approaches to equality means asking ‘how do we create space for

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you to flourish as a human being and to give back to your community as a human being?’<sup>100</sup> Exclusion from social, cultural and political domains does not permit this.

Students with disability expressed their grief about being separated from students without disability. Giving evidence about their experience and their younger sibling’s experience in the education system, Gi Brown said segregation limits the ability to make friends and connections, and is detrimental to the development, connectedness and participation of young people with disability.<sup>101</sup> Gi expressed their view about school students without disability – ‘we’re your peers. We’re not “other”’.<sup>102</sup>

The institutional nature of group homes, day programs and ADEs puts considerable constraints on people with disability building similarly diverse social networks to those of peers without disability. We heard relationships for residents in group homes may be limited to support workers and other residents.<sup>103</sup> Some people in group homes are isolated or prevented from seeing family, friends or cultural groups, or from accessing NDIS supports.<sup>104</sup> In a private session, we were told:

[Group homes] are like a little island. The only people that step onto that island are families, people that have responsibilities like coordinators or counsellors or whatever, or staff. ‘Heidi’s’ lived in the same house for 20 years, where she is now and there is absolutely no contact with the resident[s] in the street, it is like they don’t belong in society.<sup>105</sup>

Families who gave evidence in Public hearing 23 described the social isolation their adult children experienced in day programs, with there being minimal opportunities to interact with people outside the program.<sup>106</sup>

Exclusion from the broader community can also occur simultaneously across more than one life domain.<sup>107</sup> In response to our *Group homes issues paper*, Independent Advocacy South Australia Inc submitted that day programs are often attended by people who are already living together in a group home. Even where local community participation is possible, there is little to no effective support for an individual to actively engage and naturally develop relationships outside their group home.<sup>108</sup>

## **Ableism from segregation**

The invisibility of children and adults with more profound disability, which results from exclusion, has broader societal impacts. When individuals, organisations and governments exclude and segregate people with disability, it renders these individuals ‘unseen and unfamiliar’.<sup>109</sup> This generates and perpetuates attitudes, beliefs and behaviours towards disability by reinforcing the belief that people with disability are ‘different’, ‘other’ or ‘special’.<sup>110</sup> A circular pattern ensues, as people with disability are seen as less able to exercise autonomy or participate in community life than people without disability. This can lead to them being perceived as a burden on society. These misconceptions and the attitudes that motivate harmful behaviour directed at people with disability are commonly referred to as ‘ableism’.<sup>111</sup>

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## Exposure to violence, abuse, neglect and exploitation

Practices occurring within institutionalised and closed settings with little oversight or public scrutiny can place people with disability at heightened risk of violence, abuse, neglect and exploitation.<sup>112</sup> They are by their nature closed institutional settings, away from public scrutiny.

People with disability studying, working, socialising or living in segregated settings experience violence, abuse and exploitation. We three Commissioners have come to the view that the segregated nature of special schools, ADEs, group homes and day programs heightens the risk of exposure to violence, abuse, neglect and exploitation, as well as being in violation of international human rights law. In other words, maintaining these segregated settings into the future means we are exposing those people with disability in them to the certainty of harm.

The Royal Commission heard special/segregated education settings can lead to higher risks of violence and abuse.<sup>113</sup> We heard there is less oversight of these settings so violence, abuse, neglect and exploitation may occur unchecked.<sup>114</sup> Parents also reported experiences of restrictive practices in special/segregated schools.<sup>115</sup>

The segregated nature of work in an ADE and the institutional factors present, including the power imbalances between staff and workers, can heighten the risk of exposure to violence, abuse, neglect and exploitation. The Royal Commission was told people with disability working in ADEs experience violence, bullying and harassment perpetrated by other workers with disability, support workers and managers. People with disability can also experience financial exploitation in ADEs.<sup>116</sup>

The Royal Commission received evidence and information that indicated that people with disability are exposed to various forms of violence, abuse, neglect and exploitation in groups homes. In Public hearing 3, Professor Patricia Frawley, an Associate Professor of Disability and Inclusion at Deakin University, described violence, abuse, neglect and exploitation of people with disability as ‘pervasive’ in group homes. She noted it occurs ‘almost as part of the day-to-day practices in these environments.’<sup>117</sup> Professor Frawley said this normalisation of abuse is underpinned by a lack of understanding of key concepts like respect, dignity and human rights.<sup>118</sup>

In relation to segregated supported accommodation, we heard how people with disability have experienced violence and abuse from staff<sup>119</sup> and from co-residents.<sup>120</sup> We also heard about the use of coercive control and financial exploitation by a staff member,<sup>121</sup> the use of chemical and physical restraints, and about various forms of neglect.<sup>122</sup>

This evidence is supported by Australia’s Disability Strategy 2021–2031, which acknowledges that people with disability living in institutional contexts such as group homes are more likely to experience violence and to fare worse than in other housing contexts.<sup>123</sup> The NDIS Quality and Safeguards Commission’s *Own Motion Inquiry into aspects of supported accommodation* Inquiry report indicated that Australians living in group homes can be subjected to sexual misconduct, coercion, serious injury, abuse and neglect.<sup>124</sup>

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Information from submissions and private sessions with family members and carers provide accounts of various forms of violence against, and abuse and neglect of, people with disability while attending day programs. In Public hearing 23, we looked into the response of service provider Afford to the abuse perpetrated by an Afford lifestyle assistant. The Royal Commission identified serious shortcomings regarding actions taken by Afford in its response to the abuse.<sup>125</sup> The Royal Commission found Afford prioritised revenue over participants' health and safety.<sup>126</sup>

This case study highlighted significant concerns in relation to the operation of day programs.

## Towards inclusive equality – the transformational change required

In *Our vision for an inclusive Australia* we set out what people with disability told us about their vision for a more inclusive society. They told us they want to live, learn, work and engage with peers without disability in safe and diverse communities. They want the power of choice, independence and the dignity to take risks. They want to fulfil their potential and make valued contributions to communities.

We consider the current environments of education, employment and housing settings in Australia are failing to realise this vision for inclusion. These critical settings present substantial barriers to access and meaningful inclusion. This is especially the case for individuals with higher or more complex needs, including people with intellectual and cognitive disabilities. We heard how segregated settings can expose people with disability to various forms of violence, abuse, neglect and exploitation.

For some people with disability, the barriers to accessing mainstream schools, workplaces and housing in the community can be insurmountable. This can leave no viable choice other than to study, work or live in a segregated setting. This has been referred to as a form of 'coercive' choice.<sup>127</sup>

As discussed earlier, we have heard these settings can also result in neglected development for some people with disability. The settings limit opportunities to build capacity, develop and grow critical life skills, and build social connections with peers without disability. When experienced in the early years, segregation can become a pathway to a life of exclusion,<sup>128</sup> with a narrowing of opportunity at each life stage milestone.

## Phasing out segregation

We three Commissioners hold the view that segregating people with disability for study, work, living and recreation should be systematically phased out entirely. This is necessary to achieve inclusive equality. We believe that it is unconscionable that segregation on the basis of impairment alone still remains a policy default in Australia in the 21st century.

As Mr Quinn stated in his evidence at Public hearing 31, 'in terms of public policy, that is to say, spending of taxpayer's money ... there is no room for a segregationist ethic, there is no room for individuals to opt out of that'.<sup>129</sup> He went on to say this goes to the quality of our communal life. It goes to the ethics of tolerance and a democratic society.<sup>130</sup>



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We consider that the continued presence of segregated settings is a significant barrier to the reform of mainstream settings as it reduces the imperative for, and affordability of, change. This constrains the improvement of mainstream systems and the commitment to developing alternative and innovative models that can deliver meaningful inclusion and choice for all people with disability. Furthermore, retaining segregated settings also contributes to the broader stigmatisation of people with disability. A cycle of social exclusion ensues as people with disability who have higher or more complex support needs remain positioned in society as the ‘other’. As a consequence, they remain unseen and unfamiliar to prospective employers, friends, partners, neighbours and community participants who continue to see people with disability as strange, frightening or inferior – as the ‘other’ to be avoided. This maintains the momentum for segregation to keep ‘them’ out of sight and out of mind.

As discussed further in detail in Part A, ‘Inclusive education’, we consider that special/segregated education settings are incompatible with Australia’s obligations under the *CRPD* and the rights of students with disability to access and participate in inclusive education. We endorse the conclusions of the legal advice from Professor Byrnes that article 24 of the *CRPD* requires the complete dismantling of special/segregated education settings over time and a transition to a system of fully inclusive education.<sup>131</sup> We believe the Australian Government and state and territory governments should embrace the progressive interpretation of article 24 set out in the *CRPD* Committee’s *General comment no. 4 (2016) on the right to inclusive education*.<sup>132</sup>

We three Commissioners have also reached the view that segregating people in terms of where they work on the basis of disability, and segregating people with disability in group homes prevents Australia from fulfilling its obligations under the *CRPD*. In this regard, we accept the position of the *CRPD* Committee in its interpretation of the *CRPD*. This includes:

- *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*<sup>133</sup>
- *General comment no. 5 (2017) on living independently and being included in the community*.<sup>134</sup>

These General comments are discussed in further detail in Parts B and C of this volume.

Accordingly, we three Commissioners recommend a timetable, and national and state and territory roadmaps, for definitively phasing out special/segregated schools, ADEs in their current form, and the group home model. Our detailed approach and the related recommendations for these proposed major reforms are set out in this volume, under the relevant parts.

We note that it is important to distinguish between segregated settings, and specialised supports or adjustments for people with disability. Our view is that the former need to be phased out over time, while the latter may be critical to achieving ‘inclusive equality’. Such specialised supports and adjustments must be maintained and provided within an inclusive setting.

We recognise that strategies to reduce and end segregation need to be planned in detail and that changes of this significance will need a staged approach.



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## The paradigm shift required

Mr Quinn stated that the challenge will be to close the gap between the new ‘myth system’, or way of thinking, and an older ‘operation system’. This is why a new vision for services must be built.<sup>135</sup> He highlighted the paradigm shift and significant work required to break down these exclusionary structures and policy defaults.<sup>136</sup> He said:

The switch in policy defaults will not happen overnight. Think of it this way: we have imagined, designed and implemented a service paradigm to match the segregationist or institutionalist default. There is nothing natural or inevitable about this – although it has the air of being natural or neutral. If we switch our policy defaults in favour of thriving in the community then we have to turn around the large ship of services to make it a reality. This is where all the action is in the future – once the policy switch away from segregation is made.<sup>137</sup>

As discussed in detail in Volume 4 and in *Our vision for an inclusive Australia*, inclusive equality or what is also referred to as ‘transformative equality’ does not require a person to adapt to the way societies have been structured and organised. People with disability are ‘to be approached first as persons with equal rights and expectations and secondly as persons with impairments that might require special attention’.<sup>138</sup> Transformative equality does not require the individual to change, rather it requires the systems and settings of institutions, organisations and governments to transform to become inclusive.<sup>139</sup> The policy focus is on initiatives intended to reverse the processes that tend to lead to exclusion, replacing them with processes that support social inclusion.<sup>140</sup>

The *CRPD* sets out the obligations on States Parties to remove barriers to inclusion. This includes progressively realising the rights of people with disability to have the moral agency to choose where, how and with whom they live, work and study.

Considering the evidence and information received during our inquiry, we three Commissioners agree with Mr Quinn’s statement that a paradigm shift from the old way of thinking, particularly an exclusionary way of thinking, is needed.<sup>141</sup> This will drive the transformative change that will deliver inclusive education, employment and housing for people with disability.

We agree with the Chair of the Royal Commission and Commissioners Mason and Ryan that mainstream systems must be significantly reformed to remove barriers to access and enable meaningful inclusion, safety and belonging for people with disability in these settings. As set out in this volume, all Commissioners make recommendations to set in motion the long-term transformation of the design and delivery of mainstream education. We also all recommend ways to open up Australia’s employment and housing markets to support greater access, choice and security so people with disability can live and work within the community.

However, we three Commissioners consider that inclusion will not be achieved unless segregation is phased out and ultimately ceases.

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## A shared commitment and roadmaps for change

We do not underestimate the challenge of transforming these systems to realise the rights of people with disability. Removing barriers to access and participation will require a significant redesign and refurbishment of infrastructure. It will also require a substantial uplift in capability across workforces underpinned by fundamental shifts in societal attitudes and behaviours over time. As we heard in our inquiry, inclusion is not merely colocation or integration. It requires inclusive and accessible design of physical settings and social infrastructure, tools, communications and resources, and inclusive practice.<sup>142</sup>

Any future reforms need to be carefully and deliberately designed to account for the interconnected nature of services within the disability ecosystem, and ensure roles and responsibilities are clear. This will require close collaboration and coordination across those in frontline service delivery roles, and the Australian and state and territory governments.

Most importantly, reimagining these systems needs to be done in partnership with people with disability, with the voices of people with disability at the centre of reforms. We heard throughout our inquiry about the importance of engaging people with disability in the design, production and delivery of services.<sup>143</sup> For effective co-design and co-production, people with lived expertise should strongly influence and share final decisions and play leadership roles in implementation.<sup>144</sup>

To achieve transformational change across systems of this scale, Mr Quinn suggested:

there must be a deeper level of intentionality, a stock-taking of where things are at, a clear statement of the end-goals and an understanding of the means, tools, timelines and resources needed to move the dial and an institutional architecture designed to oversee the change.<sup>145</sup>

We consider the best way to achieve these reforms is through the development and delivery of roadmaps that identify priorities, investments required and time frames. To be successful, there needs to be a long-term commitment from the Australian Government and state and territory governments to develop, fund and implement these roadmaps. Focused, prioritised efforts will be needed from governments so that momentum for change can be built and sustained over the next 20 to 30 years.

The Royal Commission heard compelling evidence about key elements that must be included to deliver on the intent of the *CRPD* for people with disability. In the following three parts of this volume, we outline the particular elements and principles that we three Commissioners believe are critical to successfully transitioning to inclusive education, employment and housing systems in Australia.

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## Endnotes

- 1 *Disability Standards for Education 2005* (Cth) s 3.3(a).
- 2 'Australian Curriculum', *Australian Curriculum, Assessment and Reporting Authority*, web page. <[www.acara.edu.au/curriculum](http://www.acara.edu.au/curriculum)>
- 3 *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth) ss 5, 6.
- 4 'About us', *Australian Education Research Organisation*, web page. <[www.edresearch.edu.au/about-us](http://www.edresearch.edu.au/about-us)>
- 5 Australian Institute for Teaching and School Leadership, *Australian Institute for Teaching and School Leadership Corporate Plan 2018–19*.
- 6 Joseph E Ibrahim & Marie-Claire Davis, 'Impediments to applying the 'dignity of risk' principle in residential aged care services', (2013), vol 32 (3), *Australasian Journal of Ageing*, pp 188–93. See also: Robert Perske, 'The dignity of risk and the mentally retarded', (1972), vol 10 (1), *Mental Retardation*, pp 24–27.
- 7 *Disability Discrimination Act 1992* (Cth) s 4(1).
- 8 *Disability Discrimination Act 1992* (Cth) s 4(1); *Disability Standards for Education 2005* (Cth) s 1.4.
- 9 *Disability Discrimination Act 1992* (Cth) s 4(1); *Disability Standards for Education 2005* (Cth) s 1.4.
- 10 National Disability Insurance Agency, Independent Living Options guidelines, 5 January 2023, p 4.
- 11 Council of Australian Governments, National School Reform Agreement, pp 6–7 [34–35], 8 [38].
- 12 *National Disability Insurance Scheme Act 2013* (Cth) s 9.
- 13 These inclusions are based on the definition of 'regulated restrictive practice' in the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (Cth) r 6.
- 14 See Productivity Commission, *Schools workforce*, Research report, April 2012, p vi.
- 15 Transcript, Kimberly Langcake, Public hearing 24, 6 June 2022, P-43 [6–9]; Transcript, Caroline Croser-Barlow, Public hearing 24, 9 June 2022, P-324 [25–26].
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into Violence, Abuse, Neglect and  
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