

INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

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SENATE

COMMUNITY AFFAIRS REFERENCES COMMITTEE

Violence, abuse and neglect against people with disability in institutional and residential settings

THURSDAY, 27 AUGUST 2015

SYDNEY

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SENATE
COMMUNITY AFFAIRS REFERENCES COMMITTEE

Thursday, 27 August 2015

Members in attendance: Senators Lindgren, Moore, Siewert.

Terms of Reference for the Inquiry:

To inquire into and report on:

Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age-related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, with particular reference to:

- a. the experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts;
- b. the impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole;
- c. the incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings;
- d. the responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices;
- e. the different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability;
- f. Australia's compliance with its international obligations as they apply to the rights of people with disability;
- g. role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability;
- h. what should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse;
- i. what needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses;
- j. identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed;
- k. the role of the Commonwealth, states and territories in preventing violence and abuse against people with disability;
- l. the challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability; and
- m. what elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings.

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MORRIS, Ms Margot, Principal Solicitor, Intellectual Disability Rights Service

Committee met at 08:29

CHAIR (Senator Siewert): Welcome. I declare open this public hearing and welcome everyone here today. We would like to acknowledge the traditional owners of the land on which we meet, and pay our respect to elders past and present. This is the fourth public hearing for the committee's inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age-related dimensions, the particular situation of Aboriginal and Torres Strait Islander peoples with disability, and culturally and linguistically diverse people with disability. The committee will be holding a further hearing in Adelaide tomorrow. To date, we have received 147 submissions to the inquiry. I thank everybody who has made a submission. This is a public hearing, and a Hansard transcript of the proceedings is being made. The audio of this public hearing is being broadcast via the internet.

Before the committee starts taking evidence, I remind all present here today that in the giving of evidence to the committee today witnesses are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. We prefer all evidence to be given in public, but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in private because we need to clear the room and take other actions. If you are a witness today and you have not already told us—we are aware that some witnesses have already indicated they would like to give evidence in camera, which means in private—could you let us know please? Finally, I ask everyone to check their mobile phones and make sure they are off or on silent, or the usual community affairs penalty of chocolate will be applied.

I now welcome representatives from the New South Wales Council for Intellectual Disability and from the Intellectual Disability Rights Service. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you both. I now invite both of you to make opening statements and then we will move to questions.

Ms Healy: I would like to acknowledge the traditional owners of the land and pay my respects to their elders past and present. Thank you for instigating this inquiry and for including the council in today's hearing. I would like to also acknowledge the people with disability who have told their stories, which is a very incredibly tough and important thing to do.

New South Wales CID is led by people with intellectual disability, and we undertake a range of roles: systemic advocacy, a statewide information service, capacity building and projects. Our submission has been informed by this work. Unfortunately, there is not a week that has gone by since I have been in my role—more than eight years—where I have not heard of abuse happening, so it is very prevalent. It is way too common an occurrence in people's lives. We know this from reported cases, let alone unreported cases. We must recognise the many forms of abuse that occur, including sexual abuse and physical violence as well as emotional and psychological abuse. We also know things like withdrawing or misusing support, limiting people's choices, misusing caregiver privilege have massive impacts that are long-lasting for people with intellectual disability. We know that people particularly susceptible to abuse have limited opportunity to develop their life, their skills for choice and control; have high level of dependence on support providers; have limited lived experience with choice and control; have communication difficulties and so on.

Our submission, which you will have seen, has outlined some key measures with regard to prevention: building natural safeguards, starting from very early childhood, and having family support as well; capacity building for individuals and families; advocacy at the individual level, and the capacity for that to be much more proactive—not just at the pointy end, but helping people to be able to make decisions to speak up and to have authority in their life; advocacy at the systemic level as well; reducing and eliminating restrictive practices, including comprehensive behaviour support; and ensuring that staff are safe and skilled.

It was really quite difficult to know where to start with getting ready for today. We have read lots of submissions; we have heard lots of evidence and stories as well. I think there are much broader issues at hand, which we need to address. They are around people with intellectual disability not being really valued by our society. That is why this work is so important; that is why this has been going on for so long. People are excluded socially, vocationally and economically. People are constantly telling us that they do not feel safe, they feel powerless, they do not feel valued, they are not connected to their community et cetera. I think one of the key challenges is addressing this and looking at the much bigger problem. I think that the NDIS will go some of the

way in addressing this through better support and giving people more choices, but we cannot expect that it is the whole answer. We must also look at the national disability strategy. I think our challenge is to make all of the systems work together to prevent abuse.

I was looking at some work of Sally Robinson, who has done research on abuse. I think this best sums up the context of abuse. It is that:

Underlying all of these contexts is *discriminatory access to mainstream services and public resources*—health, housing, education, criminal justice, social security, and so on, all of which may be exacerbated by poverty, racism and social exclusion.

The time is now to do this systemic work. Thank you.

CHAIR: Thank you.

Ms Morris: Thank you for the opportunity to give evidence today. I also acknowledge the traditional owners of the land and pay my respects to their elders past and present. The Intellectual Disability Rights Service is a community legal centre and disability advocacy service working with and for people with intellectual disability throughout New South Wales. We provide legal advice and casework; advocacy and support persons for people in contact with the criminal justice system, as defendants and as victims; advocacy and legal assistance for expectant parents and parents with intellectual disability who are at risk of having their children removed; rights training and self-advocacy development; and policy and law reform work to protect and advance the interests of people with intellectual disability.

I put on record that our written submission to the inquiry was very largely the work of our executive officer, Janene Cootes. Janene is presently overseas for six weeks and so, unfortunately, is unavailable to give evidence here today. Our primary written submission focused on violence, abuse and neglect of people with intellectual disability in residential settings. The submission was based on the results of a phone-in that we held on 20 and 21 March this year. We called the phone-in 'No abuse—no excuse'. The callers comprised people with disability, their family members and friends, disability service staff, independent disability advocates and others. We wanted to facilitate these people expressing their experiences and to record what they feel needs to change to make things better. Key lessons that we learnt from the phone-in regarding people with disability in residential settings were: (1) the individual support needs of each resident should be carefully assessed; (2) in group home situations, compatibility between residents should be the major factor in deciding which people live together; (3) there must be a greater range of accommodation options so that people who are not compatible are not required to live together; (4) residents must be trained about what behaviour from paid carers and other residents is okay and what is not, and about what action to take if something is not okay; (5) in group homes there must be more full-time permanent service staff who have been better screened and better trained; (6) service staff must regularly ask if service users are okay and listen to them;

(7) after any abuse has occurred, there must be immediate action by services to ensure residents' safety; (8) a person with disability who is the victim of abuse and neglect must have an independent advocate or guardian to assist them, especially if there is no family member assisting that victim; and (9) victims must be given referrals to other supports, if needed, to assist them in coping with any trauma resulting from the abuse.

Key lessons that we learnt regarding family members were, firstly, that family members must be listened to by disability service staff. Secondly, family members should be given immediate information about any allegation of abuse by staff or aggressive acts by service users. Thirdly, family members should also be given referrals to supports that they may need to assist them to cope with any trauma resulting from incidents.

Key lessons that we learnt regarding disability workers were (1) workers must have adequate expert support when they are working with residents who have challenging behaviours; (2) workers need better training to recognise and respond to indicators that a person with disability may be experiencing abuse; (3) there must be protection for whistleblowers; and (4) management must support front-line staff in finding solutions to abusive situations.

The phone-in also confirmed the need for other important safeguards, being, firstly, improved procedures to ensure that reports of abuse and neglect are recorded and followed up immediately by management; secondly, clear repercussions for any sort of staff abuse of residents, including the taking of action by police; thirdly, a community visitor program that is focused on the well-being of individual service users and about which family members are informed; and, finally, there must be an independent complaints and safeguarding organisation with the power to act quickly to ensure that adequate protection is provided when abuse is occurring in services. Thank you.

Senator MOORE: Good morning. Just because it is in my mind, Ms Morris, I will start with you, because you have just read through it. Is there anything in that list that you just read out that is new?

Ms Morris: I do not believe so. I think that a lot of those things are things that we have been hearing about for quite a long time, and that is the tragedy. On the positive side, while there is so much focus on the disability sector and there appears to be goodwill for achieving more in terms of better outcomes for people with disability, now is a time when some of these recommendations may really be acted upon. That is certainly our hope.

Senator MOORE: The list read out seemed to me to tick every box that we have been talking about in this inquiry. If that list of procedures that you read out were in place, whilst you would never, ever be able to say that there had been no abuse, you at least have a systemic response and clear process. From your understanding—and, also Ms Healy, from yours—the actions that you have just read out as a result of your phone-in, are they already in the system? The various things we are going to hear about today with the Ombudsman and the different pieces of legislator and the inquiries—from the list that you have read out, are all of those things from immediacy and care concern to penalty already available in the system?

Ms Morris: Firstly, in relation to immediacy, if we are looking at immediacy of informing relatives of any abuse that is experienced in a residential setting, the accounts that we are hearing from relatives are that they have not been informed of abuse—sometimes sexual abuse—for 12 months or so after the event was alleged to have occurred. Sometimes it seems to be accidental that family members when they are visiting a residence become aware of problems. It may be that even someone in the community, like a taxi driver, may notice bruises on someone that he is transporting. Information about problems that are occurring in care does not seem to be getting out immediately to where it needs to be, by any means.

Senator MOORE: Should it? We have bookcases of guidelines and policies and reports. In the current stuff—a technical term!—is there a recommendation that any issue should be reported to family or carers as soon as possible?

Ms Morris: I am not aware of an overarching recommendation to that effect, and I am certainly not aware of every policy in every residential facility, so I cannot account for those. We would hope that there would be something to that effect, but certainly, if there is, it is not being implemented.

Senator MOORE: In staff training, the listening approach and the clear penalty should something be found incorrect—you would think that they would also be in guidelines?

Ms Morris: In relation to penalty, if we are looking at the sort of independent oversight organisation that I was mentioning we think should exist, at present in New South Wales we have the New South Wales Ombudsman, who has some oversighting role.

Senator MOORE: And a detailed submission has been provided.

Ms Morris: Indeed, and I am aware that senators will be hearing from the Ombudsman's office later. But there is no provision to require enforcement of measures that the Ombudsman might recommend to a service provider, and there is no penalty mechanism that applies in terms of, for example, formal cautioning or fines or any such measures.

Senator MOORE: Ms Healy, from your point of view?

Ms Healy: It is interesting. Lots of those things are in place. I guess some of it is around the adequacy of resourcing: limited access to behavioural supports and very limited access to capacity building for individuals and their families. It is often done post something, but lots of people do not have access as part of their life or their life plan to be doing those things. I think that is a real big problem. I think again with advocacy and some of the complaints procedures that they are not as proactive as they should be, so you are always looking at the pointy-end things and being reactive to them, as opposed to people being able to build relationships, with people having many more people in and out of their lives et cetera, so that you know a person well. That is particularly so for the people who have maybe a communication disorder or a complex need. You do need to know the person quite well to know that they are upset or they are not acting like themselves lately. So being able to have that in place would work much better.

Senator MOORE: I am interested that you said in your opening statement that you would hope that the impact of the NDIS will improve. I am really interested to know why you think that would happen.

Ms Healy: If people have more choice and control about what they are doing in their lives, I think that would be quite good. In regard to where they are living and who they are living with, as Margot said, lots of people do not get to choose who they live with. In lots of our work we speak with people with intellectual disability constantly, and one of the big things that comes back to us is: 'I'd like to have a place of my own. I'd like to

choose who I live with.' It is not living in mansions, not big aspirations; just 'a small flat and a place of my own' or, 'I want to live with who I live with.' Lots of people do not have that choice. If that were to be enabled, that would be very good.

It is also having choice about what you do in your day-to-day activities and having that personalised around going out into the community and belonging in a group, not going to day programs, not being segregated from the rest of the community, and starting to learn more skills and have more capacity et cetera. Lots of people have expressed interest as adults in learning to read or write, learning to use computers—all day-to-day skills which they have not been able to access. I am hoping that that that would give more power and authority to them.

CHAIR: You made a point both in your submission and in your verbal comments about natural safeguards.

Ms Healy: Yes.

CHAIR: How would you build that into the NDIS?

Ms Healy: I would think that perhaps in tier 2 or as part of tier 3 people have access to capacity building. I guess you are just looking at individuals, but you also need to look at families so that there are broad community schemes that people can go to—so that parenting classes have access to social workers, case management and all of those things so that they are not left isolated until a major life transition point comes up.

CHAIR: In the trials to date, have you seen examples where there is the capacity that you are talking about? I realise we are not talking about tier 2 or LAC yet, but, in terms of the packages that people have received, are you aware of any that have had this type of support?

Ms Healy: No, but I could check, and I will.

CHAIR: That would be both for the individual and for families. The issue around families is something that we need to explore a bit further with NDIS anyway—and the support that families are getting or not. But, if you could check that for both, that would be very much appreciated.

Ms Healy: We know that in the Hunter a disability support organisation, CDAH, have been set up, and they have done planning work with families and pre-engagement and stuff, but again that is not from early childhood; that is with adults et cetera. It really, really needs to start from when you know your child has a diagnosis and, 'What do we do from there?' so that parents can become good and natural safeguards, look out for signs of abuse and prevent them, and make sure that they are promoting that the child has a good quality of life. It is what all that stuff entails as well. There would be limited work done across that, but I will find out.

CHAIR: That would be appreciated.

Senator MOORE: This is really a question I have generally about your experience with the NDIS and a number of things that have run through all the submissions that I have read. It is about the issue around advocacy. I would be interested to have on record from your perspective: how do you think the term 'advocacy' is being used, and what is your view of what is happening in the NDIS with that process? Consistently, the submissions are talking about the need, particularly if someone is vulnerable and may or may not be subject to abuse, to have that advocacy around them so that their voice will be heard. I am just desperate to find out how advocacy is working in the NDIS, to be frank. I can never find that out.

CHAIR: Can we ask both of you to address that one.

Ms Healy: I am happy to start. We know that advocacy is very thinly spread on the ground. We have heard from Victoria and work that VALID has done and from the agency down there that, for people who have had advocates involved in their planning process, it has resulted in better plans and packages, probably because the advocates have spent more time with the people, know them well and have been able to work through what they might want, help them with their decision making et cetera. A lot of people would not have access to advocacy or would only see it as a reactive type of thing that you could access.

In the Hunter, IDRS has been doing work in outreach, engaging people who would not otherwise access the NDIS, who might have been involved in the criminal justice system, so that has been quite positive.

Ms Morris: Yes, I can perhaps talk a little bit more about that. One of our coordinators of our Criminal Justice Support Network who is based in the Hunter region, Kenn Clift, has been assisting some of the Criminal Justice Support Network clients with their transition into the NDIS. He has assisted them from the point at which they are having their eligibility for the scheme determined. He has been assisting them with preparation for meetings with planners, so going through all the preplanning materials that are sent to people as they are about to enter the NDIS. He has attended planning meetings with the client. And, before that, he has assisted clients to think about how they might want their life to be under the NDIS. His existing knowledge and familiarity with the client and their circumstances have really been of benefit in that exercise because it can be very hard for some clients with

intellectual disability, who may think in very concrete terms, to develop abstract ideas initially about what they would really like in their life or to think in practical terms about what sorts of supports they really need. He assists in helping clients to think about that and then to be able to express their needs in a planning meeting and then in working through with the client after a package is settled—working out what service providers might be appropriate for the client, assisting a client perhaps with interviewing service providers and finally, basically, getting the package and the way it is going to work sorted out. Mr Clift's estimate is that that process takes about 21 hours of advocate time, which would be spread perhaps over weeks or months, depending on the particular client situation and what has to be worked through.

There is then the whole separate issue of monitoring how a package is working for a client, how their service supports are working for them, after a system is set up. So a client can really benefit from having ongoing advocacy assistance, even once they have got their NDIS service supports in place. In fact, there is on our website a video of one of the clients that Mr Clift assisted, Alan, who speaks about his experience with having transitioned to the NDIS.

Senator MOORE: That work is quite specialised to people who have had links with the criminal justice system—it is an identified special needs group?

Ms Morris: Indeed. That is the small group of people that our coordinator has managed to assist to this point.

Ms Healy: There has been no specific funding for that within the NDIS—

Ms Morris: That is right.

Ms Healy: and IDRS is a unique service in New South Wales. Our problems, unfortunately, are not unique to New South Wales.

Senator MOORE: We are trying and have been trying for a long time, and the joint committee is as well, to find out exactly how the advocacy model operates, how people get it, how it is funded and whether it is systemic or personal—all that stuff. I know that is a wider issue than this inquiry, but it consistently comes up in the submissions: knowing people's rights, knowing where to turn to and then that resilience you have to show not to give up.

Ms Healy: That is right. The availability of self-advocacy for people is very limited. Victoria has some good networks and Tasmania has as well for people with intellectual disability. There are only one or two groups in New South Wales, so it is funded in a very ad hoc way across Australia. Again, that affects people's ability to speak up. We did some consultations for DSS around safeguards, and people said that having the opportunity to come together and talk about what is available and what is not and about practising your skills, being able to speak up, learning from other people et cetera would be really, really useful—having resources to do that stuff. But it is not available in an ongoing fashion. People said they would like to be able to build a relationship with a trusted organisation in one regional area. People told us: 'I like that I can drop in and out of that advocacy service. I haven't needed to use them for a few years, but when something comes up I know I can go in there, and I know I can do that.' Definitely some sort of block funding would be useful so that people can provide a basis for systemic work and for individual work as needed, because you are not always going to be able to pick when you might need individual advocacy.

CHAIR: That takes us to the issue that has come up, the issue of block funding for ongoing services of the nature you are talking about, which is a tricky issue for the NDIS.

Ms Healy: That is right. The other thing, too, is that not everyone is going to be in the NDIS. The skill of an advocate is to be able to navigate the numerous systems. Someone will come to us and they will have an issue with housing, social security, maybe the justice system, maybe the Public Guardian—a range of things—so you are negotiating across all of those things, and that is not straightforward work. The other thing then, too, is making sure that that gets linked to systemic work, and who has the oversight of trying to get all of them to improve their practices and collaborate? Some of the investment in the work of the National Disability Strategy should be around more collaborative practices between organisations so things are not siloed.

CHAIR: Senator Lindgren, do you have any questions?

Senator LINDGREN: I do, but I am not sure if I want to ask them at the moment. I will ask the first person—I did not get her name; I am very sorry. At the beginning, she outlined some key points around advocacy and whatever else. They talk about advocacy and training. My biggest concern so far is that, in every hearing that I have been in to date, training has been a real issue. For me, it appears that there needs to be some sort of a national strategy around a consistent method of training. Is that an issue for anyone who works in disability services?

Ms Healy: Can you just clarify? Training in relation to?

Senator LINDGREN: Advocacy, looking after people with a disability and all those sorts of things—just working with people with a disability in general. I am really concerned that, at this particular stage, everyone has said training is a real issue and qualifications are an issue. For me, it appears that there needs to be some sort of national standard right across the board, where people who work with people with a disability are similarly trained. Would you agree with that statement?

Ms Healy: Our experience would be that, certainly for people who would be involved with people who would need specific skills around working with people who would have perhaps communication disorders, specific health needs, an awareness of mental health and challenging behaviour, absolutely, you would need to have training there that would be adequate and, again, with input from appropriate clinicians. That is essential and, again, it depends on the organisation about how well that might be in place in the organisation. Certainly there is room for improvement there.

With regard to more general skills for support workers, there are certificate III and certificate IV level courses, and they seem to be very technical in basis. What we sometimes find coming out of that is that people do not necessarily have a good values base around the work that they are doing and it sort of becomes more about doing stuff with people as opposed to facilitating a better life, so it is more about perhaps basic caregiving or that a person is a recipient of care as opposed to a role of much more active support and how you would facilitate people to have relationships in communities. So you would have someone perhaps working with a person for two or three years and taking them for regular outings but the person actually has not made any friends or they have not made any connections in community.

I can send you some information that Christine Bigby from La Trobe University has researched, around active support and how people can be more skilled to facilitate some relationships and connectedness and that sort of stuff. So, yes, there could be improvements in training.

Senator LINDGREN: Thank you very much. That would be fabulous. One thing you just said that kind of concerns me a bit is that training can depend on the organisation. I am hoping I got that right. I would suspect that, if you were working with people with disability, the training would be very similar across organisations and there would be some kind of standard or code of conduct or code of training or something. Do you believe that that exists?

Ms Healy: Everyone has to comply with their relevant state practices and legislation and the things in place, but it does vary. My own experience as a support worker has varied completely, including not being able to work with clients until I have done training in giving medication, behaviour management et cetera, and being buddied up until that was done, and that was quite comprehensive—and some of the stuff around medication is still drilled into my head, about the right person, the right dose and how critical an incident is if someone has missed medication et cetera. I have also been put into situations where I have not been briefed on working with the clients and I have had a five-minute changeover and been expected to work with people. So there are massive variances between—

Senator LINDGREN: Thank you very much. That is all I needed to know.

CHAIR: I have one last question—and I realise that we have gone over time already. The need for an independent complaints and registration process comes up repeatedly in submissions and in the oral evidence we are hearing. I know that you talked about an independent process. Would you support an independent national complaints and registration process? I am asking both organisations.

Ms Morris: Yes we would. It may well be that there would be state offices of the overall organisation, but, yes, definitely we would support a national approach on that.

Ms Healy: We would as well. We did significant work on safeguards for the NDIS review on that. We said yes to that, and that they need to have certain authority to be able to act. Independence is vital and that it is well resourced and has a good culture around disability. We know that if agencies get merged with other agencies sometimes the culture changes and they become much more legalistic and do not understand perhaps the lived experience of people as well. In New South Wales the guardianship tribunal has a community member who must have experience with disability. They have three panels, so is not just one person making decisions based on the law. They have investigative powers et cetera, which makes it much more about the person.

CHAIR: Thank you for your evidence today. You did take on board some homework.

Ms Healy: Yes. I have down to send some research regarding active support and also around some of the capacity building stuff that can happen for families and individuals in trial sites. I will send that to you.

CHAIR: Is the end of next week okay?

Ms Healy: Yes.

CHAIR: That would be great. Thank you very much for your evidence today and also for your written submissions. We really appreciate it.

EGARTER, Ms Heidi, Member, Health and Community Services Union

MUNRO, Ms Tammy, Lead Organiser, Tasmanian Branch, Health and Community Services Union

STEELE, Mr Paul, Delegate, Health and Community Services Union

WILLIAMS, Mr Lloyd, National President, Health Services Union; and State Secretary, Victorian Branch, Health and Community Services Union

[09:07]

CHAIR: Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to everybody. Before we proceed, do you have any comments to make about the capacity in which you appear today?

Ms Egarter: I am also a disability support worker.

Mr Steele: I am also a disability support worker.

CHAIR: We have your submission. Thank you very much. I would like to invite you to make an opening statement and then we will ask you some questions.

Mr Williams: I would like to start by acknowledging the traditional owners of the land on which we meet both past and present. Thank you for the opportunity to present today. The Health Services Union represents over 70,000 members working in both health and community services across Australia. In Victoria and Tasmania, disability services is one of our larger areas of coverage representing nearly 15,000 members in those states.

Our members do fundamentally important work. We believe that their work is very much undervalued by society and as a result workers in disability services are poorly paid for the skills, knowledge and emotional labour they bring to their work in a highly casualised sector. I have over 20 years experience in the sector and I can say confidently that the vast majority of disability support workers are people who are highly committed to the work that they do in supporting people with a disability. They want to make a difference to people's lives, and it is our view that the vast majority work hard to do that. They are committed to assisting people to reach their life goals. But it also has to be acknowledged that the recent accounts of violence, abuse and neglect reported to us by our members and also reported in the media and to this Senate inquiry through written submissions and hearings reveals a system that is failing to deliver quality outcomes for some people with disabilities. We are deeply concerned that, if these issues are not addressed, the problem will only get worse under a marketised National Disability Insurance Scheme.

There are systemic workforce issues inherent in the disability industry as outlined in our written submission, and it is impossible to separate the issues of violence, abuse and neglect against people with a disability from these workforce issues. There are very significant, longstanding attraction and retention issues, particularly in community services organisations. The sector is seeing increased casualisation of staff. There are no mandatory minimum qualifications and, even for those who do have a minimum qualification, there are no formalised systems for ongoing, continuing professional development in issues like the reporting of abuse, understanding the signs of abuse, human rights and working with people to achieve their lifelong goals.

There is no requirement for disability workers to be registered, unlike childcare workers and even unlike crowd-control people who work in hotels and casinos. It beggars belief that to be a crowd controller you must have a minimum qualification and you are registered, but to be a disability support worker you do not need any of these things: just a simple police check will suffice. There are no overarching requirements for safety checks of new staff to be applied across the country.

All of these issues and a fragmented, duplicative regulatory regime continue to create a working environment that is unsupportive of the disability workforce and leaves people who are vulnerable to risks of abuse. It is an environment that does not assist workers to improve their level of skill, knowledge and professionalism. Society rightly has high expectations for disability staff to deliver quality outcomes to people with whom they work, but neither that expectation nor the requirement on their employer is there to ensure the workforce is empowered properly to deliver those outcomes. We say these issues need to be addressed.

The issues around workforce supply with respect to the NDIS are quite significant and challenging. The workforce is predicted to more than double as the NDIS rolls out. Unfortunately, the NDIA has not been active enough in dealing with workforce issues that arise in terms of the rollout. They have recently released a market sector workforce strategy, and we say that strategy is wholly inadequate because largely it leaves these issues up to the market to determine. We say that there is a duty on us all to ensure that the market is not allowed to simply work these issues through without a proper regulatory regime wrapped around for the protection of people with a

disability. We believe that there are significant unresolved workforce issues associated with the full rollout of the NDIS, and these include a flawed funding architecture that we think will be inadequate in terms of the unit price to ensure that the proper safeguards and training provisions of employers are met through the NDIS.

It is the union's view that both the systemic issues and the quality issues must be built into the NDIS in order to ensure the protections are in place before the rollout is completed. It is our considered view that these need to be considered in the bilateral agreements that the federal government and state governments are about to embark on and that if they are not properly addressed we run the risk of continued rollout without adequate protections being put in place.

To be clear, the HSU and our members condemn all instances of violence, abuse and neglect against people with disabilities. People who prey on the vulnerable have no place working in the sector and working with people with disability. We firmly believe that it is a systems problem and we cannot blame all workers as the root cause of the problems of abuse that we have seen coming through. A chronically underfunded service system with poor safeguards will always—and this is the experience in other countries—turn good people into bad carers, because they are unable—through their training, through their development and through their support—to produce the outcomes that people require. We believe that a well-trained, well-supported workforce operating in a quality framework is a vital safeguard to the issues around abuse and one which responds to abuse when it occurs. We believe that there needs to be a proper regulatory system around this issue and we have put forward a range of suggestions in our submission regarding this. I would like to hand over to my colleague, Tammy Munro, so she can take you through them.

Ms Munro: In our submission the first recommendation is that a national independent complaints body be established. This body must have real coercive powers to investigate and respond to allegations of violence, abuse and neglect against people with disabilities. It should also improve sector transparency and data collection. This body must also be obligated to publicly report on the number and nature of complaints it receives. Additionally, continued funding must be made available for independent advocacy services to assist people with disabilities to access the complaints system. Our second recommendation is that an independent national statutory authority be established to conduct consistent and thorough pre-employment screening of workers employed in the disability sector. This must have at minimum the features outlined in our written submission. Our third recommendation is that the government must commit to fund and work collaboratively with sector stakeholders on a national workforce development strategy that addresses the critical challenges of workforce attraction, retention, training, skills and the casualisation in the sector. Our fourth recommendation is that the government must commit to professionalising the disability sector by implementing a national risk based registration and accreditation system which requires mandated minimum qualifications and ongoing professional development for certain job roles. Our final recommendation is that the NDIA review the adequacy of the NDIS unit pricing to ensure that it will provide our most vulnerable citizens a guaranteed and ongoing supply of high-quality, trained and skilled disability support workers.

Ms Egarter: There are several situations that I have encountered in my employment as a disability support worker in the non-government sector and while working for an agency. I am concerned about the lack of training and the low standards of education required of staff in the disability sector, especially in residential services and the dangers that this represents to those vulnerable members of society.

I was asked by an employment agency to work a sleepover shift for a community services organisation housing five men with intellectual disability, mental health issues and severe behaviours of concern. I clearly specified that I was not confident working with people with behaviours of concern and was told, 'You will be okay. Just read their files and don't do anything outside of their routine.' When I arrived at the house for my sleepover shift, several of the residents were staring at me through the window. I spoke to staff and endeavoured to familiarise myself with the running of the home. It was not long before an altercation broke out between two of the residents. Walls were punched and there was a lot of swearing and shouting. Staff were laughing and heckling the residents on, encouraging the altercation. At one point, a staff member stated to one resident, 'Don't worry, you'll be dead soon anyway.' I was shocked by the behaviour of the staff towards these residents. As staff were leaving, they told me not to leave my sleepover room until the morning staff member arrived because, if I did so, I would be in danger of being raped or assaulted. I felt very vulnerable and afraid, and I was very concerned for the welfare of the residents that I would not be able to assist if a problem arose during the night. I read the clients' files with the sleepover room door locked, feeling very uneasy. All but one resident had severe behaviours of concern which had resulted in the past in injuries against staff and fellow residents.

Reflecting on this experience, I feel alarmed by the type of staff this service attracted. I did not feel comfortable reporting this service as I felt sure no action would be taken and I had not felt supported at any point

during my time as a disability support worker. Morale in this sector is notoriously low and fellow staff often report feeling disrespected, undervalued and, as we have been told by a service manager, all replaceable. There is little or no motivation to further one's studies as the highest pay rate can be reached just by working for two to three years. I hold an applied science degree in disability and my pay rate is \$23 an hour.

On another occasion, I was sent to work with a man who had an intellectual disability and severe behaviours of concern, despite having made it clear that I was uncomfortable working in such a situation. On this occasion, when I arrived at the house, the resident with whom I was to spend four hours of one-on-one access in the community came running out of his room covered in faeces. He charged at me and put his arms around my neck and shoulders in a forceful manner. I was shocked and did not know how to react. The other worker responded by encouraging the resident to let go and she went to shower him. I was asked to read his files. I was terribly alarmed at finding out the extent of this resident's behaviours, which ranged from severely injuring staff and attempting to strangle staff while they were driving the house bus to inappropriate actions towards children and mannequins at shopping centres. I declined to continue with this shift and told my agency I felt way out of my depth.

I believe there is often a lack of fit between staff chosen to work with people of varying degrees and severity of disability. Staff often have little choice about the situations they find themselves in, when it comes to casual employment especially. This poses a grave danger to the vulnerable people whom we work with and places staff at risk also. At times, a service may have residents with high care needs and staff with minimal or no training beyond basic induction. Induction is often three to five days of very intense information, and staff report absorbing little to no information from that session. I am aware of a young lady with a severe intellectual disability who was attended to by two casual workers at a high staff turnover facility. Instead of hoisting her, they carried her, one holding her legs and the other at the shoulders. Due to her rigidity and her condition, this resulted in both femurs being completely broken. This horrific scenario, I believe, could have been avoided through better education and a better staffing match. At times, medication like OxyContin, Mogadon and morphine are dispensed by staff who do not know what these medications are. They do not know the side effects, the reasons for their use or the potential dangers inherent in administering these. A very basic medication administration course of three hours is offered to staff dispensing these medications.

Another matter which concerns me greatly is the tardiness and reluctance to act on allegations of abuse by non-government agencies in particular. There appears to be a culture of suppressing information that could lead to negative publicity. I believe this is endemic and perpetuated throughout the management structure. As an example of this, I am aware of a workplace where staff became increasingly alarmed by the actions of a new service manager. The provisions funds were being monopolised and staff were told they would not be required to shop or cook for the residents. In a short space of time, the diet of the residents declined dramatically and there was a lack of fresh fruit and vegetables. Residents, their families and staff began to complain. There was verbal abuse and intimidation by this manager towards all. The door was slammed in close proximity to residents and families on many occasions. The majority of staff placed written complaints detailing many incidents of concern, and these were sent to the organisation in question. It took significant time for a response to occur, and in the meantime the manager still had a key to the facility and was able to remove paperwork, receipts and other evidence.

The manager was still working at another facility. I was very alarmed by this and contacted the go-to person under the whistleblowers scheme of the organisation as advised by my union. I expected a caring response but was met by a rude and disrespectful manner and I believe my identity was disclosed to persons nearby during the conversation. The response went like this: 'I'm in the middle of a meeting. Your name is?'—she repeats my name—'And the service you are from?'—she repeats the service name—'Yes, I know about this situation and I believe it's being handled by management. Can I call you back?' Upon the return call I stated that I was not happy with the way the matter was being handled. She asked me why. I said that the manager in question still had a key and took evidence from the house and that his staff were concerned as they have not been communicated with about what was occurring. Staff were very anxious and stressed about whether this manager was coming back. I stated that we had heard the manager was still at another service. I was then told in no uncertain terms that it was not up to me to have an opinion on the matter, because it had been assessed and the manager was deemed not to be a risk to the service or the residents.

Not long after, a person from upper management came to the service to reassure the staff that the investigation was underway but that no further information could be provided. This was followed by these words: 'This is a gentle reminder, it's not a threat, but if anyone in this room talks about this matter to anyone else there will be repercussions.' Shortly thereafter the manager higher up called the service requesting the minutes of this meeting. The manager under investigation resigned months after the initial concerns were raised. Thank you.

CHAIR: Thank you.

Mr Steele: Thank you, Senator. My statement is along the same lines as that of my colleague. In Tasmania I have worked in disability for 10 years now and I have received a certain amount of training but I have to work with lots of staff who are not trained at all. They get a tiny bit of training. We were even sent into the houses where there was a staff member on who had probably just done a buddy shift and then they were expected to train the other buddy that had just come on and then look after clients, and I am talking about clients with high needs and challenging behaviours. They can do lots of damage to people who are not trained well. I have had to work with ladies, some of whom are 74 years of age, some of whom are 64 years of age, and they are not really equipped to deal with somebody who might be six foot two and can cause an awful lot of damage. But they are still expected to do transport runs. They are expected to look after these people, and when something goes wrong it seems like we are always the ones at fault.

It is not—how can I put this?—the protocols that are in place; it is that they are not being adhered to. And the system seems like a big failure. I came into it initially with no training. I have since got going towards my certificate IV, but not everybody has done that. I applied to do that so I could get more learning ability for myself. But they just throw other people in there, and they just have not got the experience. A lot of them have not got the empathy. I think a lot of them are just there for the money, which is not a lot of money. I am on \$24 an hour, and to be chased and spat at and kicked or whatever is just not right. I feel it is not right. A lot of people feel the same way.

There is a lot of neglect and abuse towards clients, and the system is underfunded. The neglect and abuse issues are just everyday occurrences where these people think they are doing the right thing by the client when in actual fact they are not. They are not giving the clients choices. They are not respecting the clients' rights and they are totally inadequate, and it is quite distressing to me. I persist with it. You bring it up with management and you get: 'Well, these people should be following the protocol.' That is all very well; everybody can follow a bit of paper. When you are actually in the house experiencing what is going on, it is an entirely different situation. You have not got time to remember a protocol if you are being chased down a hallway with a knife or something like that. They do not have the proper protocols in place. They do not have the proper protocols in place. That is about the crux of the matter. It is a very unutilised field. There is nothing there. I am afraid more people are going to start abusing that because it is so easy to get employment. When you do bring up something with management, which I have in the past, and then ask what has happened about that, you do not hear anything back; you never find out. Quite often the person who you brought it up about is still there, still working. That is about all I have got to say.

Senator MOORE: I am interested in the quite detailed recommendations that the union has put forward. They tend to follow a lot of the other evidence, and I am sure you have read many of the submissions. In terms of making these things happen, to whom should these recommendations be referred in the current system? As you know, this area is mainly regulated at the state level and we are all working through the process with the NDIA but that will take several years. In terms of the information that you have put forward, I am interested to know where you think those particular recommendations about change in structure and independent bodies should be addressed and also have you talked with people about them? I am sure this is not the first time you have put these ideas forward. That would just round off the evidence for us.

Mr Williams: The key part of our recommendations is for a risk based accreditation scheme.

Senator MOORE: Which is a national one?

Mr Williams: Moving to a national one, yes. But we believe that in the first instance states, through their own regulatory systems, could run these schemes and then move to a national scheme. We understand that you cannot move to a national scheme immediately so the states could lead in changing those current regulatory systems and, insofar as they can, have them consistent between each state and then move to a national regulatory system which is fundamentally regulated in law.

CHAIR: Having had quite a bit of experience in this area of the states trying to talk to the Commonwealth and getting a unified system, are we not better off starting straight up with a unified system given that we are rolling out the NDIS? I hear all the issues you have raised about that but, given that we are rolling that out, are we not better having both an independent complaints system and this accredited accreditation system across-the-board straight up?

Mr Williams: That would be better, yes.

CHAIR: I think we will delay quite substantially if we go down encouraging the states to set up theirs first. I think we will delay a national one quite substantially.

Mr Williams: Sure but we would want to ensure that a state system is properly regulated and is robust to ensure that there are proper screening systems and inspection systems in place at the state level because this is where the service delivery will be rolled out. We think there is a case for greater regulation around service providers as well and a proper investigatory regime, where if there are reports of abuse there can be proper inspections around that service provider's accreditation in the system, similar to the aged care sector where there are accreditation standards, there can be inspections of premises and the like.

From the workforce point of view, we argue that there needs to be a proper risk based accreditation scheme, which does not say that all people have to be accredited at the same level. But the higher the risk of the individual and the higher the vulnerability of an individual, the higher the accreditation standard should be for the person who is going to be working with that individual, including base level qualification and ongoing professional development and understanding of human rights, understanding and being able to identify the signs of abuse and how to deal with those and how to empower someone's life.

Senator MOORE: What is the response when you raise that? You have been pushing for this for a while.

Mr Williams: Across the sector we tend to get furious agreement. It is just we need the leadership at the state and federal level to make it happen. When I talk to advocates, when I talk to families, when I talk to staff, there is agreement right across the board that there is a high level of support for these sorts of standards.

Senator MOORE: Any idea what it would cost?

Mr Williams: No, I do not know. I cannot answer that question.

Senator MOORE: When you have raised it no governments have said—I do not know what they have said—we are waiting to hear what they are going to say as well.

Mr Williams: The work has not been done, but, I think, that we cannot afford not to do it. I think, when we are dealing with people's lives and these sorts of things, we cannot afford not to do it.

Senator MOORE: You talked about childcare workers and so on. Is there a comparable system in any other industry?

Mr Williams: There are registration systems across the board. Nurses are registered, for example. They are required to not only have a base start registration. There are many health professionals registered across the board. Base qualification, ongoing requirement for professional development—

Senator MOORE: That is with the national registration—

Mr Williams: Correct.

Senator MOORE: that group of nine professions that have those.

Mr Williams: Correct. They started out at the state level and moved to a national level. If something happens—and what we say about accreditation is that it needs to be a preventative scheme not just a reactive scheme. You cannot have just an exclusion scheme. An exclusion scheme waits until something has occurred. You need a scheme that promotes prevention on the way through, and an accreditation scheme would do that in terms of base level qualification and requirements for ongoing professional development. Then, if something occurs, then you can utilise exclusion by withdrawing someone's accreditation.

Senator MOORE: That was in your submission referring to the Victorian scheme which had some problems.

Mr Williams: Yes.

Senator MOORE: Thank you.

CHAIR: Senator Lindgren, do you have some questions?

Senator LINDGREN: Thank you, I do. I wholeheartedly agree with Ms Munro in terms of the five points that she outlined that she would like to see happen. I think it is very important that those things do happen. I am a former teacher. We have the Queensland College of Teachers, and I can see something like this happening, where once you get a qualification you are then registered with an equivalent of the Queensland College of Teachers. Someone just said that nurses have something very similar to that. I think it is important that there is ongoing professional development. I think there are a whole lot of factors that were nicely set out in those five points. I would probably add one more. I think it was Mr Williams who said there needs to be state level systems. That is where the individual bodies like nurse registration and teacher registration occurs. So when there are allegations of abuse there is an actual body or authority that this abuse can be reported to—and also investigated. I think it is very important. Each state has an equivalent to QCAT, the Queensland Civil and Administrative Tribunal, where, once these allegations have been proven, in order for someone to get their registration back they have to go to

another authority which then looks at it in the tribunal type of way. I think that adds some safeguards and some quality to any framework that may come out. I thoroughly agree with the evidence that was put out today.

CHAIR: Do you have any other questions?

Senator LINDGREN: No. I think they outlined all the questions that I would like to be answered.

CHAIR: Thank you. I want to go back to the pre-employment checks. Do you see that as being part of the process of accreditation as well? The pre-employment checks could be carried out by the same body that does the registration process?

Mr Williams: It could, to be consistent. We think there is some onus on employers around pre-employment checks as well. It should be a shared responsibility. But certainly the accreditation authority would be charged with ensuring that the person—when they are accredited, at that point in time—is a fit and proper person. But things change.

CHAIR: That is exactly right. So that could be part of that national process?

Mr Williams: We would say it would be a part of the national system at accreditation. There would be a requirement for ongoing professional development. But there would also still be requirements on employers around pre-employment checks, because things do change along the way.

CHAIR: I totally take your point. I am just looking at that national consistency. As I am sure you have seen from looking at the evidence we have received, the point is being made repeatedly and consistently that we need a national process of pre-employment checks, because we have had instances of people moving interstate. My final question is around the unit price process with the NDIS. I am on a number of committees and, while this has come up a little bit in this inquiry, it has certainly come up in other inquiries I have been involved in, in other committees—and just from being out there on the ground. How have you gone with raising that issue with NDIA and with government most recently? I realise that there is also a political process here as well.

Mr Williams: We have constantly raised it with the NDIA. We have raised it with employer associations. We have raised it at the state government level. We know, from all of the peak organisations that we speak to and state governments that we speak to, that everyone is concerned about unit pricing. Unit pricing is not building in adequacy around quality, around safeguards, around training. Whilst we support individualisation, we believe that the full marketised fundamentals of the NDIS system are wrong. We believe that funding around quality, funding around safeguards, and funding for service providers around delivering ongoing professional development for their staff should be built into the pricing. These things all cost money. Quality costs money. Paying disability support workers decent wages and conditions so that working in disability is a career of choice—and not just flooded by people who want to move through the system—is important. Currently the funding is solely based on the absolute minimum employment standards. So there is no capacity for career structures that advance people. Everything is set at the lowest common denominator. That is why I said earlier that an under-resourced and underfunded service system potentially turns good people into bad carers.

CHAIR: Thank you for your submission and for your evidence today. In particular, hearing from disability workers directly is really valuable for us. Thank you very much. We will now go to an in camera hearing, which means that anyone who is not involved with our next witnesses have to leave the room.

Proceedings suspended from 09:43 to 10:55

Woman A Private capacity

The following evidence was taken in camera but was subsequently made public at the request of the committee—

CHAIR: Welcome. I have some official words that I have to read. Because this is an in camera hearing I need to advise you that we do not intend to publish or present to parliament all or part of the evidence that you are about to give. However, you need to know that it is within the power of the parliament and the committee to order the production and publication of undisclosed evidence. You should also note that an individual committee member may refer to in camera evidence in a dissenting report to the extent necessary to support the reasoning of the dissent. However, we try on all occasions, as much as possible, to consult the person involved in any such proposed disclosure. That is particularly so if people have heard the evidence and want to use it somehow to support a particular argument. Do you have any comments to make on the capacity in which you appear?

Woman A: I am appearing as a parent of a child with disabilities who has suffered harm in an institutional setting.

CHAIR: I understand that information on parliamentary privilege and the protection of witnesses and evidence has been provided to you.

Woman A: Yes.

CHAIR: I invite you to make an opening statement and then we will ask you some questions.

Woman A: I have prepared an opening statement, so I will just read from it. I am here today to provide evidence to the committee following my written submission to this inquiry about my daughter's serious injury: a broken hip at a workplace and her disclosure about a staff member she holds responsible for the injury. My written submission outlines my experience of the lack of accountability or response by various government agencies following my daughter's serious injury and her disclosure. These agencies are primarily the Department of Community Services, the Department of Education and the police and, to a lesser extent, the Department of Ageing, Disability and Home Care. There are a range of systemic and cultural issues, causing a great deal of suffering for people with disabilities. I hope that through this inquiry our leaders and the Australian community will listen to these issues, understand and refuse to tolerate the poor treatment of our family members.

I am continually amazed at the low levels of knowledge of disability held by some people who work at various times with people with disabilities. This includes school and after-school environments and the police. It is not necessarily just disability services we are talking about here. Worryingly, a number of workers providing services to people with disabilities can be entrenched in outdated attitudes and approaches to their clients. This may be due to a lack of training or perhaps they are simply serving their own purposes. It is a particularly dangerous situation for people with limited communications skills, such as my daughter, when blatantly wrong assumptions, patronising attitudes or convenient and self-serving excuses are imposed upon them. Frequently, their efforts to communicate and their protests are dismissed as behavioural problems—in our case, my daughter's first ever temper tantrum when her injury occurred.

People with disability, including children with disability, and their families remain cast out to the margins of our communities, disconnecting us from accessing even our most basic human rights to be heard, be taken seriously or have the social protections or access to justice that most of our community enjoy unquestioningly. We all hope that the NDIS will provide greater choice in service delivery and that this will weed out some of the rot in the system. However, effective change across the board will take a long time. It can only really be maintained with leadership demonstrating a powerful commitment to respecting people with disabilities at the same level as everyone else in our society.

My gentle daughter has already a trunkful of experiences of being shut down, bullied, ignored, infantilised and physically harmed by people being paid to do their job caring for her. I have a trunkful of brick walls I have faced while fighting for my daughter's basic needs to be met and failing to achieve anything. She is only 10, and she has

a long and challenging life ahead of her. I ask the committee today to consider how it can provide greater dignity and safety to my daughter and other people with disability from this moment on. Thank you.

Senator MOORE: Thank you. It is a terrible story—there is no other way to say it. For you to be able to share that with us so directly, we really appreciate it. It is the kind of thing that, if you did not hear it, you would wonder how on earth something like this could happen. How is your daughter's health now? She was diagnosed with a broken hip?

Woman A: A broken hip. She has had surgery. She has had metal pins and plates inserted in her hip. That was quite a long time ago. Normally they take the metal out, because children grow. Because she has lower bone density—within normal range, but at the low level—they wanted to keep hers for longer.

Senator MOORE: For the stability in the bone?

Woman A: Yes—well, they are just very cautious. She will have to have another operation. I think because of their caution, she will go back in a wheelchair. In the meantime, I rigged up ramps and things when the injury occurred; otherwise we would have been stuck inside the house. I have since had home modifications installed, knowing that we are going to be in the same position again.

Senator MOORE: How old was she when this injury happened?

Woman A: She was eight.

Senator MOORE: Only a bub, really.

Woman A: Well, she was a little girl. I guess that is why I am talking about her being infantilised. This is a common thing with people who have poor verbal skills. The issue with us was that that was in some ways an excuse to just not do anything—that she could not talk. Even though she did talk and named the person that she says was responsible for this injury, nothing happened. During the time we were stuck at home for months, I worked and worked and worked on her to try and get her talking. And she is now talking a little bit. But I am not going to go down that road and start asking her to present evidence for this injury again. She was terribly traumatised by it, by the physical suffering and by the peripheral efforts that I was making, trying to get the situation addressed. I cannot put her through that again—although, mind you, I have to put her through it to some extent, because she has to have another operation.

Senator MOORE: Did you have any support through this process?

Woman A: I am a single parent and I do not have very close family support. I had family who were worried and, unfortunately, felt that it was best for me to move on—which is not in my nature, so I was unable to do that. It was difficult to get support from the department of ageing and disability services, because they had misunderstood and decided not to do anything.

Senator MOORE: That was your first support?

Woman A: When we were leaving the hospital, we were asking for additional support. The main office sent the request to our local office. Our local office dismissed it; they had not been told that my daughter had had an injury, so they sort of put it down in priority, and I never heard anything, until I chased it up over and over again. I have given you all this information. I had to be interviewed to rule out causing the injury. I got some support during that process, and I got some support from a social worker while in hospital. But for the rest of the time I just battled on my own, trying to move things forward. I wrote to my local member, and she responded with a sympathetic and supportive letter, but working in a system that was not doing anything.

Senator MOORE: From your perspective now, your daughter is healing, but you are still in the system, because that is the only system that is there. From your perspective, where do you think the department is now?

Woman A: Which department?

Senator MOORE: The system.

Woman A: Well, my feeling is that it cannot be the system, in a way, because they are all broken up into little pieces, so I cannot talk about the system as one system. The department of education is still a closed arena, and even as we are moving to the NDIS it is quite reluctant—it is nervous about the changes that are coming. I have to fight very hard to represent my daughter's interests and to bring to their attention issues that could be harming my daughter—perceived bullying by staff and that sort of thing. I have had similar responses, in that I write a letter making it official, and I have had responses back saying, 'There is no evidence that this is going on, and we are not going to do anything about it.' That has been the response to my daughter's injury. It seems to be a pretty standard response.

The police: well, I just would be reluctant to return to the police without them identifying a trained staff member in disabilities, because it would be a waste of time. They might be good people but they had no idea about dealing with my daughter, with low verbal skills. Because she had been made to wait for quite a long time during the police interview, she was behaving in a way which was trying to distract them from talking to her, just like any child would. But, because they did not understand the context, it got nowhere. They were not able to get her back on track, because they were seeing a disability, not a little child trying to avoid. That was a lack of training, I think, and outdated perceptions about people with disability. We are talking about a team that specifically investigates abuse of children but is inadequately prepared for children with disabilities or low verbal communication skills. I do not know if they have moved on—I doubt it. I think what is needed is training, and there are no extra resources to do that at this stage. I had hoped that the inquiry would identify that and even consider the NDIS as an area to source resources for that sort of training. It needs to support the other aspects of the NDIS—for people to live a decent, full and independent life.

CHAIR: The issue around the police is consistent with other evidence that we have heard—that there is a lack of training, a lack of responsiveness, a lack of understanding.

Senator MOORE: I take it everyone has said there was no available evidence?

Woman A: Yes. The reason there was no available evidence was that I was the only person interviewed about the injury. From my understanding, the department of education did attend the centre and interviewed them in terms of their compliance with licensing. The Department of Community Services did not pursue it, because they stated that they do not have jurisdiction for investigating child abuse outside the home. They said that was the responsibility of the department of education. The department of education said it was DoCS's responsibility—the Department of Community Services. And they were angry with each other, but not doing anything to investigate my daughter's injury, and nothing happened.

CHAIR: So nobody was held responsible. There is no agency with ultimate responsibility?

Woman A: I suspect they probably do hold themselves responsible, but it is a matter of interpretation of their role. I got the ombudsman to try to see what was happening. Nobody reported back to me, except to say that they had followed a process and that process was now completed. I received no reports, really, about the incident until I wrote to the centre directly with a long list of questions—very specific questions—about their conduct and about clarifying what happened during the day. After a long time—nine weeks, over 2½ months—they responded. It was a long list of denials. To be honest, it was stuff that just could not have been true, because I was there talking to them on the day, and they even denied those sorts of circumstances. There was no evidence at hand to help us come to terms with and understand what had happened.

Senator MOORE: Does your daughter need to go back to that centre?

Woman A: No. She was going to a special school, and there is only one special school in our area. There is a support unit in the mainstream public school that that centre is attached to. I had been trying to get my daughter into that support unit. She now is in that support unit at the mainstream school. That centre operates in out-of-school hours in that school hall. It was very difficult for me to have to make that decision to move her to that school, even though it was a huge benefit to her, because she was now part of a mainstream community—it was fantastic. It helped her speaking and helped her mobility, but there was always that concern. I have not run into

anybody from that centre while my daughter has been at the school, which is good, because I do not know how I would respond. I carry a level of stress with that when I do go to the school.

Senator MOORE: Have you taken up the ombudsman's suggestion that you get some help?

Woman A: During the process I did get some counselling locally, and that was great. That was good for dealing with stress, because it was not simply that I was upset about the circumstances. I could not work. My daughter was physically very impaired, so I had huge physical loads on me, and emotional loads of us being stuck at home, not getting anybody visiting us and that sort of thing, because I do not have that kind of family support. There were huge loads—huge financial burdens; it went on and on. Every aspect of our lives became very difficult. And we have never really recovered from that. I have had to make decisions to work less to support my daughter more. They are difficult decisions. I know, as soon as we get this operation going, we are going to go back down to low levels of poverty again for a considerable period. And it is going to be traumatic at many levels for my daughter. So it was good to get that support, but I cannot see how I could have avoided feeling distressed about the situation.

Senator MOORE: And your message to us is in your dot points about the actions to address systemic failings. Thank you very much.

CHAIR: Thank you very much. We really appreciate hearing people's lived experience; it helps us a lot.

Senator MOORE: Good luck with the operation.

Woman A: Thanks very much, and I hope there are fantastic, strong outcomes from this inquiry.

In camera evidence concluded at 11:13

GIVEN, Ms Fiona, Private capacity

[11:15]

CHAIR: I now welcome Ms Fiona Given. I apologise for keeping you waiting. We are running behind time.

Senator MOORE: As we always do.

CHAIR: As we always do, particularly in this inquiry. Have you been given information on parliamentary privilege and the protection of witnesses and evidence?

Ms Given: Yes.

CHAIR: That is good. We have your submissions. Thank you very much. Would you like to make an opening statement before we ask you some questions?

Ms Given: I would like to thank the committee for giving me the time to give evidence at this very important inquiry. As the committee is aware, I have made two submissions to this inquiry. The first submission relates to my aide at high school. The second submission relates to my coach in the sport for people with disabilities called boccia. I want to emphasise that I was never physically or sexually abused by either of these two people; however, I was emotionally abused. The emotional abuse occurred around the same time. Emotional abuse is damaging, especially for people with little or no speech. We cannot easily retort.

I would like to explain why I chose not to report my school aide. As you have read, I fought so hard to go to a mainstream school that I feared that if I complained about my aide I would have been sent to a special school. The results of this would have been catastrophic for me. I would not have been able to go on to university and have a career. I understand you cannot amend the past but the outcome that I am seeking from this inquiry is for better checks and balances to protect people with disabilities, particularly people with little or no speech, against institutional abuse. Thank you.

CHAIR: Thank you. Can I start off by asking you a question about the fear of the consequences of reporting abuse. Through the inquiry, on many occasions people have said they were scared of the repercussions. When we are talking about checks and balances, what do you suggest we do to overcome that fear, even with the checks and balances, of the repercussions?

Ms Given: Firstly, I would love to see a working-with-vulnerable-people check, including adults and children. Overcoming the fear of consequences is hard, but I think a campaign letting people know it is okay to report abuse would help.

CHAIR: If we ran a national campaign as part of a package that addressed the issue?

Ms Given: Yes.

Senator MOORE: Ms Given, you said that you came because you wanted to make sure that, when there was bullying, it would be exposed. They are not your exact words; I am verballing you, but I think that is what you said. I am interested in the two submissions you have made. In both cases, it seems like the person that was bullying you had a very strong public profile and that everybody thought they were a great person, and that seemed to be the heart of it—that everybody loved them, they were great and so on.

Ms Given: Yes.

Senator MOORE: Knowing that, which is really difficult, what do you think the authorities should have done? First of all, they would have had to have a complaint, but we have had a lot of evidence in this inquiry where people have had the strength to put a complaint in. They have seen something that was wrong for them or their family and then it is investigated, and then they get back a response, as some previous people have told us here, that there was not enough evidence. So they have gone through all the trauma and then they get that response back: there is not enough evidence. With your experience and the work that you have done in your own job and so on, working with people, how do you get across the message you have just told Senator Siewert—that people need to have the confidence to complain—and ensure that people do not have an undue expectation that, if they do make a complaint, everything is going to be fine? I know that is tough, and I do not know the answer, but I am just seeking your help because you have obviously thought about it. When someone gets back a response that just does not give them the answer that they know is right, how do you prepare someone for that and make sure that the whole system does not fall over?

Ms Given: Tough question. I guess I would like for them to at least be acknowledged that they have been heard.

Senator MOORE: So it is worth it.

Ms Given: Yes.

CHAIR: In your experience, how extensive is the emotional bullying that you experienced? How extensive would you estimate it is that instances occur?

Ms Given: I would say, especially among people with little or no speech, that it is rife.

CHAIR: Both in your experience at school and in workplaces, sporting clubs?

Ms Given: Yes.

Senator MOORE: In that case, it is the lack of communication skills more than any of the other forms of disability that you think is the telling factor—that people just cannot communicate effectively and get people to listen?

Ms Given: I would certainly say so.

CHAIR: There have been a lot of recommendations for a national independent complaints process, a national accreditation process for people working in disability services and national registration and a workers check, a pre-employment check. Particularly with the national complaints process, would that go some way to addressing the issues around bullying and being able to voice your concerns?

Ms Given: I think it would.

CHAIR: There have been a lot of calls. So you would support those calls?

Ms Given: Yes.

CHAIR: Senator Lindgren, do you have any questions?

Senator LINDGREN: No. The phone hung up from your end. They have just rung me back, so I missed the last bit, but at this stage, no, I do not.

CHAIR: Do you have anything else to add?

Senator LINDGREN: It was a little bit difficult for me to hear the last couple of bits, because the phone had hung up, but I am touched by the witness's story and I would like to thank her for her contribution to the hearing.

CHAIR: I have an additional question before I see if you have any other comments you want to add. In terms of training and support for disability service providers and for workers, how would you suggest that we go? With the issues that you particularly raise, in terms of emotional abuse, it seems to me that some of it is a bit trickier around training.

Ms Given: Yes.

CHAIR: What sort of training and development should we specifically be recommending for this sort of abuse and recognition of this sort of abuse?

Ms Given: As you said, Senator, it is really hard to achieve that through training. I think recognition by the employers of people who are clearly on a power trip and weeding those people out is very important.

CHAIR: That requires really good checks and interviews of the workers.

Ms Given: Yes.

CHAIR: It is not something that you can get just from looking at their qualifications?

Ms Given: No.

CHAIR: Is there anything else you would like to add?

Ms Given: I would just like to say that emotional abuse is really hard to detect and I think Australian society has to do better at detecting it.

CHAIR: We have been talking about that. What extra should we be doing to put that detection in place?

Ms Given: Regular consultations with people with disabilities.

CHAIR: People have suggested community visitors.

Ms Given: Yes. And of course I would support a royal commission into the abuse of people with disabilities.

CHAIR: We have had a lot of calls for that. Thank you very much for your evidence today; it is very much appreciated. Both your evidence today and your submissions have been very helpful for us, particularly bringing out the issues around emotional abuse. It is particularly important that we pick that up in our report.

Ms Given: Thank you.

HASTINGS, Mr Theo, Assistant Director Operations, Office of the Public Guardian, New South Wales Department of Justice

HOLTON, Mr Anthony, Director, Disability Reportable Incidents Division, NSW Ombudsman

KINMOND, Mr Steve, Community and Disability Services Commissioner; and Deputy Ombudsman, NSW Ombudsman

McKENZIE, Ms Kathryn, Director, Disability, NSW Ombudsman

SMITH, Mr Graeme, Public Guardian, Office of the Public Guardian, New South Wales Department of Justice

[11:40]

CHAIR: I welcome representatives of the Office of the Public Guardian and of the New South Wales Ombudsman. I understand information on parliamentary privilege and the protection of witnesses and evidence has been provided to everybody. Thank you all for coming today. I invite whoever wants to make an opening statement to make an opening statement, and then we will ask you some questions.

Mr Kinmond: I have indicated that, as we have the only legislated Disability Reportable Incidents Scheme in the country, I might take the time to take you through some of the key elements of that scheme. I am principally going to focus on that scheme. However, I note that it is complemented by a range of other functions we perform relating to people with disability, and those have been outlined in the document we have provided to the committee. They of course include complaint-handling functions. I note that this morning that official Community Visitors have been mentioned; we coordinate the Official Community Visitors Scheme, along with a range of other functions. But, as I said, I will principally focus on the Disability Reportable Incidents Scheme.

That function commenced on 3 December 2014. It enables my office to oversight reportable incidents involving people with disability who live in supported group accommodation. What is the scheme? The Secretary of Family and Community Services or the head of agency of a funded disability services provider must notify us of all reportable incidents within 30 days of the head of the relevant agency becoming aware of an allegation of a reportable incident—and let me stress it is an allegation based scheme. It is a requirement to notify us irrespective of whether the allegation has been proven. If an allegation is made, even an allegation that it may amount to a reportable incident, we have to be notified of it.

Upon receipt of the notification, we will consider whether an investigation into a reportable incident has been properly conducted and whether appropriate risk management action arises out of the incident, and we will keep under scrutiny the systems that FACS and disability services providers have for dealing with these types of incidents.

There are four categories of incidents: employee-to-client incidents; client-to-client incidents, and as one would expect there is a higher threshold for the reporting of serious client-to-client incidents than for employee-to-client incidents; the contravention of an apprehended violence order made for the protection of a person with disability, regardless of who contravenes it—if there is contravention of an AVO in respect of a person with disability living in supported accommodation, then we need to be notified; and an incident involving an unexplained serious injury. For incidents to be reported under the scheme, they must involve a person with disability living in supported group accommodation.

Let me briefly discuss the numbers and then the types of matters. From 3 December 2014 to 25 August 2015, there were 437 reported matters. Of those, 55 per cent were employee to client matters, 34 per cent were client to client matters, 10 per cent were unexplained serious injuries and one per cent involved the breach of an AVO. The reporting rate is around 50 per cent higher than the estimate that we gave when we sought funding. So we are receiving about 50 a month. Based on a comparison between the reportable incidents scheme and our separate complaints data, we believe that the notification of abuse and neglect matters via the mandatory reportable incidents scheme is over 10 times the number of matters that we received via our complaints system.

CHAIR: Sorry—could you say that again?

Mr Kinmond: Based on comparing the data that we have in relation to complaints of abuse and neglect—and of course that is one of the functions that we perform—as compared to the notification of abuse and neglect matters that we have received in relation to the reportable incidents scheme, there is an over 10 times increase in the number of abuse and neglect matters that we receive from this mandatory reporting system than what we receive under the complaints system. So I think that is particularly significant in terms of a compelling case for legislative mandatory reporting of certain types of incidents.

In terms of the subcategories of reported matters, employee to client matters are 240 in total. Of those, 38 per cent involve physical assault, 20 per cent involve neglect, 12 per cent sexual offence allegations, 11 per cent ill treatment, five per cent sexual misconduct allegations, and four per cent fraud. In the handout which I provided to the committee, there are specific examples of the types of employee to client matters which have been notified. And the committee will note that they are serious. This is not a system which notifies trivial and negligible matters.

Of the types of client to client matters which need to be reported, I note the following: the client to client numbers constitute 148 notifications, of which 34 per cent involve a pattern of abuse. So, whilst the threshold for reports of client to client matters is generally higher, the legislators, in their wisdom, took the view that if an individual is subjected to ongoing—as I think we have heard this morning—bullying, and ongoing acts of physical violence, then it ought to be reported. So 34 per cent involve a pattern of abuse, 24 per cent involve assault causing serious injury, 20 per cent involve allegations of sexual offences and 19 per cent involve assault involving the use of a weapon. I have also provided to the committee examples of client to client notifications.

While we believe that a national reportable incidents scheme is a necessity and enables one to examine the issue of abuse from both a case-specific and a system perspective, it is certainly not a sufficient safeguard. It is necessary but not sufficient. It has been mentioned correctly this morning that issues such as rigorous preemployment screening and recruitment processes, codes of conduct for staff which clearly outline what is acceptable and unacceptable, clear policies and procedures, comprehensive induction for new staff, the training of staff, high quality support for staff, and supervision, monitoring and performance management all serve to reinforce the right culture—a culture free of abuse.

In particular, in relation to the disability area, we would also emphasise placing clients at the centre of decision making; good practice regarding preplacement decisions and planning; good risk assessment practices; good client matching and assessments of client compatibility; effective risk management, to minimise safety risks and to manage challenging behaviour and client incompatibility; and also best practice in relation to restrictive and restricted practices. It is also critical that service providers have systems in place to appropriately identify and respond to any serious incidents that might occur, and of course the committee has considered that today. This requires a policy practice framework for ensuring staff recognise that a serious incident has occurred—we should not take that as a given—high-quality support to victims and appropriate engagement with families, carers and guardians following incidents; making the correct call around the involvement of police and other external agencies when experts might be required when an incident occurs; and effective investigations, investigators and investigative practice.

We have already established a best-practice working group consisting of a range of highly qualified people to give us advice and support. We are currently looking at a range of issues, including staff screening and recruitment practices, the related need for a workable information exchange regime, the availability of and access to relevant clinicians and expert advisers, assessing the capacity of individuals to consent to sexual activity, support for victims with disability and, where relevant, their family members and the criminal justice response to people with intellectual disability.

Our current focus is in a range of areas: service provider practice development, raising the profile of the scheme—it is important that service providers know about the scheme—and sector education. For example, since 2012 we have run workshops with disability services staff on responding to serious incidents. Last financial year we delivered 77 workshops to 1,629 staff of disability services. Of those who completed the surveys, 96 per cent said they would recommend the workshop to others. We do not get the impression that the people who attend these sessions find them long, tedious and unrelated to their activities; in fact, it is directed at front-line staff, and they have been very keen to engage with us. In addition, we have been delivering a large number of presentations to disability services, advocates, peak agencies and justice agencies to promote the scheme. We are also doing a lot of proactive work with government agencies, including the police. That has been a very productive area of work.

Data collection and analysis is also important. We have the first disability reportable incidents scheme in the country. It is important then that we collect solid data. That data has already revealed important issues. In addition to that we have a disability rights project. FACS—Family & Community Services—approached us without prompting in relation to providing \$1 million for disability rights training over the next few years. The challenge for us will be not that we develop some wonderful package that a range of individuals can ponder but that we actually come up with something which is practical, which is practical for people with disabilities and which in a very real way continues to promote their rights.

Thank you for the opportunity to address the committee. Thank you for your patience. Forgive me for my passion for the scheme.

CHAIR: Thank you. There is no need to ask for forgiveness; it is really helpful for us to have this information. Mr Smith.

Mr Smith: The Public Guardian in New South Wales is appointed as a guardian for people with disabilities by the New South Wales Civil and Administrative Tribunal predominantly but less frequently by the Supreme Court of New South Wales. When appointed as a person's guardian, we are normally appointed with a range of different functions, including making decisions with respect to where the person shall reside; the services they receive; consent to medical and dental treatment; health care; access decisions such as who they can have contact with, who can have contact with them and the circumstances in which that contact can occur; legal services; and restrictive practices. They are the general range of functions that the Public Guardian would have.

The situation in New South Wales is slightly different from the situation in other jurisdictions. In New South Wales we have the Public Guardian. In a number of other jurisdictions they have a public advocate. Public advocates have wider investigatory powers. They can advocate for people without actually being appointed as the person's guardian and they usually have a mandate to advocate in relation to systemic issues. The Public Guardian of New South Wales does advocate in relation to systemic issues, but the evidence for those systemic issues is derived from the aggregated experience of people under the guardianship of the Public Guardian.

CHAIR: So it could not be wider; it has to be for the issues that have come up for the people that you are acting for.

Mr Smith: Yes. We do not advocate for people with disabilities as a general population; we advocate for people under the guardianship of the Public Guardian, and any evidence that we provide to other agencies with respect to systemic problems or deficiencies is derived from the experience of people under guardianship. So that is slightly different from the way public advocates in other jurisdictions might operate. That is all I really wanted to say by way of background.

CHAIR: Thank you. I know we will have a series of questions for both of you. I might kick off with a general question to you, Mr Kinmond. A lot of the evidence we have received is not just about people in supported accommodation. I am also very conscious of the NDIS coming in, where we are providing people with more choice, individual support and the idea that people are not necessarily going to be living in group situations but instead receiving support in individual homes. I am wondering if those issues have come to you already even though you are really clear about group supported accommodation? Have you given consideration to people outside group supported accommodation? Are you getting those instances reported anyway?

Mr Kinmond: Yes. The individual who is the victim has to be living in supported group accommodation. In relation to client abuse, however, if the individual is an employee of either Family and Community Services—the government agency—or a funded provider under the Disability Inclusion Act, if the allegation is made against the employee who is working for FACS or a disability service provider and the allegation is that they have abused a person who lives in a supported disability environment, it still comes in.

CHAIR: Even if it is not a group home?

Mr Kinmond: The person has to be living in a group home, but the abuse might have taken place at the hands of somebody who is an employee of FACS—for example, in a day program. You might have somebody running a day program or an employee of a day program who abuses a person with disability who lives in supported group accommodation, and that comes under our jurisdiction.

CHAIR: Even if it has occurred while they are in the day—

Mr Kinmond: That is correct. It is against the employee of a funded provider in respect of somebody living in supported accommodation. The question then is: is that adequate coverage? I make a couple of points. When were initially working this proposal up, what we thought we would present to parliament to consider was a clearly identifiable vulnerable group. I think it would be fair to say that we—I cannot speak for the New South Wales parliament—are not suggesting that that should be the end of the matter in terms of the debate about people who should be covered. Of course, the National Disability Insurance Scheme will bring up a range of circumstances where you have potential high vulnerability in place. So the general principle, I think, would be that as a community we need to explore those areas where people are particularly vulnerable in a service provision context and, in considering those cases, then consider whether employees who work in that context ought to come within the jurisdiction.

Finally, I would like to refer to the committee's attention some excellent work that was carried out by Alex Goodwin, who looked at the issue of the abuse of people with disabilities in the community context. My interest

is particularly drawn to the adult safeguarding boards that operate in the UK—because I think it would give us very little comfort if we have a member of the community who is living independent of these service environments but, nevertheless, is the subject of serious abuse and neglect with no-one to turn to. That is an issue that needs to be considered by us as a community.

CHAIR: In fact, when we were talking to Ms Given earlier about her sporting experience, that would be an example of what you are talking about, in the community context.

Mr Kinmond: Yes, the idea of no wrong door—a simple contact point in the community with somebody who is going to be able to stand alongside the member of the community with disability and ensure that their rights are heard. There is a lot to commend consideration of that issue.

Ms McKenzie: Another thing is that we do have the new mandatory reporting scheme, but we also have, as Mr Kinmond flagged at the beginning of his presentation, a whole range of powers as the oversight agency outside of that scheme. One of the beauties of the scheme so far has been raising awareness more broadly about abuse and neglect of people with disability and encouraging people to come forward and raise issues with us. Certainly we still take matters that have been outside of the jurisdiction of the mandatory reporting scheme, look into them and investigate where necessary. It is not just the mandatory reporting scheme, and I suppose it emphasises the importance of that independent oversight body that can take even those matters that are outside of a mandatory reporting system.

CHAIR: The information you have given us is obviously very current—as at Tuesday. Four hundred and thirty seven is a lot. You said there were 10 times the complaints and it was 50 per cent higher than you had estimated. Firstly, that is an issue around resources—so I ask you about that. Secondly, given that it is so much bigger than you expected, how have you been able to handle the workload and how many have come to a conclusion?

Mr Kinmond: As to a conclusion, Mr Holton may well be better placed to respond, but the numbers would be relatively low around conclusions because one wants to not simply look at the notification but make sure that the downstream action is adequate. I noted the evidence given earlier in relation to the fact that a number of these may not lead to a sustained finding or a criminal prosecution. There have been seven charges already, though. In connection with a number of those, charges would not have been laid were it not for the fact that we were involved.

To give you some understanding as to the nature of our involvement, we have direct access into the police system, for example, and we have direct access into the child protection system. So, when we have information brought to our attention, particularly in relation to a worker in a disability environment, it is routine for us to then look at those systems to see whether the person has had other matters raised about them, either to the child protection authorities or to the police. The important thing to bear in mind in relation to this responsibility is that it is unacceptable for us to have a situation where, in 18 months time, we prepare a report and say that somebody's rights should have been better protected. So the approach that we take is that, from the moment the matter comes through the door, we seek to identify what the risks are for the individual. If we do not have evidence to indicate that those risks are being managed, we seek to take action. We will also have a very strong emphasis on having a look at the initial investigative plan, and, if there is not an investigative plan, we will seek to make sure that there is.

In many cases also—particularly, more complicated matters—you will need multi-agency involvement. So regularly we will set up multi-agency meetings to make sure that there is a coordinated response to the issue. Your point is a good one; that involves resources. I do not like to appear and for the first time table a resourcing issue. We were well-resourced to start with, but our estimates were out. So, at this point in time, we are swimming as fast as we can, but it is a pretty strong current.

CHAIR: I have multiple questions and I get diverted with your answers, so I apologise if I appear to be jumping all over the place. On that one, in terms of the numbers and the age of the cases: because there has not been a process before, are some of these complaints going back a period of time? I want to know about the number of cases, but are we also dealing with a surge at the beginning because this is a new process?

Mr Kinmond: Because of historical allegations?

CHAIR: Yes?

Mr Kinmond: In terms of the legislation, the test is whether, at the time that the head of the agency becomes aware of the allegation, the person is still an employee. That raises the issue of the possibility of historical allegations being caught up in the scheme, and that is a good thing. My understanding—and I am happy for my

director to correct me here—is that the vast majority of matters relate to current incidents, so relatively recent incidents.

CHAIR: So we can sort of expect that for a period. Hopefully, with the process getting in place, this is going to help stop it. As you said, it is only a part of the process. But, for the time being, it is not as if you are going to deal with the historic case load and then—

Mr Kinmond: And then it will be smooth sailing?

CHAIR: Yes, it is not?

Mr Kinmond: That is correct.

Mr Holton: It is only a relatively small number, at this point in time, that predate 3 December. As Steve mentioned, they tend to be matters where the CEO may not have been aware at the time. He was made aware post 3 December. The bulk of the allegations are post 3 December.

CHAIR: So there have been seven charges to date. It is early days, I know. You talked about 18 months being too long. What time frame are you working on? I would have thought that you would have had to rethink, given the numbers that you are dealing with. What is the time frame in which you expect to be resolving cases?

Mr Kinmond: Let me give you an example. We are running 128 open criminal charges in relation to the reportable conduct scheme, which is the sister function in relation to child-related employment. So certain employers have to notify us of allegations of abuse of children. There are currently in excess of 120 people who have been charged with one or more offences in relation to current open files. One of the challenges in responding to that question is: if one ends up with a significant number of matters that result in disciplinary or criminal charges, then one would be worried if those matters were being finalised quickly, because one has to maintain line of sight. But where matters come through the door and there is not the involvement of the police, there is not a protracted investigation and there is not a disciplinary matter, one would expect that those sorts of matters are dealt with in the space of a few months.

Can I emphasise this? One issue is what the finalisation rate is, and we expect that will climb substantially in the near future. But the fundamental test I have for my staff—at this point in time in terms of the matters that we have before us—is whether there are adequate steps being taken to protect not only the identified victim for the purposes of the matter that we are looking at but also other people who may be at risk. So the timeliness of our response to matters pertaining to protection will be my early focus. And of course over time with those numbers we then start to look at and track very closely whether what is coming in the door is matched by what is being finalised. Otherwise, it becomes unsustainable.

CHAIR: I figured Senator Moore would like to look at the questions that came up this morning about guardianship.

Senator MOORE: Yes, I want to follow up on guardianship, but I thought we would finish the other agencies first. I note that when you started your submission—and thank you very much for the detailed submission; it was very useful—you said that you did support a national scheme. That is coming up in all the submissions. Yours is the first scheme in New South Wales now that has this degree of mandatory nature, which has been a demand in the industry for so long. How would you then translate a best-practice scheme to a national scheme? It is also difficult because we are in the transition with NDIA. Certainly once it is up it would be expected that there would be national schemes. But it is that transition. I am just wondering about your discussions with the other jurisdictions. I would imagine that they would be watching what is happening here, because everyone is dealing with the same issues. I know we should never ask someone in the public sector for an opinion, but in terms of process, I am interested in the willingness and the ability to translate what you have implemented in New South Wales to a national scheme.

Mr Kinmond: There has certainly been a great deal of interest by Victoria, and of course this committee would be aware of that. I was heartened by the recent report of the Victorian parliament which recommended a national scheme.

Senator MOORE: They did, yes.

Mr Kinmond: So I can speak reasonably confidently about the Victorian situation. Beyond that, I have regular meetings with like commissioners from across the country. I am not in a position, though, to make a judgement call about the parliaments in those other jurisdictions. In my discussions with DSS and those involved with the National Disability Insurance Agency we have had a very good hearing and they have expressed a great deal of interest in a reportable incident scheme, which I find very encouraging, in addition to expressing an

interest in understanding the reportable incident scheme and significant related discussions with us about a screening system. A screening system is only as good as the information that is being examined.

Senator MOORE: Yes, and the maintenance of it.

Mr Kinmond: Exactly. If one relies simply on criminal records alone to determine the suitability of an individual to work in the disability sphere, then one is taking a look at the issue through a not very clear perspective. We have the template in New South Wales—and this has been examined by the current royal commission—in child related employment. The strength of the New South Wales system, I would argue—and the royal commission will form its own views on this—is that the New South Wales system has criminal record checks but also feeds into the screening system the results of our reportable conduct area in the child related employment sphere. And we are talking about substantial numbers of matters. That forms part of the consideration by the children's guardian as to whether somebody should work in child related employment. I can see no reason to not have a national system in place for the reporting of serious incidents, and as a part of the screening system there should be a combination of criminal record checks, information that one might receive from professional associations. But in addition to that there should be a feed in of significant adverse findings from a reportable disability incidents scheme.

Senator MOORE: And have a national standard.

Mr Kinmond: Absolutely.

Senator MOORE: In the development of the scheme in New South Wales, were the unions involved?

Mr Kinmond: I imagine so. The unions played a very important role with the reportable conduct scheme. The unions had legitimate concerns about trivial physical confrontations, and they argued and argued—appropriately, in my opinion, and successfully—that the legislation in the reportable conduct area, under part 3A of the Ombudsman Act, should indicate that technical inappropriate use of force which is trivial and negligible in the circumstances ought not to form part of the scheme. That was a good move, and that was appropriate representation. So, with the part 3C scheme, the legislators have already included within the legislation that in connection with alleged staff-member-to-resident technical assaults—and I am not seeking to minimise things, but 'technical assaults'—if in all the circumstances the matter is trivial and negligible it need not be notified.

Senator MOORE: Yes, you have given us that evidence.

Mr Kinmond: I think common sense is important in this area. The other thing that is absolutely important is that my organisation has an open door. For example, I recently met with the Independent Education Union in relation to the reportable conduct area and had some very useful discussions with them, and we will continue to have discussions. If a scheme is not fair to the involved employees then one runs the risk that a scheme that must protect the rights of individuals ends up being compromised by case studies that show that it is not protecting the legitimate rights of those who are the subject of allegations. It is essentially important in this area that there be balance.

Senator MOORE: Mr Smith, I have a question on guardianship. We have had evidence, and some of it has been in camera, so it will not be about particular incidences, but what I am trying to work out is how the system operates. We have had concerns raised not just here but elsewhere—and I know each state has its own thing—about the rights and responsibilities of guardians and how guardianship is determined. Can you let us know what the system is in New South Wales?

Mr Smith: If a person with a genuine concern for the welfare of another person believes that the person is in need of a guardian they can bring an application to the Civil and Administrative Tribunal in New South Wales. That application will be determined by the tribunal. Legislation sets out the circumstances that would satisfy the definition of a person in need of a guardian. The person would need to have a disability—be compromised in terms of their capacity to manage day-to-day living tasks. There would need to be a demonstrable need. In other words, the person may have a disability and may lack capacity for certain decision making but be surrounded by effective support, particularly from families. The nature of that support is largely informal, but the tribunal may consider that the circumstances of the matter do not merit a more formal legal response.

Senator MOORE: Anyone can bring that request to the tribunal?

Mr Smith: There are people like the Public Guardian, for example, who have a statutory right to bring applications before the tribunal, but otherwise standing provisions are determined by the tribunal. As I said, it is a wide standard—that is, that a person be able to demonstrate a genuine concern for the welfare of the person.

Senator MOORE: Particularly with parents who have had the family responsibility and then the person turns 18—which is the stimulant, isn't it?. Up until 18 parents can operate in family circumstances—

Mr Smith: It varies from jurisdiction to jurisdiction. In New South Wales you can make application for the appointment of an adult guardian at the age of 16.

Senator MOORE: Up until then it is a parent-child relationship, normally. Is there a process of informing parents about the change that would occur when someone reaches the age of 16 in New South Wales?

Is there a standard information pack that goes out to parents that tells them about their status, the status of guardian, with information about the difference between a guardian and a nominated person—all those quite significant differences depending on what decisions are being made?

Mr Smith: The short answer is no. My office does provide an information service so that people can contact my office and get information about the nature of the guardianship system in New South Wales. We provide education as a general service to the community, so we would conduct hundreds of community education sessions, many of which would be targeted at parent groups throughout the year. But, no, we do not. Unless someone makes contact with us, there is not a general sort of notification.

Senator MOORE: And the tribunal operates in a non-legal way, so it is like an AAT situation?

Mr Smith: Its charter is to operate as informally as possible. The more complex the matter, the more legalistic it is likely to become, particularly if matters are contested. But, in general terms, it operates in a fairly informal way.

Senator MOORE: Is there a cost?

Mr Smith: No. It is a no-cost jurisdiction.

Senator MOORE: The concerns that have been raised are around issues of the decision-making capacity and rights of someone who is living in some form of provided accommodation who has the right to be involved and be advised. An issue that has come up, and I am sure that the Ombudsman has found it, is the issue around being advised of things that happen in a circumstance—not necessarily a complaint but if there is an issue that happens to a person who is in care—and the responsibilities of advising the family that it has occurred. Across the submissions in this inquiry, we have heard various concerns that there does not seem to be any law that says, 'If something happens, the parent must be advised immediately that it has happened.' The understanding is that, if someone is a guardian, that is a more direct responsibility. Is that right?

Mr Smith: If I understand what you are saying, you are asking if there an obligation on the guardian to advise the family.

Senator MOORE: No—an obligation on the provider to advise.

Mr Smith: I think Steve would probably be able to answer that more than I could.

Mr Kinmond: In the spring session of parliament, we anticipate—we certainly hope—that legislation will go through which will provide a right, first of all, for the person with a disability to be advised of what is taking place in relation to their matter and the outcome. One might say that is not a particularly spectacular outcome, but that is the first step.

Senator MOORE: To have that legislated.

Mr Kinmond: And, secondly, it then recognises that, if the person has a support person or a guardian, in circumstances where, in order for there to be an informed understanding as to what is taking place, a guardian or a support person may need to play a role to assist the person to understand what is taking place, then that person should also be advised. Kathryn can correct me, but we have a number of other steps which then also include a parent. Would you like to take us through the particular regime?

Ms McKenzie: What I would say in response to the senator's question is, yes, that legislation is about to go through, but still it hinges on the views of the person with disability in the first instance, so where they are an adult—

Senator MOORE: That is a primary cause.

Ms McKenzie: Yes—they have got the right to say whether they want their parent or family member or other person advised of the event. The other thing that I would point out is that the obligation on the part of the service provider to notify a guardian as opposed to a family member would be dependent on the functions of the guardian. It is because the guardian acts as the person. They are not a family member; they are standing in a different role.

CHAIR: The way I heard it, the specific issue being raised is that, particularly for someone with an intellectual disability, to a certain extent the guardian has more rights than the parent even though the parent may be down as the support person or the—

Senator MOORE: If they are two separate people. If the parent is not the guardian, the guardian would have privacy.

Ms McKenzie: Graeme can correct me if I am wrong but, to me, that would just be the discrepancy between the functions—that it is a legal appointment of someone, as opposed to—

CHAIR: So the issue is sort of that but it is broader than that: once a child turns 16—in some states it is 18—the parent can have no formal role.

Ms McKenzie: You are not a formal guardian, yes.

CHAIR: You are not a formal guardian. So there is a call for a legislative process for a parent to become a guardian—other than them having to go through the more formal process of becoming a guardian.

Senator MOORE: It is the entrenching of a right.

CHAIR: It is the entrenching of a right. The point Senator Moore was making is that parents do not know that they have to become a guardian. The way I heard it was that you only find out when Medicare says you cannot sign a form or they cannot tell you information, when you come up against a legal situation.

Ms McKenzie: Certainly in relation to the notification of incidents or something significant that happens to the person in an accommodation service, the family member should not need to be appointed as a guardian in order to get that information. But I understand that that might be occurring.

Senator MOORE: That may be corrected by the legislation being passed in the spring sitting. That would formalise the process, but that does not exist at the moment.

Mr Kinmond: It will be important then for us to explore what 'best practice' involves. The starting point there, of course, is the person with the disability and their views—as Kathryn has correctly pointed out. It is also important to bear in mind—and let me stress this—that parents have a very keen interest in the circumstances of their children, whether they be children or adults. My mother still has a keen interest in me. In that context, that normal relationship ought to apply and respect ought to be shown for that relationship. Clearly, in many, many cases, people with disabilities will want the support of their family members, and we would be keen to make sure common sense applies in terms of the application of the law.

Mr Smith: Attorneys-general across Australia have been in receipt of representations from various groups suggesting that, when a person reaches the age of 16 or 18, where their family have been their key source of support historically, there would be some sort of automatic or streamlined conversion of the parental responsibility into guardianship. I know for example that the Victorian parliament considered that issue. But to my knowledge none of the parliaments in any of the jurisdictions has actually agreed to provide some sort of automatic guardianship to families in the absence of an evaluation of the circumstances.

Senator MOORE: It would require an application under the current circumstances, which people would have to know. I think there is great confusion about the different terms we use—'parent', 'guardian', 'contact' and so on. I do not think people really understand that terminology; they just see the child that they want to look after.

Mr Smith: As you would be aware, under the National Disability Insurance Scheme there is provision for the appointment of nominees. To my knowledge, there have been very few nominees appointed under that scheme. In New South Wales, as a result of participation by people with disabilities in the scheme, there has been a substantial increase in applications for the appointment of a guardian. There are some cited cases in New South Wales on the tribunal's website where people have been appointed as a person's guardian purely to facilitate their role as nominee under the NDIS. And my understanding is that those appointments have not been made. I will give you an example. When the residents of a large residential centre in the Newcastle area in New South Wales became participants in the NDIS the result was that I was appointed for a substantial number of those people because it was apparent that they had no family support and no access to external advocacy. I think that resulted in me being appointed for an additional 50 or 60 people in that institution. And I expect that to be replicated as the trial sites expand.

Senator MOORE: Did your office talk to the NDIA about these things in terms of your role?

Mr Smith: We have. Given that the planning process under the NDIS, for the most part, does not actually require the consent of the person to the plan, we are not talking about a formal consent process. The appointment of a guardian results in the guardian basically becoming an advocate. The whole of the ACT is a trial site. Where the public advocate was appointed for people in the ACT, the participant secured substantially improved outcomes from the planning process. So we do know that there is a propensity on the part of the NDIA not to require but to encourage the appointment of a guardian for people where there is a clear lack of support.

The other point I want to touch on—and you mentioned it earlier—is the gap that exists in the protection of people who are not in the sorts of services that Steve's scheme covers. This is an issue that has been highlighted by Alex Goodwin, as Steve mentioned. John Chesterman, from the Office of the Public Advocate in Victoria, wrote a public paper on this as well. And John Brayley, the Public Advocate in South Australia, has written extensively on the lack of what they refer to as adult protective services across the jurisdictions in Australia. This was highlighted for us in New South Wales a few years ago when we were involved in a matter that involved what could probably best be described as an extended family who had set up a compound living arrangement on a rural property in New South Wales. It was a fairly impoverished situation. More importantly, it became apparent, as a result of certain circumstances, that there were a number of children involved in this living arrangement and, for the most part, they were the product of relationships between related adults. Child protection services in New South Wales were able to intervene in that situation. In fact, they removed 12 children from that situation.

But there were young adult women who were, in the opinion of the Ombudsman, child protective services and the police, subject to sexual abuse in that situation. But the lack of adult protective services meant that we were unable to intervene on behalf of those young adults. That is a situation that has been replicated across the jurisdictions, and many of the jurisdictions have written about this. These were young women who had disabilities. As a result of our inquiries, we discovered that they were the recipients of disability support pensions on the grounds that they had intellectual disability and so forth, and yet we were unable to intervene in that situation.

In 2010 in New South Wales there was a parliamentary inquiry into the guardianship system. The New South Wales parliament recommended that New South Wales have a public advocate instead of a public guardian, with expanded powers to intervene in those adult protection situations that are outside the jurisdiction of other authorities. For example, in that situation a public advocate would have been able to intervene, determine whether or not the person was in need of a guardian, make an application on behalf of the person and have a guardian appointed. But we were not able to do that in New South Wales.

The other area that is not covered by Steve's scheme and would be covered by a public advocate with appropriate powers is the area of elder abuse. The fastest growing cohort of people under public guardianship in New South Wales, as it is in other jurisdictions, is older people with disabilities, particularly people with dementia. Elder abuse is a growing problem and it is not a problem that is going to fall within the ombudsman scheme in New South Wales. In New South Wales we lack the sorts of powers that they have in Queensland and Victoria to intervene in those matters, particularly in relation to obvious financial abuse situations. For example, the public guardian in Queensland is able to investigate situations where attorneys under a power of attorney have misused their power to exploit people financially and so forth. We have no powers to do that in New South Wales, and that is a growing area of concern.

CHAIR: We have had evidence on that from some of the other states we have been to.

Senator LINDGREN: One of the earlier witnesses spoke about direct access to police and child service systems. Could you clarify what that means?

Mr Kinmond: Yes. I have direct access into a system called COPS, which is the police information system. If we have a particular matter that comes to us and, for example, the agency say that they have notified the police, we can not only check whether the police were notified of the matter but check on the nature of the information provided to the police. We can check on the actions the police have taken. That then forms part of our determination on whether adequate steps have been taken. In addition, we can check the individual on the CNI—the criminal name index—to see whether that individual has come to the attention of the police for similar types of matters in the past. Regularly that leads to us pulling together a brief where we can provide the police with a potted history of that individual in connection with other like incidents and point them in the direction of particular investigative inquiries that they might wish to carry out.

In addition, we have direct access to KiDS, which is the child protection system. It is not that uncommon, where an individual may have engaged in abusive behaviour within their own family environment, for that to have replicated itself in their workplace environment. Those two sources of information, together with the exercise of royal commission powers and the ability I have to obtain any information that I need from any public authority and, if I exercise royal commission powers, also from private individuals, serve to be very valuable in getting the necessary information to make an informed decision as to the best way forward.

Senator LINDGREN: Is the COP system, as you call it, only a state-wide check or is that a national check that is available to you?

Mr Kinmond: Largely, it is information pertaining to the individual as they are known by New South Wales Police. My Director of Reportable Incidents, who has 25 years of policing experience, is with me. So Anthony will no doubt be able to provide some additional details.

Mr Holton: My understanding is that there is also a national link to the COP system, but I would need to check whether that same system is broadly accessible.

CHAIR: Could you please take that on notice?

Mr Holton: Definitely. I can find that information for you.

Senator LINDGREN: Are you aware of whether that type of direct access is available in other states for other jurisdictions as well? Are you aware of whether, say, Queensland can do that, or is that just something that is a New South Wales initiative?

Mr Kinmond: I am not aware of any other ombudsman's office in the country with either the role that we perform and that engages in a similar range of activities. I note that IDRS, for example, indicated that a traditional ombudsman role would not work. I would endorse those comments. In this area, it is not about conducting inquiries that are done according to a paper based system and eventually pronouncing judgement, although I do conduct direct paper based inquiries. The work is about people and risks pertaining people. So it is very much an operational role. That is somewhat unusual in the context of the ombudsman's business.

I can refer the committee to evidence that I was required to give before the royal commission. I appeared before the royal commission for three hours a few weeks ago along with the Victorian Ombudsman and the Queensland Ombudsman and then there was a later appearance by the other ombudsman. It will give the committee some insight into the differences between the way we do business in the reportable conduct area, which is in the child related employment area, and the business of ombudsmen elsewhere. All of those observations are relevant to the reportable disability incident scheme.

Senator LINDGREN: Thank you very much for that. That has answered quite a few questions for me.

CHAIR: Thanks, Senator Lindgren. I advise that we have already made a note to make sure that we get that and circulate it to committee members.

Senator LINDGREN: That would be great. Thank you.

Senator MOORE: A number of the issues we have heard about have been to do with the gender of the person providing care. I am interested to know whether there are any kind of guideline or whether you have a history of complaints in this area. It has popped up a couple of times—and not just in this state. So I would be interested to know whether there is any information on that.

Mr Kinmond: Given that this is one of the committee's terms of reference, I had a look at the data from a gender perspective. If one looks at the accommodation environments under our jurisdiction, one sees that 60 per cent of the residents are male and 40 per cent of the residents are female. If you look at the matters that we are receiving from the perspective of victims, you see that 44 per cent of the alleged victims are male and 56 per cent are female. Only 40 per cent of the resident population are female, but 56 per cent of the matters that are notified to us concern female victims. That supports, I think, the evidence that this committee has no doubt received from others in that, when one looks at the issue of vulnerability, disability is a factor and then that can be compounded also by gender.

Senator MOORE: In terms of complaint, if there is a resident who has made a formal complaint that they would prefer to have someone of their own gender looking after them—in this case, a woman concerned about having care provided by men—what is the process for that?

Mr Kinmond: If we take a person-centred approach, that is an issue, in my opinion, that ought to be the subject of a very respectful discussion with the person who has those concerns. It would be inappropriate for me to say that in all circumstances the outcome would be of a particular type. But if that concern is not paid heed to and there are not respectful discussions that take place, it seems to me that that does not accord with the idea of a person-centred approach.

CHAIR: Thank you for your evidence today. It has been extremely valuable—as has all the evidence we have received—and it has been particularly useful for us to hear firsthand of the very new process that you have in place. There is a little bit of homework. If we could have that by the end of next week, that would be very much appreciated. Thank you for your time today.

NUSCO, Mr Jeramy, Behaviour Support Coordinator and Practitioner, Northcott

SMITH, Ms Hilary, Business Development and Partnerships Coordinator, Northcott

[12:46]

CHAIR: Welcome. Thank you for appearing today. Can I check that you have both been given information on parliamentary privilege and the protection of witnesses and evidence?

Ms Smith: Yes, we have.

CHAIR: I invite you to make an opening statement and then we will ask you some questions.

Ms Smith: Thank you. Before we commence our testimony I would like to take the opportunity to acknowledge the traditional owners of the land on which we are meeting and presenting today and pay my respects to their elders past and present.

Thank you for the opportunity to come and present today as well as the opportunity we have taken to make a written submission to this committee. Northcott's mission is to build an inclusive society in which people can live the life they choose. In that context, we are firmly committed to preventing violence against and abuse and neglect of people with disability. Those two things are about human rights: the ability to live the life you choose and the ability to live free from violence, abuse and neglect.

We are invested in removing barriers to inclusion for all people with disability. This includes barriers to speaking out and barriers to justice. We educate the people we support about their rights and bring an approach to our work which lets people know that they can have high expectations both in their lives generally and in the services that they receive. We do not want the people we support to feel that they have to tolerate a low-quality service, much less an abusive one. As such, we are proactive in promoting our positive complaints culture. People who receive services from Northcott—and, indeed, from any organisation—need to know that they have a right to speak up and that they will not be penalised if they do so. The same applies to our staff. We are committed to protecting the rights of whistleblowers, as we recognise that these people may play a key role in speaking up about a colleague where a person with disability cannot do so for any range of reasons.

Our view is that prevention is always better than response, though of course we recognise that there is a need for both. Our hope is that, over time, the scales will tip further and further towards prevention and that the rate of incidents requiring a response will decline. Obviously there is likely to be a spike in reporting while community awareness grows but, hopefully, once awareness has grown and further investment has been made in prevention, we will start to see that tail off.

We believe that the New South Wales Disability Reportable Incidents Scheme will be a great driver of this through its sector development initiatives, and we are supportive of a mandatory reporting scheme. Of course, such mechanisms need to be consistent nationally and should link with parallel systems.

We were heartened recently to read the interim report and recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse regarding working-with-children checks. The firm recommendations about national consistency and portability ought to be reflected in the findings of this inquiry as well. Our strong view is that the age of a vulnerable person should not impact the rigour with which a person who works with them is screened.

In our paper we have made a series of comments regarding barriers to responding to violence, abuse and neglect, including strategies which could address many of these. In particular, we understand that this committee is interested to know more about our approach to behaviour support as a key pillar in prevention, as well as our approach to skilling our staff to act as an effective first line of response. We welcome your questions.

CHAIR: Thank you. Senator Lindgren, do you want to go first this time?

Senator LINDGREN: Actually, I do not have any questions at this stage. I will probably wait and see if you might prompt me.

CHAIR: Okay. Senator Moore?

Senator MOORE: In terms of the Northcott response, we have received similar evidence from other providers in other states. I am interested to know—particularly as we have just had the evidence from the Ombudsman—about the role that Northcott has played or whether there has been any special response from Northcott to those enhanced powers of the Ombudsman and the mandatory reporting process, which is the first one in Australia, and just get an idea of the industry perspective on that.

Ms Smith: Northcott's specific experience has been that our internal Prevention and Response to Abuse and Neglect Committee—which we currently operate and which, amongst other things, guides our work around

ensuring that we do what we need to do under the reportable incidents scheme—is kind of the third iteration of internal structures and governance processes around protecting the people that we support. In 2010, New South Wales brought through a series of child wellbeing reforms called Keep Them Safe. That was probably the first time that we made a really concerted effort to say, 'We actually need to establish a working party around making sure that we get these reforms right, that we change our processes, that we make any service changes and that our workforce know what they need to be doing differently and know how to be doing those things.'

Our Keep Them Safe working party worked for probably a period of six months to establish what we needed to do. One of the findings from that was that we needed to have better internal monitoring and regular checking of what we were doing as an organisation that works with so many kids who were, for various reasons, at risk of harm and who also had disability and may therefore have been more vulnerable. One of the recommendations of that working party—amongst other things, and we had a number of workforce initiatives—was to establish what we called at the time a child wellbeing committee, which had a remit around making sure that every report that we had to make about a child was done properly and was done well, and that it was not just a case of making a report and then saying, 'Right, I've done that; DoCS can do the rest.'

That committee functioned in that manner for quite some time, until we then heard that there was going to be something like a reportable incidents scheme coming in. That was flagged for us during the process of the consultations that led to the New South Wales Disability Inclusion Act 2014. We responded to the fact that that was coming—and also to the fact that, in fact, a number of our staff had been telling us for some time that we needed stuff for people over 18—by restructuring our internal processes to make sure that our prevention of and response to abuse and neglect was for any person who we support who it affects and not only for people under 18.

That committee has quite a broad representation within the organisation. We meet at least bimonthly, but we can have out-of-session meetings as required as well. The remit is quite broad. It includes things like a statistical analysis of any report that we have had to make over the period and breaking that right down into what the reporting rates are like in different services, different service types and different geographical areas so that we can make sure we are putting the right supports in place if there is an area where there are greater concerns or if there is an area where there does not appear to be much reporting happening, because we assume that there should be.

As for other factors, Jeramy can probably speak further to the fact that in each of those meetings we take a report from our person centred behaviour support team. That looks at what has been happening within our organisation in restrictive practices over the prior period to make sure that we are using the least restrictive intervention possible and, again, to make sure that we are developing our workforce in the best way possible to respond to each individual person that we support in the most appropriate way that upholds their rights to the greatest extent. Is there anything you want to add, Jeramy?

Mr Nusco: No, but we also have a committee that looks at all restrictive practices to make sure they do not infringe on people's rights. As part of that committee we also look at the application of restraint to make sure there is appropriate compliance by and governance of staff. We make sure the application of restraint never, ever borders on abuse and that it is reasonable, necessary and proportionate. Currently in Northcott we do not have any forms of restraint besides those of seatbelts, but we still have the function of the panel there because we understand that, under the NDIS, the demographics of clients that transition out of aged, disability and home care and into Northcott may differ, and that it may be required. We want to make sure that scrutiny of staff and processes is quite high to ensure it never leads to abuse or neglect.

Senator MOORE: What is the Northcott policy on advising family of incidents or concerns?

Ms Smith: It was interesting when you asked the question in the prior session. My immediate response, and I said it under my breath to Jeramy, was, 'Of course there is a moral obligation.' And we would take that obligation very seriously, whether it was legislated or not. I know that our CEO, Kerry Stubbs, has previously sought to speak to the family as soon as she has been made aware of a concern, and that is absolutely our approach. Families need to be informed—obviously, as per Kathryn's comments, subject to the consent of the person. It is a natural justice issue and it would not be appropriate for us to say, 'We're still gathering information so we'd better not tell you yet,' or 'We're worried about how it might affect an investigation.' The first thing that has to happen is making sure that the person who may be a victim of abuse has the supports that they choose in order to start to commence that healing process, and if they choose them to involve their family then they need to involve their family.

Senator MOORE: And that is in the guidelines as part of operating practice?

Ms Smith: Yes, absolutely.

Senator MOORE: My last question is in the same kind of area, on the issue of guardians and family. From the Northcott perspective, how does that operate?

Ms Smith: Sorry?

Senator MOORE: Guardian versus family member—should there be a 'versus' there? Are any of your clients in the situation where the family are not the formal guardians, and is there a difference in approach by the organisation if that occurs?

Ms Smith: Certainly. Without having client details in front of me, I am sure we would have clients that are subject to formal guardianship orders and who may not have other family involved—

Senator MOORE: That is a different area. I am asking about when you have a family who may or may not be the guardian. How is the process operating in that case?

Ms Smith: I am not sure how many of our clients that specific circumstance may relate to, but, again, our position would be that it comes back to the person with disability first and foremost and what they actually want in this process. Generally speaking, we would not want to see a circumstance where, if a person wanted their family involved, there were barriers to their family being involved. But if a person wants their guardian to be the person who manages a particular process for them then that is what we would respect.

Senator MOORE: Fine. Thank you.

CHAIR: We were talking about behaviours earlier, one of the issues that have been coming up in our hearings. In your submission you talk about 'alternative person-centred behaviour support plans and strategies'. Can you take us through what that actually means?

Ms Smith: I will hand over to Jeramy for that one because he is our subject matter expert.

Mr Nusco: There are a few different methods by which we develop a behaviour support plan. Predominantly, we try to be preventative, whereby if a profile or a client transitions into Northcott we will develop a plan with the information we have received to make sure that the best service is delivered to them. Under the New South Wales ageing, disability and home care behaviour support policy, we are also reactive in terms of developing the behaviour support plan if an incident occurs, to ensure that the same sort of situation does not occur again. Within the behaviour support plan, there are strategies which reduce the restrictions on an individual and ensure they are not contested during a time when they may be escalated, because that may contribute to a behaviour. It is sometimes is a natural response for us to maybe want to eliminate a behaviour at a heightened point, so that is why the behaviour support plan really highlights what should be done at different stages. We work on the basis of an escalation curve with two axes, the horizontal axis being time and the vertical axis being severity. We use that to educate staff as to at what point on that curve we should be applying intervention and the rate of intervention we apply.

CHAIR: When you talk about intervention, behaviour and prevention, is there a process you go through to understand what potentially triggers someone's behaviour so you do not wait until it is triggered but understand those really clearly before it happens?

Mr Nusco: Yes. We use something called a personal profile, and that is something that we also deliver to external organisations through training packages. The personal profile looks at the person's biological factors, their mental health contributor and then the triggers, so it is exactly that. We look at everything that is going on for that individual. If we can support them during that, we do not focus on the triggers as much. We believe that, although we can eliminate triggers, we want to have the perspective that it is a reactive approach, if we are only focusing on triggers, because there is so much more going on for that person. We do that via team meetings with staff or we prompt a team meeting, especially if there is an incident, to make sure that we are responsive. We also meet with all the stakeholders so that can include doctors and family members—of course with the client's permission. That is where the majority of our information comes from. We do meet with the person themselves, if they are cognitively able to contribute.

CHAIR: In terms of the amount of resources and support you provide to staff members, one of the issues that has come out repeatedly this morning and in the other hearings and submissions is around quality training and support for staff. I am interested in learning a bit more about how you invest there. Some of the evidence we have received is saying that, under the NDIS, the unit price means that we are not able to provide—I realise all your services are not going to be provided through NDIS yet but, obviously, into the future that is what is coming down the line. How are you approaching that particular issue and making it work?

Ms Smith: That is a future concern for us. There is so much that is great about the NDIS but there is quite a lot that remains unclear or unknown—or uncertain. I think there is so much discourse around, for example,

pricing at the moment that is saying, 'It's too high,' 'It's too low,' 'We can't afford the whole scheme' or 'We can't afford to deliver an hour of service,' depending on which particular point of view is being represented at the time.

I expect the current picture may not be what the eventual picture is going to be for the affordability or otherwise of training. Our position would be that, if we were looking at something that stays pretty much static from now, then, yes, training is going to be increasingly difficult to provide as services become increasingly flexible as funding for those services becomes increasingly fragmented.

Our current approach is to get as front-footed as we can while we are in a position to make sure that we really do upskill our staff, and we are doing that. We are making sure that we spread a kind of train-the-trainer approach throughout the organisation so that it is not a case of: we have got this one expert in our Parramatta office, and everyone has to fly in to learn from them and then go back out to their office and do what they have learnt. It is much more a case of: this is our culture and this is the way that we work. It comes from induction and permeates through supervision with managers and team leader discussions and so on to make sure that that constant culture around positive complaints and zero tolerance to abuse and neglect et cetera is really, really open across Northcott.

In terms of specialist training, we have a range of programs which we roll out to people like child protection training—one that we mentioned in our paper. Positive behaviour support is another area. Some of those things are quite established training programs. We will also work on other training topic areas as staff identify that need for their particular area of professional development. We have worked together with staff previously on: how do we intervene as a case manager for an adult with a disability when there isn't much of a statutory system to refer them to, but there are concerning issues happening for them whether it is abuse and neglect or something in that area or something different?

The other thing that we are doing while we can is making sure our training is as smart, I suppose, as we can make it. So we are looking at a whole range of different ways to induct staff into the organisation, so there are elements of face to face, elements of what a manager can do with you in supervision and elements of online, and we are continuing to hone that process. Our online training package has a really strong rights-based focus throughout. It has specific modules focused on intervening appropriately with regard to the person who is experiencing abuse and neglect as well as on intervening appropriately if you see a colleague doing something that is not appropriate.

CHAIR: We were talking about prevention earlier. What sort of support do you provide for people to be self-advocating?

Ms Smith: We have a group of clients who over the last few years with our support have themselves developed skills as group facilitators and trainers. They now deliver quite a lot of, for example, assertiveness training, self-advocacy training and other training around the areas of how to prepare for the things like the NDIS or 'how to take control of my life' and those sorts of areas. It is certainly not a program that is targeted at abuse prevention, but definitely things like advocacy and assertiveness are some of the areas that those clients cover.

CHAIR: Capacity building.

Ms Smith: Absolutely. One of the things that is brilliant about it is that it is delivered by people with lived experience with disability. Again, that is something that has evolved over time with us. We started off with a person-centred champions program where, several years ago now, staff were selected to spread the good word about person-centred approaches within each of their work teams. But then we had an internal realisation that that needed to include people with disability as well as their carers. Our next wave of person-centred champions were people with lived experience, people who cared for people with disability. It has grown from there and gone in many different directions. Our person-centred champions now teach other people how to be their own person-centred champions.

CHAIR: You mentioned that it may not be specifically about abuse. Is that a deliberate approach? Surely the process needs to be named. It is not only violence and physical abuse. We also heard very strongly this morning about financial and emotional abuse. Do you do specific programs?

Ms Smith: Yes, I apologise. I did not mean to misrepresent earlier. The person-centred approaches program and the different trainings that those facilitators offer is much, much broader than abuse. It includes those advocacy skills, but its focus has always been about living a good life broadly. We also have a whole range of other safe and healthy relationship type training. Lots of young adults who leave school and come to Northcott for vocational or life skills programs receive quite an intensive amount of training.

We always take it from a positive approach, but it includes things that are and are not okay. We would talk about positive sexuality and healthy relationships and respectful relationships, but then within that we are clear about the fact that this is what is not a positive relationship; this is what abusive. It is not that it is tacit. We make it clear enough for people to understand when things are and are not okay.

CHAIR: Senator Lindgren, do you have any questions?

Senator LINDGREN: There is one thing. You mentioned the child wellbeing committee. Can I get someone to elaborate on what the role of the committee is and how it is structured.

Ms Smith: Sure. The child wellbeing committee was an iteration that we went through on the way to what we now have, which is the Prevention and Response to Abuse and Neglect Committee, which looks at both children and adults. The child wellbeing committee at the time that it existed included representation from across the organisation. We had metropolitan and regional staff. We had the general manager of client services as the sponsor and a senior manager as the chair. We had a number of other subject matter expert staff roles from across the organisation. We did not at that time have any client representation on the group because we felt that there were some safety issues that we did not at the time have the resources to manage in terms of whether it might be triggering for a person to read a lot of information. We also had some privacy concerns. If we are doing a case review discussion within the context of a meeting, we know what we can do to stop a staff member sharing that information. But how do we manage that process with third parties? That committee ceased to exist probably in the middle of 2014 and was replaced by the Prevention and Response to Abuse and Neglect Committee.

Senator LINDGREN: Thank you very much.

CHAIR: Was that all your questions, Senator Lindgren?

Senator LINDGREN: Yes, thank you.

CHAIR: That is the end of our questions. Thank you very much. Thank you for your time today and for your submission. I note that your recommendations are similar to a large number of the submissions that are calling for that national approach.

Ms Smith: Good. Thank you.

Mr Nusco: Thank you very much.

Proceedings suspended from 13:10 to 13:51

WOODWARD, Ms Mary, Private capacity

CHAIR: I would now like to welcome Ms Mary Woodward. I will just check that you have had information on parliamentary privilege and the protection of witnesses and evidence.

Ms Woodward: Yes, I have.

CHAIR: Thank you. Do you have anything to say about the capacity in which you appear?

Ms Woodward: I am here as a speech pathologist and a former registered intermediary.

CHAIR: Thank you. We have your submission; thank you very much. I would like to invite you to make an opening statement, and then we will ask you some questions.

Ms Woodward: Thank you. I qualified as a speech pathologist in 2003, so I have been working as a speech pathologist for about 12 years now. For the majority of that time, I have been working with both victims and offenders in psychiatric and custodial settings. In 2009, I also trained to be a registered intermediary with the Ministry of Justice in London, and I worked in that role as well until I moved to Australia in November 2011. To my knowledge, I am the only person in Australia that has worked as a registered intermediary in England and Wales, so it is that role that I am going to be focusing on today.

It is well known that people with disabilities are over-represented throughout the justice system and that those disabilities are often associated with significant communication difficulties. People might also have communication difficulties without any physical or cognitive disability associated. Communication difficulties might be the more obvious difficulties like stammering or a speech impediment, but more often than not they include hidden problems such as difficulty understanding information that people are saying to them, difficulty expressing their thoughts in words, or difficulty answering questions effectively. In some cases, those communication difficulties have actually contributed to their victimisation. For example, you hear of perpetrators talking about targeting people who are less likely to be able to tell anyone about what has happened to them.

I am sure you have already heard evidence about a lot of the barriers for people with communication difficulties in the justice system, so I am not going to go into that now, although I do want to say that, in my role as a speech pathologist with adolescents and adults with mental health difficulties, I quite frequently see people who have disclosed abuse, often childhood abuse, but very few are formally interviewed and very few of those then have cases that proceed to trial. That seems to be despite things like the UN Convention on the Rights of Persons with Disabilities. I think that, despite the UNCRPD, our current judicial systems do not provide enough modifications for people with communication difficulties to have a voice in the justice system.

The Witness Intermediary Scheme in England and Wales is one example of how those communication difficulties might be overcome, and it is viewed internationally as a model of best practice. The use of an intermediary is one of a range of special measures allowed under the Youth Justice and Criminal Evidence Act 1999. Intermediaries are considered for anyone who is under the age of 18 or anyone whose quality of evidence might be affected, whether that is by a mental disorder, a cognitive or social impairment, or a physical disability. Registered intermediaries are professionals with expertise in communication, so the majority come from a speech pathology background, and they are recruited and trained by the Ministry of Justice. The role of an intermediary is impartial; they are not acting as an expert witness, as an advocate or as a support person. Their role is to help facilitate the communication between police, courts and vulnerable people, by ensuring that the vulnerable person can understand questions and helping them to communicate their answers effectively.

The way it works is that an intermediary will be called in and will conduct an assessment of that vulnerable person's communication difficulties. The intermediary will then advise the police or courts about how to achieve best evidence—for example, looking at how the witness communicates, at their level of understanding and at how questions might be phrased so that they are more likely to understand, and giving advice on communication aids. The intermediary is then involved in the preparation of the police interview and the trial—if it goes to trial—and actually plays an active role in the questioning, by monitoring communication and intervening when necessary. For example, if a question is asked that is too linguistically complex, they would signal either to the police officer or to the judge that there might be a communication breakdown. It is then up to the judge to decide whether or not the question should be rephrased and, if so, whether or not they want the intermediary's assistance in rephrasing that question.

I thought I would give you a quick example of a case that I was involved with. I was called in at the pretrial stage to facilitate the communication with a 45-year-old lady who had borderline personality disorder and post traumatic stress disorder. At the time, she was sectioned under the Mental Health Act in a secure psychiatric hospital due to significant risks of self-harm and suicide. She disclosed, alongside her sibling, historical sexual abuse by her father. She had already given five videoed police interviews by the time I was called in, and they

were used as her evidence-in-chief. The Crown Prosecution Service, who are the equivalent of the DPP here, were concerned that her significant mental health difficulties would prevent her from being able to participate in the trial proceedings. But they had previously worked with an intermediary—actually with me, but that was just by coincidence—with a woman with schizophrenia. So they knew how an intermediary could help facilitate the communication of someone with significant mental health difficulties. They requested an intermediary and, by chance, it was me that was matched to the case again.

I conducted an assessment of her communication and found that she was superficially a very articulate lady. She did have some difficulties processing more complex language but, as her mental health deteriorated, so did her communication skills—to the extent that when it got really bad she would just completely shut down. Obviously, if that were to happen during questioning she would not be able to continue. I advised the court on the impact of her mental health on communication and told them about some strategies that might be adopted to enable her to give evidence. The judge agreed to all my recommendations and, with my assistance, she was cross-examined via video link from her hospital; she was not safe to leave the hospital. Largely as a result of her evidence, the defendant was convicted of 22 out of 23 counts and sentenced to 14 years in prison. At sentencing, the judge commended everyone who had enabled her to give evidence, including me as the intermediary.

I believe that there needs to be legislative reform and systems, processes and funding put in place in Australian jurisdictions to allow for such a role in the justice systems here. Western Australia does actually have the legislation to allow for the use of an intermediary, but they do not really use it. South Australia and New South Wales are both moving forward on pilots involving an intermediary model for very specific groups of vulnerable witnesses, which, of course, I think is fantastic. However, I do have serious concerns about the shortcomings of what has been proposed, particularly in South Australia. I would be happy to discuss further how the Witness Intermediary Scheme of England and Wales operates and how it might be implemented in Australian jurisdictions, and to give you further examples of cases, if that would be helpful.

Senator MOORE: I found your submission particularly interesting, in terms of the kinds of issues this committee has been struggling with for many years, about making sure people have their voices heard. With your experience and with talking to people, has the response been positive?

Ms Woodward: On the whole, yes; it has been overwhelmingly positive. The majority of people who are working with vulnerable people—in whatever capacity in the justice system—get it. To them, it is a no-brainer that, of course, we need to be having this sort of role. There has been some resistance, occasionally, from people whose role it might affect, particularly defence counsel. It is certainly not across the board. But in something as traditional as the legal system a new role like this, that will bring about cultural change et cetera, can be quite confronting for some parties.

Senator MOORE: Your experience is in the UK, and I see they have specific legislation.

Ms Woodward: That is correct.

Senator MOORE: What about other countries? It would seem to me, looking at the UN convention, this is a natural corollary, in terms of justice before the law so that you have equity. Are we lagging behind or is it still fairly new across the board?

Ms Woodward: We are certainly lagging behind. The UK has had an intermediary scheme since 2004. South Africa has an intermediary scheme, although it is a slightly different model. The role is slightly different, in terms of how it practically operates. I believe there is some movement in Canada, although I do not know all the details of that, at present.

Senator MOORE: What about the US?

Ms Woodward: Not that I am aware of. Some Scandinavian countries certainly do. New Zealand does not have a scheme but I think section 80 of the Evidence Act allows for some communication assistance. They certainly have had cases where they have used a speech pathologist in the capacity of an intermediary, although they have called it a different name. I believe that the scheme in England and Wales is the only full scheme that has processes and guidelines in training and funding and legislation—a kind of full package.

Senator MOORE: So it is a wraparound process there.

Ms Woodward: Yes, it is. I believe that is the only country, although I might not be right.

Senator MOORE: This committee previously did an inquiry into the whole issue around speech pathology, speech therapy, in the country. One of the major issues was the lack of appropriate resources. There is a desperate need for them but they do not actually have them. Is there a particular stream in your profession that works in the

legal system? Would it be another level of training that would have to take place to get this as an established process?

Ms Woodward: As you will know from the Senate inquiry you are referring to, there certainly are very few posts for speech pathologists within the justice system. I have been doing some work with juvenile justice, for example, here but not in an employed capacity, more in a contract capacity. There are very few roles. That is not from lack of interest and it is not from lack of—

Senator MOORE: Definitely not lack of need.

Ms Woodward: Definitely not lack of need and certainly not lack of interest within the profession. I believe that is more to do with the prioritisation of funding within justice systems.

Senator MOORE: Which is tight everywhere.

Ms Woodward: Absolutely.

Senator MOORE: You said there will be trials in South Australia and New South Wales. The way the trials often operate is that it is a 'taste it and see' kind of thing and all the jurisdictions are watching to see how they go. Are you aware of whether that is occurring here, whether there is an interest across the board? Increasingly, we have been talking about the fact that whilst states have the jurisdiction and the law, in all these cases, there is a more national approach being requested, because of the change of focus in Australia. I am just wondering whether the attorneys-general, in their wisdom, across the country are looking at this.

Ms Woodward: I am not 100 per cent sure. My contact has predominantly been with South Australia, Victoria and New South Wales. That has more been because of contacts I made when I moved to Australia and the natural progression of those contacts. That is not to say that other states or territories are not interested, I just have not had contact myself with them.

Senator MOORE: I am not sure of the actual law—I have to check it out—but it does seem there is a reluctance when the evidence relies on people who are not effective verbally. In terms of getting witness statements and pursuing a case some of the evidence we have received in this inquiry is that people are reluctant to take it forward if the only evidence is from someone who is not able to communicate effectively.

Ms Woodward: That is right.

Senator MOORE: I am not sure whether that is in the law or whether it is an interpretation of the law, but it does seem to be a huge limitation and the work you are describing could mean some progress there.

Ms Woodward: Absolutely. As a speech pathologist who works with some of these vulnerable people it has been quite frustrating at times to know that more could be done in terms of interviewing people if they were interviewed in the right way. As things stand and the current systems in place, if you have a disability or mental health difficulties—even if you are verbal but your verbal skills are compromised—I think there is a tendency to believe that either they will not be viewed as credible or reliable witnesses or it will be too hard to get a decent interview. I find that really frustrating because I know that that does not need to be the case.

CHAIR: We had evidence this morning about that where police are holding interviews and do not have any support—anybody with disability experience let alone your specific set of skills—

Ms Woodward: People will quite often say that we can provide some more training for the police and the judiciary. I wholeheartedly applaud that—I think training is a fantastic thing and I certainly think that more training could be done—but it is never going to be enough. I think it is unrealistic to expect a police officer, a barrister or a judge to become an expert in really complex communication. You can give training on general good practice but to facilitate communication effectively it needs to be adapted to the strengths and weaknesses of that individual. You cannot expect a police officer to be able to make those assessments and those modifications within the first five minutes of having met a witness. It is not a criticism of how they are performing their role as things stand or even how they would perform the role with more training; I just think it is unrealistic to expect them to take on that additional sort of specialism.

Senator MOORE: You said in your evidence that you are concerned about the direction the South Australian trial was going. Could you put that on record for us to follow up on?

Ms Woodward: Yes. It has been about a month since I have had contact with the Attorney-General's Department so it may have progressed since then, but my understanding is they are looking at implementing an intermediary model—and they are calling it a different term—through their disability justice plan. They are focusing on witnesses with disability. I have several concerns. One really key one is around the fact that—and I understand that budgets are tight—they are proposing it as a voluntary model, so the role of an intermediary would be unpaid.

Senator MOORE: Lovely. Are they doing the same with the judges or is it just intermediaries?

Ms Woodward: Indeed. While I love to think that we are all altruistic, I have a lot of experience in this and I would not do that role for free. It carries a lot of responsibility and it is high stakes and high pressure. I do worry about whether they would be recruiting to that role people with the right motivation, expertise and experience.

I also have concerns about the name they are proposing to call the role. As I understand it they have two strands to the role. One is going to be a communication assistant and the other is going to be a communication partner. The communication assistant I believe is going to be potentially a family member or someone who knows the vulnerable person well and the communication partner is going to be a person who is registered or approved by the court.

I am concerned about someone who has a close personal relationship with the vulnerable person acting in what is meant to be an impartial role, and I am also concerned about the impression that that terminology gives. Because an intermediary is going to be a new role, and, as we said, in a traditional field a new role is going to come with some barriers and some resistance at times, you have to be able to denote the credibility and expertise of someone who is in that role. To me, calling it an 'assistant' is quite demeaning. It minimises the role. And 'communication partner' sounds very partisan and, again, is going to give off the wrong impression. I have voiced those concerns. I understand that it is very clear in the legislation that it is an impartial role et cetera, so I am not doubting the intent of it. But I am a speech pathologist, so words are very important to me, and I think the terminology of everything connected with this new role is going to play a big part in its success. They are my concerns at this stage.

CHAIR: We are in South Australia tomorrow, so we can follow this particular issue up.

Ms Woodward: They are aware of my concerns. I have met with them. I am a broken record on it, I am afraid.

CHAIR: In terms of what is going on in Western Australia, you mentioned that it has not been implemented. What is your understanding of the reason for that?

Ms Woodward: I have been given two different reasons. One reason I was given was that there are concerns about it adding a level of complexity to the justice system and potentially making trials longer, adding to the workload et cetera. But I have also been told by somebody completely different that it is not so much that; it is more that they could not find anyone. As I understand it, they have the legislation but they do not have any systems or processes in place. They do not have a group of people with the right experience and expertise who have been recruited and have received additional legal training et cetera to fulfil—

CHAIR: Have they not bothered to actually encourage people to train up?

Ms Woodward: I do not believe that there is a training program to offer them. As I understand it, there is legislation but there is not a system and processes and procedures and funding in place. But, as I say, I have been given two different versions. I have not spoken to anybody at the Attorney-General's department, so I do not know. It is slightly Chinese whispers.

CHAIR: In terms of the police, when you were talking about training I was also wondering: is it not more about training to recognise that they need this sort of intermediary?

Ms Woodward: That is certainly very important as well, yes. Ideally you would be working with the police to train them to recognise the difficulty, because a lot of the difficulties are hidden difficulties. People do not have 'communication difficulties' slapped across their forehead. But you would also want to give them additional training in general good practice on how they can work best with an intermediary, because it is an additional role that they would not obviously be familiar with yet. But ideally the police would also be involved in the training of the intermediaries as well. Once recruited, an intermediary would ideally go through a training program to learn more about the systems and the roles in the legal system so that they would be aware of rules of evidence and they would be aware of who does what and why et cetera so that they would not get into any trouble themselves.

CHAIR: It came to my mind when we were talking about WA that, as there may not be anyone available to do it, surely that suggests that they should look at how they develop up that body of expertise to enable this to happen.

Ms Woodward: Absolutely. I do not believe that there are not people who would be able to do it with the relevant support. I think that they probably would not know where to look, because it is such a new thing. In New South Wales, people were apparently looking for an intermediary to consult with around a case. I was told, 'Yes, we have looked and looked and looked and haven't been able to find one,' and I was sitting there thinking, 'You have someone who has actually worked in that role right here!'

CHAIR: Speech Pathology Australia—

Senator MOORE: Would be able to have a contact straightaway.

Ms Woodward: Absolutely.

Senator MOORE: It is like finding women from politics!

Ms Woodward: Yes. And Speech Pathology Australia are very aware of my existence in terms of this role as well, even though I am not suggesting that I would do it everywhere. They are very aware of the role and people with the relevant sort of background and interests.

CHAIR: There have been a lot of recommendations about the need for a national complaints registry system and pre-employment checking and that sort of thing. If the committee were to recommend a national complaints system—and it is very clear that is what people want—it seems to me that there would need to be some sort of process that surrounds that, and an intermediary process would seem to be needed for that process.

Ms Woodward: Yes, I would agree with that.

CHAIR: Senator Lindgren, do you have any questions?

Senator LINDGREN: No, thank you, Chair.

CHAIR: Both your submission and your evidence are very clear, with very well reasoned arguments.

Ms Woodward: Thank you.

CHAIR: Thank you very much. You have a very good view of what is going on in Australia, too.

Ms Woodward: There may well be other things happening that I am not aware of. I am not across it all, but I certainly try to keep on board, at least with those three states that I mentioned.

CHAIR: Thank you very much.

CADWALLADER, Dr Jessica, Advocacy Project Manager, Violence Prevention, People with Disability Australia; Australian Cross Disability Alliance

FLANAGAN, Ms Jane, Senior Research and Policy Officer, National Ethnic Disability Alliance; Australian Cross Disability Alliance

FROHMADER, Ms Carolyn, Executive Director, Women with Disabilities Australia; Australian Cross Disability Alliance

GRIFFIS, Mr Damian, Chief Executive Officer, First Peoples Disability Network Australia; Australian Cross Disability Alliance

SANDS, Ms Therese, Co-Chief Executive Officer, People with Disability Australia; Australian Cross Disability Alliance

[14:18]

CHAIR: Welcome. I want to double-check that you have all been given information on parliamentary privilege and the protection of witnesses and evidence. I know most of you have given evidence before and are used to it. We have your substantial submission and your supplementary submission, which we have just got. I would like to invite you to make an opening statement—I presume you have a process and that you have decided who is going to make the opening comments—and then we will ask you some questions.

Ms Frohmader: I will be making the opening statement on behalf of the Australian Cross Disability Alliance. We are all here today in our capacity as the founding member organisations of the Australian Cross Disability Alliance, a newly established alliance of national disabled people's organisations in Australia. The key purpose of the alliance is to promote, protect and advance the human rights of people with disability by working collaboratively on areas of shared priorities, interests and purposes.

Before I begin the substantive content of our opening statement, I would like to take the opportunity to thank the committee on behalf of the alliance for the opportunity to speak here today. Some of you are very familiar with the work of our organisations and have been interacting with us for many years regarding the issues we are here to discuss today. But today is a bit different. Today we stand united as the national alliance of organisations of and for people with disability to demand on the national stage an end to the epidemic that is violence against people with disability in institutional and residential settings in this country. We stand united to say to the leaders of our country that enough is enough.

We would like to start by sharing with you three stories. We do of course have many hundreds of stories and we have formally tabled 70 of these personal stories and testimonies at the hearing today. We know that this inquiry has already revealed many hundreds of horrific stories. However, the people with disability who experience violence in institutional and residential settings need to have their stories told as most will not have the intensive supports or extensive process required to provide their own submissions or to tell their story directly to this committee. We have selected these three stories as they are not only critical in illustrating the stark reality of violence in the lives of people with disability in institutional and residential settings but they also demonstrate that this violence cannot be dismissed as belonging to just one institution or one type of institutional setting or is the fault of just one bad apple. Rather, these three stories illustrate the wide-ranging systemic failures in legislation, policies and service systems in Australia which facilitate conditions that give rise to violence against people with disability. These systemic failures are embedded within and underscored by an enablist culture which not only denies people with disability the most basic human rights but which provides a legitimised gateway through which violence against people with disability can flourish.

I would like to start with the story of Christine, 39-year-old woman with intellectual disability who was repeatedly raped and bashed in one week by several different men. Christine lives in a semi-supported residential facility and, although she is classified as having high support needs, she receives only two hours of support each day. For the other 22 hours she is left unsupervised and unsupported. In one of the attacks in the local park in broad daylight, she was repeatedly anally and vaginally raped and beaten. When she made it back to the residential facility, a staff member made her hand wash her bloodied underwear and garments. The worker wrongly assumed that Christine was menstruating despite Christine being on an injectable contraceptive, and Christine was reprimanded for getting blood on her clothes. Christine was too scared to tell the worker what had happened to her because she thought she would get into trouble. Two days later, Christine disclosed the rapes to her friend who helped her report the rapes to the police. Three of the five police initially involved in interviewing Christine and taking her statement asked her friend if Christine might be making it up. The detectives

investigating the case admitted later that although there was now clear evidence the rapes occurred, there was little likelihood of a conviction due to the fact that Christine has an intellectual disability.

Now I would like to share Dave's story with you. Dave is a young Aboriginal man with intellectual disability. He was found unfit to plead in a criminal matter. He was indefinitely detained in a maximum-security prison. Dave does not have access to the intensive rehabilitation programs he needs to address the causes of his offending behaviour. He is often isolated in his cell for approximately 16 hours a day and frequently shackled during periods that he is outside his cell. In response to the repeated banging of his head, which causes bleeding, prison officers strap him to a chair and inject him with tranquillisers until he is unconscious. This has happened on numerous occasions. The corrections department responds to complaints by stating that it has a duty of care to prevent Dave from hurting himself and that the prison is not equipped to manage people with cognitive impairment.

The third story we wish to share with you is Leila's story. Leila is a three-year-old asylum seeker with epilepsy. When she arrived on Christmas Island she was taking to medications, which her parents had brought with them. These were destroyed on arrival; her records removed and not made available to doctors. Doctors had only one replacement form of medication, and Leila started to have seizures. Doctors were in contact with the mainland to try and procure the correct medication, but, when it eventually arrived, she was only given a month's supply. That ran out, and the entire time Leila was still having seizures. After trying a third medication and after repeated requests from medical officers and a long wait, Leila was eventually transferred off the island. The medical officer involved said that children with complex medical problems are unable to be supported in immigration detention facilities without appropriate paediatric support and specialist care.

These are not isolated stories. We hear stories like these every single day—not once a week, not once a month, but every single day. Just last night, as I was packing my suitcase in order to fly here to speak to you today, my phone rang. It was a woman with disability trapped in the laundry of her home, hiding behind the washing machine whilst her husband—her carer—raged outside the laundry door, threatening to kill her. Again this is not an isolated incident. Every day, every night, every weekend we hear these stories. So today we stand united to say to you that people with disability in Australia represent the most detained, restrained and violated sector of our population. They are significantly overrepresented in prisons, institutionalised and segregated within communities, locked up in schools, confined in mental health facilities, incarcerated in detention centres and trapped within their own homes.

Violence against people with disability in institutional and residential settings is Australia's hidden shame. The evidence of this national epidemic is extensive and compelling. It is deeply shameful blight on our society and can no longer remain ignored and unaddressed. It can no longer be dismissed by our national leaders as an issue for state and territory governments to deal with. More than 65 years ago, Australia helped draft the Universal Declaration of Human Rights—the international document that declares that human rights are universal, to which all human beings are entitled, no matter who they are or where they live. We repeat that: no matter who they are or where they live. And that includes Christine and Dave and Leila and many, many thousands of people with disability around this country who, as we sit here today, are experiencing the most horrific human rights violations imaginable. The Australian Cross Disability Alliance says today: 'Enough is enough. The significant level of violence perpetrated against people with disability in institutional and residential settings demands urgent national leadership and action and we will not go away.'

We make 30 recommendations in our comprehensive submission to you, but we highlight three key recommendations in a national call to action: 1) we call for a royal commission into violence, abuse and neglect against people with disability in Australia; 2) we call for an overhaul of the criminal justice system so that at every step of the process people with disability are supported in accessing the same legal protections and redress as the rest of the community; and 3) we call for the establishment of an independent national statutory watchdog to protect, investigate and enforce findings regarding violence, abuse and neglect against people with disability. Thank you.

CHAIR: Thank you. Does anybody else want to make an opening statement? No.

Senator MOORE: I am not going to ask questions. Everyone can have a go. You have covered it all in your submission. Thank you so much, Carolyn. The cross-party nature and the fact that it is a united group are very powerful. I would just like to hear from each of you, because your submission is so substantial and you each have certain areas that you concentrate on. I know that there is a significant section in here on education and schools. Whom should I ask to have a go about that—the element about restraints in schools and the treatment of students? Because your submission covers so many things—and that is the reason the inquiry is so important—I thought I

would take a couple of key issues and ask about them. There is a chunk here. It has been given a recent media profile with the situation in Canberra—

Ms Sands: Yes, that is right.

Senator MOORE: which has led to a social media debate and also some informed and non-informed comments that have gone into the community, which always happens. Does anyone want to talk about that particular area?

Ms Sands: Probably what I could say about that is that the situation of restrictive practices in schools is finally now being highlighted, but it is not just isolated to the education system. It is also in our prison system, our disability service system, our mental health system and a whole range of areas. I think it is particularly prevalent in schools, whereas in many other systems there is either some form of regulation or maybe an attempt at regulation in policies and procedures—maybe there are senior practitioners et cetera. In the school system there is absolutely no oversight or regulation, and often it is up to school principals, the schoolteacher and specific approaches and cultures within schools.

Obviously it underpins a whole area in education where there is a complete lack of training and support for the inclusion of children with disability in schools and what that means. If you think it is okay to lock someone in a cage or isolate them in some way with basically solitary confinement, I think there is a massive problem, but I think those kinds of practices cannot be viewed in isolation. Just because there might be some kind of regulatory system in prisons—maybe not prisons—or the disability service sector or the mental health sector does not mean it is okay. It is really clear that there are practices which are aimed at control and behaviour management in a whole range of settings, which the UN special rapporteur and various UN committees have clearly named as torture and ill treatment. Clearly they have said we need to say they are torture and ill treatment, because while they are considered legitimate behaviour modification practices or a way to manage 'challenging behaviour' the actual dignity of the person and what is required to support somebody is not being seen.

So we would say that it is not about regulation and authorisation of those practices; it is about really understanding what is happening for a person. Many challenging behaviours are a legitimate communication method in response to maladaptive environments, for example. A number of our stories, for example, talk about people who are living in places where they do not want to be, where they have experienced levels of violence or neglect, and support workers may see them as exhibiting 'challenging behaviour.' That might be the term, so they get labelled as that, but in fact this is communication: they do not want to be there. Something is wrong. They may be suffering trauma. They may need support. So what is happening for that person?

This is the missing thing: we end up with a service terminology about management and control of behaviour rather than respecting what is going on for the person.

CHAIR: That raises a couple of things—it raises a lot of things—but there are three key areas I want to explore. One is recognition amongst service providers that that is in fact the case. Two is then providing the training and support to the care providers—support people. The third is resources: it seems that there are not enough resources. Let's take one as given—and I will come back to that, because I do not think we can take it as given. If you take as given that there is a recognition of the fact that people are trying to communicate, it takes a specific skill set to then recognise that. We have received plenty of evidence that shows that the only qualifications for workers in this field—so you are getting people who come in potentially with little experience, and I am not dishing out on those workers who are really qualified and are doing a good job. However, there are a number of critical breakdowns that are in place at the moment that actually mitigate against people recognising that this is a person who is trying to communicate.

Ms Sands: I think—I am not sure if anyone else wants to respond—there is a shift in thinking about positive behaviour support. We keep getting new terminology in the service system. Looking at how instead of having perhaps more punitive practices that might respond to particular behaviours, we would have positive behaviour support. It is unclear what that means. I am really concerned about the lack of research around what that actually means and what the evidence is around these issues.

The other thing that really concerns me is that there is a lot of attention on the person and their behaviour and not so much on the relationship between that behaviour and the environment they are in. Paul Ramcharan in his study renames behaviours of concern as environments of concern as opposed to putting the onus on the person. That is probably one of the only pieces of study I know that looks at how people with disability themselves feel about particular practices. So it is quite a powerful research study.

If we are going to look at what a person might need in terms of what might be considered 'challenging behaviours', firstly, it has to be looked at as communication. It has to be looked at in terms of the environment it is

being exhibited in, because many of those environments are incredibly problematic. Also we need to know what is positive behaviours support if we are going to start using that terminology. I know Dr Leanne Dowse at the University of New South Wales is conducting research into behaviour supports and what it actually means. She is beginning to look at that and she is the chair of the intellectual disability behaviour support unit there.

Ms Frohmader: I would like to add something to this, because I think—I acknowledge what you are saying, Rachel, about the lack of trained staff across all service settings. One of the things that I do not hear a lot of is about the critical need to build the capacity of people with disability themselves to understand what their rights are. I have seen time and time again, having been in this job now for nearly 20 years, training of service providers come up. Again, sometimes it depends on the setting but in the disability service setting, for example, it can be quite a transient casualised workforce. Some people are there just filling in time until they find another job or whatever it might be. That is not to say there are not dedicated people working in that field, but the focus is always very much on the service providers rather than on building the capacity of people with disability themselves.

We have to start from a position where everybody is considered to have some form of capacity. Some of our members, and women with disability in group homes and many with stories like Christine's—if that is their lifelong experience and they know nothing else other than that, it does not matter what complaints mechanisms we have in place, it does not matter what we do, if somebody does not understand that what is happening to them is wrong, then they have no rights. I would like to see a lot more focus on the need to build the capacity of people with disability across all service settings, to understand and know what their rights are.

CHAIR: We were in fact talking to witnesses this morning about that very issue; about what supports are available.

Senator MOORE: 'Building possibilities' was that particular jargon.

Mr Griffiths: I wonder if I might just add to what my colleagues have said—and this flows on nicely and echoes their sentiments completely—a bit about the educational experience of young Aboriginal people with disability. The way we see it is on a spectrum of experience, if you like. On one hand there is the soft discrimination of low expectations, and at the other end we have the institutional racism. Experience sort of sits in there somewhere. In a disability context, we talk about this syndrome we call the 'bad black kid' syndrome. There is a kid in the back of the classroom acting up. They might be very frustrating in the classroom. They get suspended and expelled. And then they might end up hanging around the local shops. The police start telling them to move on. They end up having interactions with the juvenile justice system. And it turns out they have a disability of some kind.

This is a very common experience for us. They may have hearing impairment or vision impairment; they may come from a home where they do not sleep a lot, for example. We would frame that clearly as neglect on the part of the education system, which is not properly recognising their needs. We think that is a major issue for a lot of our young people. The lack of early intervention and specialist supports around their disability is a very significant consequence which can lead to a trajectory which we see quite regularly of interactions with criminal justice and a journey which takes them in a particular direction, when there is a very clear opportunity early on to make an intervention and provide appropriate support. So I guess it flows on a bit from what Therese and Carolyn are saying. There needs to be a concerted approach to early intervention for our young people with disability, particularly in the education system.

Senator MOORE: The health checks program, which has a chequered history around the place, was introduced for that purpose; so that kids would be identified early if they have particular issues with their health; because health leads into the behaviours, which leads into the isolation at school, and the trajectory you talked about.

Mr Griffiths: That approach is very medicalised. As you both know, there are very high rates of hearing impairment in Aboriginal kids. What we see is a medical process, where kids may get successfully treated for glue ear—and that is great and that is a very easy thing to do—but it may be that they have had that condition for three or four years, and in fact they have a learning disability. So there is a tick, if you like, for the medical intervention, but a lack of focus on what now effectively becomes the primary disability. They have not been hearing properly, they have not been participating in the classroom like everyone else—

Senator MOORE: But how do you pick up on that? If you have the health system doing their ticking when they get into the school—and it is something we struggled with here for a couple of years in different inquiries—how do you then see the person and not have them as X, Y, Z at what school? That is one of the issues. How do you believe the system should interact so the kids are not lost?

Mr Griffiths: That is a great question. The medical model of disability is still very dominant in Aboriginal Australia, and that is one of the fundamental barriers we face. There has been a prioritising of Aboriginal health, and that is right and proper and as it should be. But what we do not see is evidence of social models in practice. It even goes to what Carolyn is saying about the very simple premise: if you do not know your rights, you do not know what to ask for. We find that all the time with the families we work with. They are not aware of what their rights and entitlements might be in relation to their child who has a hearing impairment in the classroom, for example. I think that lack of understanding of social models in an Aboriginal context is quite profound.

We have a very dominant Aboriginal health sector. And I am not running that down; that is appropriate, because those interventions are critical. But what we do not have is an understanding of rights and entitlements, like Carolyn said. That is absolutely acute in Aboriginal contexts. But we also do not have a great understanding of that social model construct of disability in Aboriginal Australia, and I think that requires a lot of investment. I think we have to spend a lot of time in the community talking about these issues.

CHAIR: I suppose I feel frustrated because we did that hearing inquiry in, what, 2009, and we reported in 2010. Before that, we did not magically discover the issue at the time. There has been a lot of work around it. I am coming from the perspective that we do know there are issues there. I saw a media article on hearing in schools—

Senator MOORE: This week has been 'hearing week'.

CHAIR: and, as you know, some of us have been banging on about this for a long time. The article was as if it was the first time they had ever discovered that hearing loss for Aboriginal children might have an impact on their learning in school. I felt like saying, 'No XX, Sherlock'. It seems like we are caught in this loop of, 'Oh, look, there's a problem'. Five years later: 'Oh, look, there's a problem'. I am not trying to lead the witness, but we know these things. We know there is enough evidence to show that it is more than a casual connection we are talking about here—Damien Howard's work, the connection in the justice system—all those pieces are there. We know that early intervention in terms of literacy and numeracy programs when we are talking about this particular issue has a profound effect.

Ms Frohmader: One of the things we talked about in our submission is that very real policy siloing that still happens where—

CHAIR: Good. Let's talk about it.

Ms Frohmader: So you have these national frameworks and policy frameworks. I think we talked in our submission about the National Disability Strategy. Then over here we have the National Plan to Reduce Violence against Women and their Children. Then we have the National Framework for Protecting Australia's Children. The National Disability Strategy is not connected to the national violence plan. The national violence plan is only focused on intimate partner violence, and does not include institutional settings. The way the National Disability Strategy addresses violence against people with disabilities is to say 'make sure we implement the national plan to prevent violence against women'.

The way the Australia's National Disability Strategy, which is meant to be a COAG initiative, measures violence against people with disability in this country is by one indicator, and that indicator is feelings of safety after dark. So that is the way that the National Disability Strategy, which is meant to be the guide to governments about how to ensure domestic implementation of the convention on the rights of people with disability, measures violence on people with disability. We ask: 'Do you feel safe during the day? How safe do you feel after dark? Would you walk alone after dark?' They are the indicators.

Then we have a national framework to prevent violence against women, which does not deal well with disability, does not include particular settings and has a focus on intimate partner violence. We have a national child protection framework that is actually about child protection. So we have this policy siloing where, yes, we know these things but this one is not connected to this one is not connected to this one. And it is just incredibly problematic.

Ms Sands: I think it is probably evident for us because we are cross disability and then we have specific population groups as part of the Cross Disability Alliance. The intersectionality is critical for us and for our members because you need to understand the different ways violence manifests and the myriad forms of it et cetera. It is going to be very different for an Aboriginal woman with a disability—it could be quite unique circumstances—than it might be for a man with a disability or for someone with a culturally and linguistically diverse background or whatever. It is often those intersections that you cannot get when you have silos of policy responses.

It is not only just in terms of population groups. If you just want to talk about restrictive practices, we have a national framework around reducing and eliminating restrictive practices in the disability service sector. The recent discussion paper on the NDIS safeguards framework talked about that as guiding their approach. But that has no connection to the framework within the mental health system or the project by the National Mental Health Commission that is looking at the reduction of seclusion and restraint. We know people with disability are going to move between those systems and will need both, yet there seems to be no connection about the same issue. Of course there will be some specifics. But what we are frustrated with is that it is the comprehensive approach that joins it altogether and makes the connections as opposed to: if you are lucky enough to be in this system, you might get that protection, but if you are going to be over there, you will not and if you are from that population group you might get this but you will not get that. It is really difficult to navigate that system if you are a person with disability who does not fit neatly into the particular policy or legislative framework that is available.

Dr Cadwallader: You see this siloing at a whole range of levels. You can see it even at the state levels where you might have domestic violence legislation but it probably will not cover residential settings. This means that the domestic violence services do not understand that part of their remit is to be providing trauma informed responses to people who are experiencing violence in their homes, because those homes are considered to be institutional or disability specific settings.

Part of the problem with that as well is that often legislation will wind up being used in ways that imply that if violence occurs in a disability service that perhaps police do not need to respond in quite the same way or the services do not need to be brought in. The referral pathways do not necessarily map together in ways that ensure that people with disability have access to the same kinds of supports as anyone else. For example, in New South Wales, safer pathways is being rolled out. It is designed to provide wraparound services to people who are experiencing domestic violence. It includes safety action meetings. They come up with safety action plans. It involves agencies like Health and Housing and DV services, so it is designed to be a wraparound. But they rely on being able to get the victim on the phone. They will try three times and then they will not try again. Someone who is in a residential setting cannot be gotten on the phone. You have gatekeeping—

CHAIR: I was going to say: what happens if you have gatekeeping?

Dr Cadwallader: by staff, in many cases. There will not necessarily be staff willing to facilitate the communication with the individual. The silos happen at a very high level but they also filter down to mean that a person can drop out of justice responses and service responses from the DV sector and may not be able to access support through disability services. So you wind up with no response at all in some cases.

Senator MOORE: The point is that you have to prevent violence. You can specialise when you go and look at it, but the overall issue is the violence. You should be starting with the response to violence and then going down. That is what I get from your submission.

Ms Sands: Absolutely.

Ms Frohmader: Absolutely.

Dr Cadwallader: In many respects it also needs to be focussed on prevention. Responses are really important and obviously they are essential here because they are so underdeveloped in this space. But if we have learnt anything from some of the work around violence against women it is that responses are not going to be enough on their own and that prevention must be put in place systematically.

I am heartened that some of the drafting and the consultation work being done by Our Watch, ANROWS and VicHealth around the National Framework for Prevention of Violence against Women is intersectional in a surprisingly fairly robust way. I have been really heartened by that. But I want to see that that also gets the support from the variety of silos, whether education, disability services, mental health services, prison services, buying in to prevention as part of their core responsibility.

Ms Frohmader: As you know from having seen many of WWDA's submissions over many years, a very common response is: 'We do not do that. That is not in our criteria. That is not our core business. We are not resourced to work with women with intellectual disability. I know we are a crisis intervention service, but we cannot do that. We are not resourced.' We have done things like track pathways trying to get a service response for somebody, and there will be 10, 15 agencies, including police, where you will get told, 'No, we do not do that.'

Ms Flanagan: I would like to reiterate some things that have been said today. We cannot really underestimate the power of prevention here with capacity building and awareness campaigns. For NEDA's constituents, people living with disability from CALD and NESB backgrounds, I would say that many people with disability and also many CALD people with disability do not know what behaviours actually constitute violence. I could also say that for many staff working in the support industry in the sector. Restrictive practices, chemical restraints—there

is a lot of ignorance out there about what is legal and what is illegal within the Australian context. By building the capacity of people with disability and their communities—more emphasis should be put there in regard to the punitive side.

Senator MOORE: One of the general issues that has come out in the inquiry is the need for a national approach rather than a state-based approach. We are in the transition to NDIS. We all know that only some people will be covered by NDIS and we need to look at it being much wider than that. It is also about looking at bringing the jurisdictions together. I know that is one of the things that you put in your submission, but does anyone want to add anything to that? At the moment one of the things that the federal area struggles with is that the major responsibility now with all the legislation for disability subject to the NDIS is state based. Everything is to do with the states. That means there is a variation of experience and resourcing and models across all the states. Does anyone want to say anything about how we make it national, and, if we do make it national, how we resource it?

Ms Frohmader: In our submission we talked a lot about the ineffectiveness of existing complaints mechanisms—no matter what they are, no matter where they are and no matter what sort they are.

Senator MOORE: You talk about the various commissions.

Ms Frohmader: Yes. Ombudsmen, disability service commissioners, community visitor programs, public advocates—and the National Disability Abuse and Neglect Hotline. You will see that one of our key recommendations is that that be completely abolished and the resources from that be used to establish a decent national—

Ms Sands: A national watchdog.

Ms Frohmader: mechanism. The information in our submission clearly shows the absolute disjuncture. There is an absurdity about it as well. In New South Wales, if you happen to fit under the definition of domestic violence you might be covered if you live in an institutional setting but not if you drive over the border. It is a nonsense. Domestic violence is domestic violence, regardless of where you live.

One of the things that we have tried to get across in our submission is that, yes, states and territories have responsibility for certain aspects in the provision of services and now with the NDIS, but Australia has a responsibility nationally for the international human rights treaties that our country has signed up to. One of those is the convention against torture and ill treatment. I think the information that we have provided in our submission demonstrates quite clearly that what has occurred to people with disability across a range of service settings does actually constitute torture and ill treatment. We are a signatory to seven international human rights treaties which all have provision for the prevention of violence against people with disability—and that is all forms of violence.

They were the key things that I wanted to raise. Does anybody want to add anything?

Mr Griffiths: I think the answer is pretty simple. An independent statutory body is the answer. That is something that has been articulated by advocates for a long time, and I think its time is well overdue. That is a critical part of the picture. One of the problems with the National Disability Abuse and Neglect Hotline is its lack of enforceability. It is just a reporting mechanism, really. So I think that is a critical part of the puzzle, and I think its time is well and truly here—in fact, it is long overdue.

Ms Sands: We see this as an issue around violence. It should not have state and territory borders; it actually requires national leadership and attention. Some of our recommendations go to things like ratification of the optional protocol to the convention against torture, which would then put in play the national preventive mechanism, to go in and monitor a whole range of service systems, including where people with disability reside—mental health facilities, residential facilities, disability justice centres and a whole range of things.

I just think there are some higher level national things that the government could take some leadership on. Plus, there is a COAG process. We did have agreement at the COAG level for a national disability strategy. That was an agreement around implementing the Convention on the Rights of Persons with Disabilities. That has a key article in it which derives directly from the convention against torture. There are so many linkages. If, in a strategy around rights, protections et cetera, violence is already in there, why can't the governments come together and, with assistance from a whole range of people—some of whom would have already appeared before the committee—discuss what a national mechanism would be.

But that national mechanism should not be a disability specific mechanism in the sense of the disability service system; it should be a mechanism to address violence in every area, whether it is a prison system, juvenile justice, mental health or immigration detention et cetera. It should be broad; it is just looking at violence. It should address what needs to happen to prevent it; what needs to happen to respond to it; what our obligations are in eliminating restrictive practices; and what proper housing in the community should look like—instead of people being forced or compelled to live in a particular living arrangement because that is the only way they can get

support. There is a whole range of research, policy development, guideline development and powers to take complaints, investigate et cetera. We would like to see some genuine teeth in terms of enforceability as well.

Ms Frohmader: One of the difficulties I have had in reading some of the submissions to this inquiry, is that the content of the submissions from some service providers simply does not reconcile with what I see and what I know happens in those services. So a protection mechanism that has the power to investigate is very important. We wrote to you at some point about our concern regarding people with disability who live in these various institutional settings not being able to give direct evidence at a Senate committee or to put in a submission. How many of the services that have put in submissions have actually assisted the clients that they serve or the residents in these facilities to come forward to you? There would not be very many.

For me it still gets back to the fact that the complaints mechanisms that we have just do not work. We need something that has teeth. The national disability hotline is a referral service. It is a disgrace. We cannot even get the data. It was established 10 years ago and nobody knows anything about it because the data is not public. One of the major things that we talked about regarding the complaints system is the inherent conflict of interest that exists, where you have government agencies and funding bodies investigating themselves in terms of complaints. That is across a range of settings. In any other area, that would be seen as an absolute conflict of evidence. We have enough evidence of the cover-ups that have occurred over many years and continue to occur when you have funding bodies essentially investigating themselves.

Dr Cadwallader: To go back to the need for the federal, state and territory governments to be working together, I think Therese is right that the National Disability Strategy does actually provide a framework to address not all of but many of the issues that play into the heightened risk of violence against people with disability. But the reporting is late. It is not clear on who has responsibility for it. There is limited resourcing. In fact, I am not even sure what the resourcing is at the COAG kind of level. Because there has not been the kind of will and commitment to the National Disability Strategy, states are moving to other options that are, in many cases, less robust and rigorous than the strategy itself.

Senator MOORE: Can you give us an example?

Dr Cadwallader: The Disability Inclusion Act here in New South Wales is giving rise to a disability inclusion plan across government and a disability inclusion action plan has to be developed by every government agency within New South Wales. Within those actions plans, there are four areas that need to be focused on: employment; inclusive communities; systems and processes; and attitudes and behaviours.

If you compare that to the National Disability Strategy, rights do not appear at all. I suppose they are still going through the process of developing these action plans, so we do not know what they are going to look like just yet. They are working hard to consult adequately with peaks and the community, but it is a bit concerning that the framework itself has become less robust in the filtering down. That is because there is no commitment at the COAG level to ensure that states are continuing to report, in accordance with the requirements of the strategy, rather than making up their own new versions which do not necessarily include all of the elements that we would like to see and that we fought to have in the strategy.

Ms Frohmader: The Australian Cross Disability Alliance has recently written to Senator Mitch Fifield to seek clarification on an overarching mechanism for the National Disability Strategy, because the government had committed to an industry advisory body—I think that is what it was called—in the election platform. That would be a national mechanism to drive the National Disability Strategy because, like anything—and we have had this conversation with Mitch previously—unless there is something to drive action, in a sense that document becomes just a document. Yet that was a very substantial COAG commitment.

Dr Cadwallader: It was a response to the *Shut out* report, which was quite a remarkable document.

Ms Frohmader: But it needs something to drive it. Nobody is going to do anything unless they are told to. My daughter will not clean up her room unless I make her clean it.

Senator MOORE: That was going to be my question. The structure of the consultation was changed in the last year and the alliance was put in place. There was a new funding mechanism, a new representative mechanism and all those things. That is still being bedded down. I would be interested in your understanding of what the new alliance's role is in that process, because certainly the rhetoric was that this was going to drive the new strategy and the national disability plan. That was the rhetoric we got 12 months ago to say why everything was being changed, without a lot of warning. But this was going to be the new focus. Now we are almost 12 months down the track with the new arrangements. It is still not very public how it is going to happen or whether your group, which is going to take a step forward, is going to be advising, engaging or making recommendations. That next step has not been made public.

Ms Frohmader: Yes, it is definitely all of those things. We met with the state and territory disability ministers in February at the COAG disability ministers forum. It was very clear that one of the areas of the National Disability Strategy that has had the least purchase is the area of rights protection. We talked very much about the issue of violence. Every one of the state and territory ministers or representatives stood up and talked about how they acknowledged that this was a major issue in their state or territory. There was a great commitment there to coming up with a mechanism, because the other thing is that the alliance is made up of organisations that are still fairly poorly funded. We want some sort of overarching mechanism to drive the National Disability Strategy, and that involves a range of players. As I said, we are seeking to find out what is happening with that, because back in February we were under the impression that that process was in train. We would naturally be a part of that process. We would be represented on whatever that national mechanism was.

Senator MOORE: We will wait—

Ms Frohmader: We will send you a copy of the response—

Senator MOORE: because there is nothing in the wider space about that at all, and the debate is dominated completely by the rollout of the NDIS. That has taken up the whole discussion.

Ms Sands: That is exactly right.

Ms Frohmader: You are right.

Senator MOORE: We have been saying for years now that whilst of course that is absolutely critical, and there is so much hope and expectation around it, for a lot of people with disability in the community the NDIS is not going to have an impact on them. We are struggling as a community, I think, to see how that is going to operate. We now have a couple of states which have clearly said that they are moving out of disabilities, that the money will go to the feds and that will be the end of their engagement. I just cannot see that. I have been trying to engage everyone. We had the ombudsman today talking about the new legislation in New South Wales on mandatory reporting, which is the most progressive in Australia, but if New South Wales has given disabilities per se to the Commonwealth government, where exactly does it all fit? That is where we need to go next; the people stay the same. They are living and breathing and in some cases suffering within this boundary.

Ms Sands: That is right. We see that every day. It is of real concern to us and it is something that, as Carolyn says, we have been actively seeking clarification on because what we are concerned about—

Ms Frohmader: We are trying to progress it as well.

Ms Sands: Yes. We are concerned about the entire focus being on the NDIS, because a lot of the work that we actually do in our organisations and what we hear from people may not be about NDIS issues at all.

Ms Frohmader: Often, it is not.

Ms Sands: We do a lot of work with the National Disability Insurance Agency on what we are seeing in assisting, reviewing and reforming their processes. That has been constructive. We have also been very concerned about jurisdictions such as New South Wales that have wanted to hand over all of their funding to the Commonwealth. We have been raising issues around what that means for people who have not got an NDIS package and what their plan is for the rest of the across-government service provision. We are still concerned about that. We do not necessarily feel that we have satisfactory answers to that in this jurisdiction, and there are other concerns in other jurisdictions as well. I think we hold similar concerns and we are very aware that we need to be progressing them to come to some agreement or commitment—a recommitment and a refocus on the NDIS and, as we were saying, some kind of mechanism that will drive that. Otherwise, there will be significant issues for people who will completely fall through the gaps. They may have already been falling through the gaps in the broken service system we had before, but we will now see people falling through different kinds of gaps because there is no disability support mechanism for them. They are not eligible for the NDIS but there is nowhere else to go except on the street, into a mental health facility or into jail. I must admit, that was part of the broken system before, but this is an opportunity to change that and that is what we are concerned about.

Mr Griffiths: From an Aboriginal perspective, this is a really critical issue. We talk about the need for a whole-of-community response to disability, particularly in regional and remote Australia. There is a real risk that it is going to be framed as an NDIS-only response. You could well have a situation where the National Disability Insurance Agency may work quite well with Aboriginal people, but the National Disability Insurance Scheme will not create accessible footpaths in Wadeye or create an accessible environment where someone can travel 500 metres down the road in their wheelchair to get into the general store. Unless we have a process where everyone gets an opportunity to say what is needed in the community, it is not going to work. We are going to be back here in 10 or 15 or 20 years having the same conversations that we have always had. It does not necessarily mean that it has to be a service system response either, we would say, particularly in regional and remote Australia. If you

look at the way disability is responded to in developing countries where there is no government mechanism, there are ways in which people come together and support people with disability perfectly well. That does not necessarily require an external service system, either. We tend to take a very positive view. We think we have an opportunity here to make a really substantial difference in Aboriginal Australia. If you can build a whole-of-community response to disability, then why can't we build a whole-of-community response to any number of other issues. That is the way forward, but there is a very real risk that all the eggs are in the NDIS basket, as everyone keeps saying, and that is why we have to revisit or reinvigorate the National Disability Strategy.

We are fortunate that we have been able to establish a national Indigenous Disability Action Plan and again that is very positive, but again I want to back the comments of colleagues on the silo experience, which plays out acutely, as you would know, in Aboriginal Australia. We are all familiar with communities where there is no shortage of government programs. I think of Wilcannia, where at one stage we had 40-odd different government programs and there were three employment providers in a town of 800 people. Basically, someone is cooking the books. There are vested interests here, too, that have to be dismantled. From an Aboriginal perspective, Aboriginal disadvantage is an industry, and it is largely not owned by the community; it is usually owned by external people.

Having said all that, the language within the National Disability Insurance Scheme is about choice and control and so, if we use that language, then it really should be about a whole-of-community response anyway. I could not agree more that the National Disability Strategy is something that needs to be reinvigorated and needs a mechanism to oversee it.

Ms Frohmader: Our submission also talks about our concerns and great reservations about the National Disability Insurance Scheme's quality safeguards framework. We have been working with government since that work started and, right from the get-go, we have been very vocal about our concerns of a national scheme bringing in eight or nine schemes into one. There are so many people who are not going to be eligible—who will not be covered. So we argued: why can't we have a national statutory protection with the NDIS safeguards framework as a component of it? Why do we have to have one for that, one for that and one for that? The idea that somehow the quality safeguards framework is going to address this issue of violence against people with disability across all forms of institutional and residential settings is a nonsense. It just will not happen. Right from the early days we were arguing that it needed to be much broader than that. If you are going to bring nine schemes into one national scheme, why not think about that a bit more logically so that anybody with a disability—regardless of their setting and regardless of whether they are an NDIS recipient, and most of them will not be—can have the same protections.

Senator LINDGREN: You were talking about policy silos. My biggest concern is that we are saying that the NDIS will not be broad enough and yet in the current system there is a broad range of programs, and the policy silos exist because of that range of programs. If we do have a national policy around violence and abuse, how do we ensure that the existing policies are integrated into the national program? Do we have one national program that ties in all the existing policies? I am really not sure how it is going to work.

Mr Griffiths: From my perspective, I would say an independent statutory watchdog is the answer there. That would be my answer to that, if I am understanding it correctly.

Senator LINDGREN: I am just a bit concerned this would be—I am sorry; I have forgotten the previous speaker's name. She touched on the fact that the NDIS was not going to be broad enough and that everyone was under the one blanket or one banner. Yet, when we have all of these other existing programs it is also not enough. I am just trying to work out what is the best fit, what is the best situation, what is the best strategy, and I do not know: is a watchdog going to be good enough to cover all of those things. It seems to me that, yes, we need a quality framework that is a proactive scheme rather than a reactive scheme. Obviously we need an independent complaint body and we also need the screening of employees. There are a whole range of issues that I do not know if they would necessarily come under NDIS. Can anyone give me a solution or give me some ideas? I am a little bit lost here, that is all.

Ms Flanagan: My thoughts are that regardless of what service system you are in or what services you are receiving you should not have to go through differing complaint mechanisms. Of course there are going to be in-house organisational protocol, but on the whole we are referring to the fact that if you are NDIS eligible or you are not, it would be one overarching, independent statutory body that manages that system.

Senator LINDGREN: Okay; thank you very much.

Ms Frohmader: I was also trying to make the point that it is perfectly fine to have a national framework to prevent violence against women and their children, but violence against women is violence; it should not be

restricted to a particular form of violence and it should not be limited to where you happen to live or reside or what your setting is. We have talked in our submission about the Istanbul convention developed by the Council of Europe as an example, and we have talked about this for a few years now in Australia—that is, there is very much the need for overarching national legislation to prevent violence against women full stop. That does not mean that we do not recognise that domestic violence is a very prolific form of violence against women, but the idea that because you happen to live in an institution means you are not protected by a national framework or a 12-year plan to prevent violence against women is shameful. Violence against women is violence against women, whether you live in a tent or whether you live in a house with a picket fence. What I am talking about are the limitations of some of our national frameworks and policy frameworks where people with disability are excluded or marginalised or sometimes left out all together, and where notions and understanding of intersectionality is not well recognised.

What we have tried to do in our submission is offer some examples of things that government could look at in terms of good practice models. Some of the other examples that we have given are for things like what the Intellectual Disability Rights Service in New South Wales has. It has a court support program. It is a very good program, but it is only for people with intellectual disability and it is only within New South Wales. We need something like that rolled out nationally. We have the Third Persons Program in Victoria, which, again, is worthwhile looking at, but it is the same as our community visitors program: where they exist, they are volunteers. What we are saying is there are some pockets of good things out there that could be looked at, but first of all it is about extending those out to all people with disability so that they are meaningful. One of the things that has come through in our submission and that we have talked about very strongly is that it is almost like a two-tier system. If you are a person with a disability it is called 'abuse'; it is a 'service incident' or a 'critical incident' or an 'administrative infringement'—it is all of those things—but, if you are not a person with a disability, it is called 'rape' or it is called sexual assault or it is called violence. This is one of the things that our submission talks about most fundamentally: that people with disability have the same human rights as everyone else. People with disability do not deserve a different set of treatment just because they happen to have a disability. I will not go on anymore about that, because our submission covers that area quite strongly.

Senator LINDGREN: I think that probably the most important point you are making right is that there should not be any difference in the type of treatment that they receive. I think that is a very important point.

Dr Cadwallader: Whilst I agree that we want people with disability to have access to the same protections as anyone else, what that requires is ensuring that those systems are accessible. Unfortunately I have heard a number of police officers say, in relation to domestic violence and people with disability, 'We just treat them the same as anyone else.' Actually, that is part of the problem and that is part of the impediment in the process. Without actually making access to justice for people with disability a responsibility of the justice system, you will not get people with disability able to come forward and give reports, have those reports taken and have them taken seriously, investigated and recommended for prosecution. Without those kinds of pathways through the justice system, you wind up with administrative responses often being the primary response to what is, in fact, a crime. It has already been pointed out earlier today that that undermines the efficacy of police checks for employment.

Unless access to justice is addressed across Australia for all people with disability, then you are not going to see the kinds of change within the service system that you need. Unless there are actual criminal responses to violence against people with disability, you are not going to see the level of deterrence that exists for the rest of the community. We know that perpetrators will target those who they can get away with targeting and, unless access to justice is addressed across the board, that will remain the case.

Ms Flanagan: A running theme for CALD people with disability is the inappropriate utilisation or underutilisation of interpreters within the justice system. That is something quite basic to communicating and engaging with the system and it is just one example of how that would result either in reluctance to come forward or in underrepresentation of reporting.

Mr Griffiths: Now that we have moved to access to justice, I am keen to make some points there. On the issue of indefinite detention of Aboriginal people with disability, and people with disability more generally, I think the latest data suggests that there may be as many as 150 people with disability in prisons around Australia without conviction and at least 50 of those people are Aboriginal. We would dispute that—I do not think that we really know the extent of this. That is the first thing we would say. We would also say that this is one of those issues which you have to stop and contemplate for a moment. You have to contemplate the fact that—as you know only too well, Senator—this is an extraordinary thing that is happening in Australia. It is a national shame to think that there are at least 150 people with disability in jails across Australia without conviction. It is just one of those moments where you have to catch your breath and go, 'Is this really happening?'

I know when we raised this with the UN committee against torture, they were shocked to hear that this was happening in Australia. Clearly, there needs to be a significant—as is one of our recommendations—overhaul of the criminal justice system. From an Aboriginal perspective, this starts right from the very beginning. If you live in regional or remote Australia—or even if you live beyond the Blue Mountains here in New South Wales—your first interaction is going to be with a police officer. If you have a mental health episode and you are not going particularly well, you usually end up in the back of a paddy wagon. In some parts of our country, as you know, the police are really the service provider in town—and this is not necessarily to run down the police force either, because that is not what they are supposed to be doing. Then you see this trajectory of: go before a magistrate maybe, and the magistrate might not be particularly attuned to your mental health needs, for example. Then you are on this trajectory of indefinite detention.

I am not a lawyer so I do not want to muddle myself here, but there is some work happening in the UK around reform, because they have a similar challenge—and this is not a unique challenge in terms of the unfit to plea. I had the good fortune to meet with the equivalent of the Law Reform Commission in the UK, and they are trying to address this issue too, so I think there are some learnings there that would be really helpful.

The other thing we wanted to say about access to justice is that there is an untold story about Aboriginal deaths in custody as it has a disability aspect to it. The royal commission did not talk about disability—that was back in 1991. When we hear the stories of deaths in custody—and often we can get a little bit further into what happened—it appears that there is a disability aspect to it. The person may have had cognitive impairment, very serious addiction, acquired brain injury or mental health issues, and that story is not told. I think that is something that warrants further investigation. Again, I can only tell you that anecdotally, but it is something that definitely needs to be investigated further.

More generally, I do not think we really know the extent of the experience of Aboriginal people with disability of violence, abuse and neglect, and I don't think we really know the extent of the experience for Aboriginal women with disability or Aboriginal girls with disability. What we rely on are the stories we hear, and we are not a huge organisation but we get phone calls that are about abuse and neglect. Again, the bigger picture here is: where do you go? Where do you get support is the bottom line.

If nothing else, we would say—and there is another issue in terms of Aboriginal people—if you can start addressing disability more appropriately, there is an opportunity here to reduce the Aboriginal prison population by 10 to 20 per cent in Australia. There is an issue in Queensland at the moment for a number of Aboriginal people on remand for extended periods. We have an extraordinary growth in the number of Aboriginal women in prisons.

CHAIR: So do we in WA.

Mr Griffiths: Yes. If you talk to the WA Aboriginal legal service, they will tell you there are lots of Aboriginal people with disability coming through their doors. That is not what they are supposed to do though. They have a legal bind—again, I am not a lawyer—and they have to make a choice about what they do in terms of trying to get the best outcome for someone. Do they go down the unfit to plea path or get people to plead guilty and then there are the consequences around that? We know all too well that there are plenty of people, as you know, that have been indefinitely detained for a very long time—far longer than if they had actually pleaded guilty to the crime. Again, in one of those moments, you have to say, 'Right. That happens in Australia in 2105.' That is quite extraordinary to contemplate.

It is right to say that the UN committee against torture were shocked to hear that this happens in Australia. I think that is another area of urgent reform and why it is one of the stand-alone recommendations of the group.

Ms Frohmader: I would like to add that it is very difficult in 30 recommendations—these are priority recommendations. As you know, we could certainly have a lot more, but you will also note that one of our key urgent recommendations relates to children with disability, particularly in out-of-home care settings. I think that the report that came out earlier this week—sorry, I have forgotten what day it is—

CHAIR: Last week.

Ms Frohmader: Last week. The report that came out last week from the commissioner in Victoria was just horrific and was yet another report. The week before that, or two weeks before that, it was South Australia. It is just every week. So there is urgency. Young Aboriginal children and girls with disability are significantly over-represented in out-of-home care settings. The fact that our young children are being sexually abused and experiencing the most horrific forms of violence in those settings is just reprehensible. So it would be remiss of us not to make particular mention of that stand-alone recommendation.

Senator LINDGREN: Thanks very much. You made some very valid points after my question, so I am pretty well finished.

Dr Cadwallader: I was just going to add that it was heartening to see that in the Senate report that came down, I think, last week as well on out-of-home care that, for example, the National Framework for Protecting Australia's Children was being encouraged to consider where children with disability fitted within its work, and there were some fairly robust recommendations around that, which was very heartening. But I think that one of the things that cut across out-of-home care and other settings is that in many cases people with disability wind up being channelled into fairly closed spaces—fairly closed institutional settings—whether it be prisons, mental health facilities or out-of-home care. Often the trajectory is into more segregated settings, and that places them at much, much higher risk of violence. Sometimes it is understood as a response to violence. In out-of-home care it is often a response to violence that is occurring within the family home. Unless we can actually ensure that the places that people are moving into are safer than they would be elsewhere, I think there are some real failures in the system as a whole—the care system, if I can call it that—in terms of actually addressing what makes people vulnerable, which is various forms of exclusions from the community.

CHAIR: Thank you. I want to get this on the public record. You made the recommendation about the royal commission. I note all your recommendations, but particularly the ones you have highlighted. I am thinking of the statutory watchdog, which it seems to me has very strong, almost universal support from the witnesses and evidence we have received. I presume it is not, 'Do the royal commission first and then we'll have the statutory system.' I just want to make sure that it is really clear that you are saying we have to be doing both, as well as all your other recommendations.

Ms Frohmader: I was going to say, 'We'd like all of them, thanks.'

CHAIR: Yes, I understand that.

Ms Frohmader: No, absolutely.

CHAIR: It is not, 'Let's have further investigation.'

Ms Frohmader: No.

CHAIR: It is, 'Let's be doing this, but we need to be doing this as well.'

Ms Frohmader: Absolutely.

Dr Cadwallader: That is right.

Ms Sands: Very much so.

CHAIR: I just want to make sure we have that.

Dr Cadwallader: We are doing substantial amounts of work around the Royal Commission into Institutional Responses to Child Sexual Abuse. Some of the changes to the Royal Commission Act that occurred before that royal commission was launched are designed to ensure that people can actually tell their own stories to the royal commission. You guys have done an amazing job of ensuring that people's stories can be told, but private sessions under the royal commission are incredibly valuable, and it is incredibly healing for people to have a space where it is very official and there is a person sitting there with a coat of arms behind them but their evidence is not being tested, as it would be when they report to police or to courts. It has a different significance. These stories have been so excluded from cultural memory, really, that it is no wonder that people with disability feel like they are just being pushed out of mainstream society. This would provide a way for those stories to be heard and I imagine that the royal commission would then inform some of the changes that would need to happen as the watchdog body went on. But there is really no reason they could not happen at the same time, and that is what we would like to see.

CHAIR: Yes, I just wanted to make sure we were clear on that. We are bang on time. At the risk of blowing this right out, is there anything else?

Senator MOORE: This is just for homework: I am desperate to know what all of you think about advocacy in the system. I know that is a much wider question, but we will go for another two days if we get on to that. But I am really interested.

Ms Sands: I will just say that it is vital. Independent advocacy is absolutely vital.

Senator MOORE: If it is possible to get something back, it would be really useful—your thinking about advocacy, where it fits, how it should operate and all that stuff. The definition is still nebulous.

Ms Frohmader: We have done some of that writing in a submission to the National Disability Advocacy Program's overarching framework, and also our work to the NDIS safeguards framework. Advocacy is addressed in both of those as well as a little bit in here.

Ms Sands: So we will take that on notice. Thank you, Senators.

CHAIR: If there are no further questions, thank you so much for your submissions. The work you have done—

Senator MOORE: And the work you are going to do.

CHAIR: Yes, it is very much appreciated. Could we have the answer to that question you just took on notice when you can; there is no deadline. It would be appreciated.

Proceedings suspended from 15:47 to 16:06

BERRIE, Ms Leona, Manager, WWILD Sexual Violence Prevention Service

HICKS, Ms Kobie, Private capacity

CHAIR: Welcome. I would like to invite both of you to make an opening statement, and then we will ask you some questions.

Ms Hicks: I was in and out of foster care all my life. I have been sexually abused, physically abused. I went into care when I was basically three months old, I think it was. I ended up moving out when I was 16. I moved into a little apartment of my own, and then I moved out because the foster mother found out where I was living and under blackmailing I went back there and went through it all again.

Ms Berrie: Perhaps you would like to tell a little about the part of the story when you were in care, living with your foster mum, and you had tried to let people know about what had been happening.

Ms Hicks: Yes. When I was in foster care I went to counsellors. I spoke to a counsellor. I was hoping it would be confidential, because back then it was; it was meant to be. But it was not. Every time I mentioned any sign of abuse it got back to my foster mother and then I copped it worse when I got home. I was thrown through a glass window, I was thrown down stairs, I was hit in the stomach. I am lucky to have children—very lucky. I am very lucky to be alive.

Ms Berrie: Is there anything else you want to say about the time in foster care, and trying to—

Ms Hicks: Well, that was not the only part of my experience in foster care either. The first time I left home I went to another foster carer and I was sexually abused there. I did not say anything. I kept it to myself. I did not know what to do. And then somehow it got to the police. All I remember is the police rocking up and asking me questions. As a young child it is very scary walking up to the police. I knew they were there to protect me, so I told them everything that happened. They were recording video. It did not go any further after court, because they asked me about stuff that I could not remember. I have a bad memory. Ever since I was hit in the head when I was younger I have had memory loss. I remember certain things, but not a lot.

After that, I went to another foster home. I was sexually abused there, too. So, I am very against foster homes. I saved my own children from going into a foster home. I went into a caravan park after leaving the women's refuge in Clontarf, in Redcliffe, because I found it very demanding, overpowering. They were breaking my confidentiality, too. We tried to work out how we could arrange to have that place done for breaking my confidentiality—telling my foster mother stuff about where I was living, what my children were doing and all that. My foster mother was very demanding, and the one I lived with before that. She was taking control of my kids. I was not allowed to leave the house with my children. I was not allowed to go shopping with my children. So I left there and went to the women's refuge and told them what happened and they took me in.

Then I went to Bric Housing and asked them for help to get out of the women's refuge, because I know that is emergency accommodation. They had accommodation for me, and I am not sure, but I think the women's refuge I had been in started saying things about me and running me down, because I got a phone call the same day and was told that the place was not available anymore, yet they had pre-approved me and said that I was going to be moving in there.

After that I moved into the caravan park to get out of the women's refuge. The day I moved into the refuge my children got sick. They had diarrhoea, vomiting—you name it, they had it—and high temperatures. And I have a medically ill child. I do not need any more stress on him. Then Child Safety came into my life because I lived in the caravan. My son had an epileptic seizure. He was rushed to Redcliffe hospital. I was told I was not medicating my son, but I was. I would never forget his medication. If anything, Child Safety needs to look at every aspect of life and give people an opportunity to parent. But if they can't, they can't; I know a lot of people out there who can't parent, because they did not want children, or whatever. But they need to be given some kind of leeway to that parent. But I had Child Safety to help me out with a parenting course and counselling with Robyn from WWILD. Leona and Jane all helped me into that.

Ms Berrie: Perhaps you want to tell a little bit about your experience trying to report to police, as an adult, something that happened when you were much younger.

Ms Hicks: I think it was in 2012 I reported a sexual abuse that happened to me when I was a child. It was happening, from what I can remember, from grade four right up until I was 19. The police were saying there was no evidence, but I can give a description of the house, what I was wearing. I found that the police did not help me very much. They did not want to listen to me. This was the one in Gympie, but the police in Maryborough were lovely. They did everything I told them. They wrote everything in the report, but they asked the person who did it to me and that is when they turned and said that there was no evidence.

Ms Berrie: When they explained why they were not going any further with it, how did they put it to you?

Ms Hicks: They said, 'The case is closed. There is no evidence. Don't bother.' That is how I was spoken to by a police officer. They were not going to go any further, so 'drop it'. There is no point. I have a disability myself.

CHAIR: It seems to me, from what you have said, that every time you have tried to report abuse the authorities you have reported it to have not followed it up or, in that case, said not to bother.

Ms Hicks: That is right. 'There is no point.' That is what I got told. I went to school down here. I went to school in Gunnedah. I reported an incident where I got hit by a polypipe and had the red mark to prove it. Child safety got involved but my foster mother called me [inaudible]. So child safety left me where I was getting abused. At the end of the day, child safety really need to watch what they are doing, because a lot of people were taken [inaudible] living in an abusive home. It is really sad that I had to go through that. Okay, yes, I know what it is like but I am living day by day. Every day I have to live with this, and it is always in my memory. I try to bring my children up without hitting. I do not hit by children, because I do not want them thinking that is right.

CHAIR: When we report on this inquiry, what are the things you think should be done to make sure that people are not abused anymore and, if it does occur, what should be in place to help people?

Ms Hicks: I can really only talk for people who have disabilities, because I have a disability myself. I think the police should give them a bit more time or ask them to get someone in to help them, with making a statement, like an advocate. They should look into it a lot more. Someone reporting a rape or crime—or verbal abuse, like I did when I was a child; no-one looked into it. They just left me in there. They should open up a case and keep an eye on the child or adult, whatever it comes down to. I do think the police should ask for someone from a service provider to help them all, another member of the family or something.

CHAIR: When you reported it to the police, did they offer you an advocate or help?

Ms Hicks: No.

CHAIR: Nothing.

Ms Hicks: Never. I had one lady who came down with me, from Maryborough, because I asked her to. I reported everything to her first, before I went to the police. That was about the sexual assaults all my life. No, I have never been asked for anyone to come in with me.

CHAIR: How did you find Ms Berrie?

Ms Hicks: Good question. How did I find you?

Ms Berrie: You are talking about, was it Bamaga?

Ms Hicks: No, Maryborough. It was the sexual assault up there. I told him I was moving down here and I think that is when my referral came in.

Ms Berrie: I think, when we met you, you were having some support from an Indigenous organisation.

Ms Hicks: Bagama. It is an Aboriginal institute.

Ms Berrie: They were offering support and counselling to do with some parenting issues and, through that, one of our councillors was doing—

Ms Hicks: No, I met Robyn before then.

Ms Berrie: You met Robyn before then; okay, my mistake. Sorry.

Ms Hicks: I think I got sent to WWILD after I left Maryborough. I have been with Robyn for years.

Ms Berrie: Was that before then?

Ms Hicks: Yes.

Ms Berrie: Goodness; what do I know!

Ms Hicks: I was with Robyn after I left Maryborough. That was nearly four years ago.

Ms Berrie: So that was a sexual assault service in Maryborough.

Ms Hicks: Yes.

Ms Berrie: And they told you about WWILD.

Ms Hicks: No, I think they just referred me.

Ms Berrie: They gave WWILD a call and said, 'Give this woman a call.'

Ms Hicks: I think that is how I met WWILD. I had a lot to do with Robyn. Then Robyn had to go away and Jane became involved. Then Jane went away and Leona became involved. They all know about me.

Ms Berrie: Some of the things WWILD has helped you with, since getting to know you, is applying for things like financial assistance for having been a victim of crime. Is that right?

Ms Hicks: Yes. I applied for Victim Assist down in New South Wales. I got it, even though there was no conviction. I think Queensland should be the same. Queensland is a different story, again; you need a conviction up there.

Ms Berrie: If it happened before a certain year, yes.

Ms Hicks: Queensland should be the same as New South Wales. Not a lot of people are game enough to stand up and speak in court. This person who did it to me only went to jail, recently, for doing it to other kids. That was before I made my statement. Now I have made my statement they are not willing to go any further with mine, and I do not know why; and they are not willing to tell me why. That is another point. They should be able to tell you why they are not going any further. If they do not want to explain it to you they should explain it to someone who can understand, and then that person can explain it to the person with a disability. WWILD is a disability organisation. Even if Leona came in with me for the meeting, if I did not understand what they were saying Leona would explain it to me, after. That is how they work. They do explain everything to me.

CHAIR: You made a recommendation about the police helping you develop your statement and in providing an advocate. What other suggestions do you have to improve the system?

Ms Hicks: As you can see, I am an Indigenous lady. I am not saying they need more leeway but they do need to give a bit more support, in that way. No one is innocent. Everyone has done something wrong in their lives. But I have stayed out of trouble. I have never been in trouble with the law, and I am not planning to be. I have children. The police up in Caboolture tried pinning me for something, saying I had been involved in stealing items or something like that, and my name was printed all over the computer. The funny thing is, I did not know the people. I said, 'I'm sorry, I don't know them. I don't know how you can pin this onto me.' Back then, I did not have any support. I did not know back then that WWILD existed. I just told them the truth: 'I don't know who you are talking about. I don't know how my name got onto that computer.'

Ms Berrie: Is that also the time you were telling me about where you said to me, 'When I'm out and about I can be a bit noisy,' and that it feels like you get a bit of extra attention from police sometimes?

Ms Hicks: No, that was not me.

Ms Berrie: Okay, sorry. I thought you said that; my mistake.

Ms Hicks: No, I am never noisy. I try to stay very quiet.

Ms Berrie: Sorry.

Ms Hicks: I hide away. I do not like police very much.

Senator MOORE: Ms Hicks, you spoke earlier about the fact you do not like the foster system and you had a terrible time yourself. Have you any ideas about what would work without the foster system?

Ms Hicks: The family are there. I have two brothers and two sisters in foster care, at the moment. I am going kinship carer for them. Look at the family. Look at the family's background. Some people's family are not very good news; I know that. But I am sure you will find somebody within the family who will have a clean record. If it came to the worst-case scenario and there were no family around, say, the mother passed away and the children got left—I would never let you put my children with my family; they do not have a clean history—I would say, 'Put them in a foster home.'

They really need to screen the foster system very carefully and watch over them. I think the foster system has got a lot stronger up in Queensland. My brother and sister are under [inaudible] now and they are always watched, every day. Child safety goes and sees them and makes sure they are doing well. I got dumped. I got left. I never once saw child safety. The only time I saw them was the time my mother came and lived with us. I was only about 3½ or four. My foster mother asked this guy to hide Ethan, my other brother, and me down at the dam, because child safety were coming to collect one or both of us. They asked where I was, so I had to be called up. I went with child safety that time.

They really need to start screening and watching where they put people. When I got placed in that foster home I was never watched. They need to keep documenting, keep reporting and keep watching, because I was not watched. Then Dawn took off to New South Wales, with me, with no legal custody. My mother went to the police and reported me missing. She went to child safety and reported me missing. They did nothing. They told her they could not help her.

CHAIR: How old are your kids?

Ms Hicks: My twins are 3½.

CHAIR: Twins; that would be hard.

Ms Hicks: I have a 20-month-old, I have a six-month-old and I have an 11-year-old stepson. I also have a 49-year-old husband.

CHAIR: He's the biggest!

Ms Hicks: Yes! One of my twins is medically ill. He has tracheomalacia. He has epilepsy. He has slow global development. He has a single kidney and he has lung disease.

CHAIR: That is very sick.

Ms Hicks: He is very sick. I am always in and out of hospital with him. We might also need to talk about splints for his legs. This is with disability services in Queensland. They are very helpful. I have never had a problem.

CHAIR: Excellent. Thank you.

ANDERSON, Dr Angelika, Private capacity

PHILLIPS, Ms Julie, Private capacity

[16:30]

CHAIR: I welcome our next witnesses, Dr Anderson and Ms Phillips. Have you been given information on parliamentary privilege and the protection of witnesses and evidence?

Ms Phillips: Yes.

CHAIR: Do you have any additional comments that you would like to make on the capacity in which you appear today?

Dr Anderson: I am a senior lecturer at Monash University.

Ms Phillips: I am a disability advocate.

CHAIR: Ms Phillips, we have your submission. I would like to invite you both to make opening statements, and then we will ask you some questions.

Ms Phillips: I hope that you have gleaned so far that there is a gaping hole in the education system in the protections for children with disabilities. The only laws and regulations that they can seem to rely upon is criminal law—and that does not really get them very far when they are in schools—and the myriad of policies and procedures that departments of education around Australia have in relation to restrictive practices. I do not like the term 'restrictive practices', because it is a euphemism for what is often simply assault, false imprisonment and abuse. On occasion they are restrictive practices. But I feel very strongly about restraint and seclusion being used when they are not a last resort, and most of the time—despite the policies and procedures saying they can only be used as a last resort—they are not. In fact, out of all the cases that I have worked with I have never seen any restrictive practices used as a last resort.

In terms of the schools, the policies and procedures around the country are very similar in that they are vague and broad and are open to interpretation—so open they are fairly meaningless. I have picked some out. New South Wales, for example, says that you cannot use physical restraint if there is a risk of injury to staff, but you can use physical restraint on a child for a threat to departmental property. In Queensland they can put physical restraint into a student's individual plan. That is not at all acceptable in any sort of disability service, because it means you are intending to use it repeatedly and that is not the way that physical restraint is meant to be used. Western Australia is similar except that you can use restraint to maintain order or re-establish order. Anyone could say that they were maintaining order to excuse the fact that they had used such practices. Such practices are also used in regard to property damage.

What is missing in all of these policies and procedures and sometimes in educational regulations is compulsory training, comprehensive behaviour assessments—which Dr Anderson can talk more about—positive behaviour plans, any intensive psychological support that might be required, any evidence based approach to the problems that have arisen and proactive approaches. All of these policies and procedures are about reacting to challenging behaviours. It is interesting to ask the question: why is this group of our citizens so ignored? And I am not sure that I can give you an answer, except to say that it is helpful to look at the way in which senior people in the education system talk about children with disabilities. One good example is a very recent example that is on your website at the moment where you have a response from the new secretary of education in Victoria, Gill Callister, dated 27 July. She is responding to a submission from the Disability Discrimination Legal Service—where I am the manager, but that is not the role I have here today—and Communication Rights Australia. She says:

Parents and carers are essential partners in developing effective responses to students who are exhibiting violent and dangerous behaviours ...

This is the sort of language that is used time and time again to describe children who have 'challenging behaviours'. They often have autism. They often have these behaviours due to their environment and the incompetence with which they are handled. When you believe that children are exhibiting challenging behaviours because they are bad or—what I often see—have made poor choices, all the responsibility is on the children. So, instead of trying to find out why these behaviours are being exhibited and what is a proactive and therapeutic response to them, we have all the responses with restraint and seclusion.

In my experience of the manner in which these children are spoken about and the behaviour plans I see, where there are consequences for their actions—consequence 1, consequence 2, consequence 3—and some of the barbaric practices, which I would say probably equate to torture, one has to wonder how this whole group can be allowed to be treated in such a manner as no other group in Australia, I believe, would. I am not saying that adults with disabilities do not get treated in this way sometimes, because they do, but they have regulations, policies and

procedures that protect them or are meant or designed to protect them. Even if they do not always work, there are some laws like mental health acts and disability legislation that make it quite clear that there are positive behaviour plans and assessments that need to be done before you can just start restraining people.

I guess that is the main thrust of what I have to say, but I also think it is interesting to look at the lack of interest with which this area is viewed. A contemporaneous example, a very sad example, is the fact that I in the last three months have written about four letters to our new Deputy Premier and Minister for Education, James Merlino, about a school in north-west Victoria which has been having cages in its classrooms, using pressure points on children and locking them up in some terrible places. I have asked for an independent inquiry, and I have said that I have a number of people, including ex-staff and parents, who are willing to say what they have seen at this school and to give evidence. It is now the end of August, and they have been receiving letters through June, July and August, and not one thing has been done. I believe that, if I had reported sexual assault or assaults against children without disabilities, this would not be the case. Kate Jenkins, our human rights commissioner, has been copied into almost every letter and I have not even received a response saying, 'Thank you for your letter,' whereas from Deputy Premier Merlino I have had letters promising to do something. I do not know if something will happen and when it will be, but there have been three months in which those children could in theory have been receiving the same sort of treatment they have in the past. This is, at best, indifference or, at worst complicity. I do not know how it should be characterised.

I have some ideas about solutions, but you might want me to wait for that.

CHAIR: Let's come to that in a minute. Dr Anderson, you wanted to make an opening statement.

Dr Anderson: Yes, thank you.

CHAIR: Then I think it would be great to explore the issues you have raised but also talk about solutions.

Dr Anderson: In my opening statement, I would like to provide some of the educational and philosophical background to the kinds of practices that could be used instead of restrictive practices. Restrictive practices are of no educational benefit to the individuals or society as a whole, and furthermore they are really not required. In order to outline the approaches that we know are evidence based and that address behaviours of concern—behavioural and educational approaches based on the principles of applied behaviour analysis or behaviour analysis—I want to give a brief description of ABA, for short, so as to facilitate a distinction between educational and facilitative approaches and restrictive approaches.

Applied behaviour analysis is a science. It is a science of behaviour, and it has a clear focus, which is behaviour. It has a number of core assumptions, one of which is that behaviour can be studied through the scientific method. Another one is that causes for changes in behaviour are in the environment, not in the individual. This is very different to many other psychological approaches, which theorise about hypothetical constructs as origins of behaviour. The experimental study of behaviour has led to the discovery of basic principles or rules of behaviour, and those essentially are the science of learning. Applied behaviour analysis, in that, is the systematic application of these principles for the improvement of socially significant behaviours, to the benefit of the individual concerned and society at large. So that is the definition of ABA. It was important for me to give that definition because applied behaviour analysis is often misrepresented and misunderstood.

Core assumptions are that all behaviour is learned and that all behaviour can change. This includes behaviours of concern. They too are learned and are the result of consistent behaviour-environment relations. Individuals exhibit these behaviours because they have proven useful to them. Once the functional relationship between relevant environmental events and these behaviours of concern are understood then the situation can be remedied, usually by teaching the individual functionally equivalent replacement behaviours, so acceptable behaviours that have the same purpose, and also ensuring that the environment no longer supports the unwanted behaviour by providing desired consequences to it. So effective function-based interventions will ensure that the behaviour of concern is rendered unnecessary, inefficient and irrelevant.

These ideas are at the heart of what is considered the current best practice, including in schools, in addressing behaviours of concerns—the functional approach. These are also the ideas that underpin school wide positive behaviour support that is currently supported and promoted in Australia. It is certainly being rolled out in Victoria in schools.

The positive behaviour support logic, the PBS logic, is also applied to the prevention of behaviours of concern and the whole system depends upon that so that behaviours of concern do not escalate to the intensity that require that high level of individualised intervention and assessment, except for very few individuals. These individuals identify themselves by failing to respond to effective preventative practices in a positive behaviour support

school. So the highly technical process of a functional assessment or functional analysis should normally in a system only be required at the level of the individual for a few cases.

Positive behaviour support is 'positive' because something is added. Although the aim is to reduce or to eliminate unwanted behaviour, in a positive behaviour support framework you do that by teaching, by adding something, by providing alternative behaviour. In this paradigm the solution is always to change the environment or to teach the person. Of course teaching is core business in schools. It makes very little sense that if the solution to challenging behaviours is to teach that we then restrict, restrain or remove children from the opportunity to learn.

The behavioural approach is in contrast to common concepts of behaviour that people, including most psychologists I would say, think of as the result of a person's free will or their choice or maybe an inherent part of the disability. Where the causes of behaviours of concern are seen as somehow inside the person, such as wrong choices or essential character deficits—this is a bad, naughty, evil person et cetera—the solutions that logically follow from this concept or from this idea of what causes behaviour are not really useful. People think you have to somehow change the person, which is not easy to do. This, in conjunction with the common concepts of disability that are primarily based on many physical disabilities, such as blindness or quadriplegia, as permanent conditions that require permanent adaptation such as wheelchairs, Braille books and signs, ramps and so on, leads to a situation where professionals often believe that nothing much can be done about behaviours of concern other than to somehow contain or control them. The common way of thinking about them leads to an overreliance on restrictive or reactive strategies. Such strategies are compensatory rather than facilitative and they are likely to lead to increasingly restrictive practices and environments and increasingly limited action alternatives for the individual as more and more events and situations are avoided.

Furthermore, such an approach is also likely to sometimes systematically strengthen the behaviours of concern as they prove adaptive to the individual in the short term. I will give an example which will probably make that all a bit clearer—for example, let's say a student exhibits behaviour of concern in a maths class. The teacher deals with it by sending the student to time out, which is a common practice, or even sending the student home. Traditional concepts of behaviour might attribute the behaviour to the child's disability. Perhaps the child has autism spectrum disorder, ADHD or whatever but that might be the explanation, because the student has ASD. Given that the disability cannot be changed, then this way of thinking does not offer any positive solutions but leads to reliance on these reactive and often restrictive practices to somehow manage—in other words, contain, limit or somehow stop the behaviour.

Often this is accompanied by misplaced notions of needing to set an example or retribution—like if a person got hurt, justice needs to be seen to be done—which is not an educational view of addressing behaviour and will not lead to lasting behaviour change or an improvement of the situation. It is likely to gradually erode the individual's quality of life by increasingly limiting their access to opportunities.

A behaviour analytic approach is different. Following a functional behaviour assessment, which might determine that the purpose of the child's behaviour is to escape the situation—the demands—then the behaviour analyst would want to find out what exactly the child is escaping from. Now maybe he cannot do the maths. Maybe it is too hard or maybe it is some other aspect of the situation—that is, the child with ASD might not have the social skills required to collaborate in that small group, so it might be small-group tasks that this class is being set or maybe the child with ADHD might not be able to sit still for 30 minutes as might be a requirement in that class. So a functional assessment would find these things out and then, depending on the answers to these questions, obvious educational solutions would follow.

So, No. 1, you will make sure that the behaviour concerned is no longer reinforced, because this child wants to escape. Putting him in time out actually will systematically train him to continue to behave this way. Secondly, address the skill deficits. Almost always challenging behaviour is a result of skill deficits of some sort. So give extra remedial maths classes, for example, teach social skills, provide a peer buddy to help during the collaborative exercises or reduce the requirement to sit still—maybe only for 10 minutes—and gradually teach the child to be able to sit still for longer and longer and so on. Lastly, teach a function equivalent replacement behaviour such as asking for help. So that is the contrast between what is and what could be done and that is what should happen to children at school with challenging behaviour.

Behaviour analysis is a science of effective application in practice. It actually requires quite a high level of skill and professional expertise. It is not a single strategy or method and does not lend itself to manualisation. The effective use of behaviour analysis to solve socially significant problems requires professionals who can flexibly apply their expertise just as a well-executed medical operation requires all the experience and expertise of a surgeon. It is possible that a little bit of knowledge is more dangerous than helpful. People do not know what they

do not know, and there has been a number of research studies that have shown that, currently, in Australia there is little expertise on how to do functional assessment or functional analyses and use that information to inform positive behaviour support plans. Our universities do not train behaviour analysts. I do not know of any teacher training program that has any behaviour analysis or behaviour management component. I know we do not teach psychologists behaviour analysis, because I teach psychologists. When I see them in fourth year, very few of them have heard of applied behaviour analysis.

I think, if we want to be serious about promoting positive behaviour support, which is considered to be best practice, we also need to recognise that it requires skilled professionals.

CHAIR: Which means resources. Thank you. Just picking up on your last comment first is that it requires professionals, which also means we require the commitment of resources to ensure that we have got those professionals.

Dr Anderson: Yes, and it is a catch-22 situation. I am currently trying to establish a course in behaviour analysis at my university, but universities are businesses. They need to know that there will be students who want to do the course. Students will want to do the course, if there are jobs for them in the community.

CHAIR: Let us just say we were training the professionals; how would you see it operating? Would you see those professionals being available to schools to work with the teachers to carry out the functional analysis and then work with the teacher to put in place solutions or work with the particular child to work out how to help that particular child to overcome those behaviours?

Dr Anderson: I think so, yes. But I think this has to happen in conjunction with a broader sea change really in terms of the way people in education think about behaviour and the cause of behaviour.

CHAIR: Making that leap to assume that they had taken this on board, how would you address it?

Dr Anderson: Yes, I think, ideally, behaviour analysts would work in collaboration with schools and with teachers. I think it would also be helpful if teachers had some foundational basic understanding of behavioural principles, because most of the time in a classroom situation it will be the teacher who would then actually have to implement the function based intervention and that is more likely to happen with integrity if they have some basic concepts of behaviour.

CHAIR: Ms Phillips, you said you wanted to go back to the issues around solutions.

Ms Phillips: I assumed that might be helpful, not that I am pretending I have got all the solutions. I think it is helpful to accept a number of premises. One premise, from my experience of reaching out and hearing stories from all over Australia, is that this is a systematic problem in every single state. I think probably Children with Disabilities Australia has also received a lot of that information directly to them. I am saying that because of the social media disability outlets that I have.

I think we need to recognise that departments of education are not going to address this properly. I say that because it has been raised for years by parents, by advocates. Certainly in Victoria it has been raised by the Victorian Auditor-General's office and by the Human Rights Commission. Recommendations have been made. Restrictive practices are linked to violations of so many international conventions. These organisations have recommended that seclusion be prohibited, which is not that hard to do. We do not see any take-up of this at all. All we see is window-dressing. Due to the current secretary's public comments, I do not see we will have any changes soon enough.

I think there is a role for the Commonwealth to perhaps get some consistency and standardisation involved in this. I always get these words in the wrong order, but the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector, despite requests, does not cover schools, and that is a Commonwealth initiative. I think it needs to cover schools.

I think we need an independent regulator who gives permission for any restrictive practices if they are ever to take place and has some very tight procedures around in what circumstances you can even request permission to restrain or seclude a child. You would find that if there was that professional organisation there would be very few circumstances where that could be the case. I refer to the office of Professional Practice and its guidelines under the Disability Act in Victoria as a good example.

I think that there could be perhaps a link to funding of the states through the Commonwealth which could be tied to measurable outcomes. Our Auditor-General noted that in all disability funding in schools, and I think it is the same in every state, there is no requirement for any measurable outcomes whatsoever and there is no requirement for the reporting of restraint and seclusion. In my experience, it is not documented even when a policy says that it should be. Therefore a lot of this is happening unbeknownst to parents who are not told and

who often find out after a freedom of information request that things have been happening to their kids. I know it is very difficult because you are dealing with different departments of education in every single state, but they do receive money from the Commonwealth and it seems to me that that is an opportunity to tie some measurable outcomes into that funding.

I think there needs to be some worker exclusion schemes. I do not think that a lot of the worker exclusion schemes go far enough but at least they are talked about in practice in disability services in some states. Education does not have that. My experience is that people are subjecting children to unnecessary restraint, locking them up and using prone restraint, which has a risk of injury or death. After a complaint is made, these people are still at their jobs. There is a sanctioning of these practices that just continues year after year. I think the Commonwealth does need to get involved if we have any hope that these restrictive practices will stop.

I think the Commonwealth is well placed to have an interest in it because, apart from the human rights angle, which is important enough as it is, the trauma that is being perpetuated in these families is significant. Apart from the psychological injury to the children—because we know the evidence says that restraint and seclusion induces trauma—the mothers that I work with, most of them have acquired psychological conditions from having to deal with the schools and watch these things happen to their kids. We have mothers who are now not working, who have acquired medical conditions that need assistance.

We have some children who are actually acquiring more severely challenging behaviours as the years go on, which lead them when they finish school to then go into the Department of Human Services service provision scheme, whereas they could have been functioning members of society. I know that because a few of the kids I have worked with have relocated to America to have their education addressed. I know you might have found Dr Anderson's opening technical but I can assure you that in practicality, knowing these children and the situations they were in here, having sometimes attended three different schools and being subjected to these terrible practices, when they went over to schools in the States which use applied behaviour analysis they suddenly turned from a child that teachers described in a horrible way to being able to shop, being able to communicate, being able to be by themselves for short periods in the community and being able to get jobs. So all of a sudden they are included in society whereas I know if some of those kids had stayed here they would have been straight on the disability support pension. So human rights aside—which are most important to me but I know governments always think about money—these human rights breaches are expensive as well. The departments are often looking at their own budget and thinking 'well when these kids get to 16 they will be somebody else's problem' and that is true; they are. But they are actually creating worse problems for government by traumatising these children and getting them to acquire new behaviours.

Unfortunately I cannot see any alternative. I do not trust the states any longer to pretend to have an interest in this area because we would have seen some movement. We have heard some talk about it but we have still got schools in 2015 advertising that consequences of behaviour will be restraint. Martial arts trained aides are being advertised for. It is out in the open. It is not changing. So I am not pretending these ideas are perfect but I also think, commensurate with what Dr Anderson was saying, and I do not know how the Commonwealth gets involved in this, we need to link evidence based approaches with schooling.

Putting education and the lack of evidence based approaches there aside, there are countries like Romania that have got on board with applied behaviour analysis. I have a colleague in America who used to train all over the world. And here we are and it is still some voodoo, still being looked at as terribly strange or every second person is saying 'I am a behaviour analyst'. We have got to be able to provide schools with an alternative because, at the moment, a small group of teachers and aides are, quite frankly, thugs. I say small group because disability services unfortunately can sometimes attract people who—you have heard the Yooralla stuff of course—should not be working in that field. But for the people who just do not know what they are doing, and nor should they be expected to, we could say to them tomorrow: you cannot restrain, you cannot seclude, you cannot lock kids up and you cannot knock them over and lie on top of them. You have to give them something, give them the tools to know what to do. Those things have to happen in parallel and they have to be evidence based positive behaviour support techniques. While I am often critical of teachers, we should not be expecting them to be able to do these things. We should not be expecting them to be able to address severe challenging behaviours of kids with disabilities, not even in special schools. They are simply not that qualified. Great supported is needed and we have to professionalise up.

CHAIR: Dr Anderson, we did start talking about some solutions. Do you have anything to add to Ms Phillips' comments around solutions?

Dr Anderson: I completely agree with Ms Phillips and all of her observations about what happens in schools. I think it is a very sad reflection, a little bit like we knew how to prevent scurvy and septicaemia in childbirth

many years before anybody started to implement practices that saved lives. It feels to me like this is a bit like that and it will be really nice to see change. I think it is a case where you almost need to make things happen in a number of different places all at once. I think policy needs to happen in accord with educational change and with provision and resourcing of services.

I agree also entirely in that I fear for teachers in schools. They are confronted with children whose behaviour challenges severely and they do not know what to do. But it has to be somebody's responsibility to provide teachers with the tools and with the expertise or the resources to be able to deal with these situations. As I tried to illustrate, it is possible. Challenging behaviours can be addressed with the right technology, amazingly, even very severe behaviour.

I had a colleague a number of years ago in Auckland in New Zealand. Behaviour analysis is much more widely accepted there. It is a compulsory part of the psychology training program. There are two university level courses in New Zealand that have behaviour analysis programs that lead to the certification of behaviour analyst whereas there is not a single one in this country. This was a fellow student who did a project working with a young child with autism. She had to go into these one-on-one sessions all padded up with cricket pads and so on because this child was very aggressive and would throw chairs and kick and bite. But through functional analysis and a highly technical systematic approach using things like non-contingent reinforcement, where you basically give the child escape—his behaviour was moderated by escape—on a time based schedule she was able to gradually eliminate this behaviour and get the child to sit for five to 10 minutes at the end, do his puzzles, do his work and begin to be accessible for instruction and for teaching. In all that time, she never had to hold him or restrain him once. So it definitely is possible.

At the same time, we have done another project with a child with mild challenging behaviour in a school, which was also escape motivated, but it was low level and the problem for that child was to sit and do a task for more than five or 10 minutes. The solution was easy. The teacher implemented an environmental adaptation where she gave the child the same tasks as everybody else but in small bits of five to 10 minutes, and the behaviour disappeared and the child no longer had a problem and could actually do his maths tasks and complete his work like everybody else.

So it can range from really simple, common-sense things to highly technical things that require a high level of expertise, but it is the thinking, it is the way we think about it, which is the same. I do not know if that was helpful.

CHAIR: Yes. It makes sense.

Ms Phillips: I will add one more thing very quickly. Sometimes children change schools and their behaviour goes—and it is clearly how they have been treated. Some of my clients who have been subjected to time out or being locked up almost every day just get into a kinder environment and it stops. I think that one cannot overestimate the trauma that some of these children are experiencing from these practices. I see young kids who have thought of suicide and who are beginning to self-harm, who cannot even attend school anymore because they are so traumatised by what has happened to them. I feel guilty when I make arguments about money, because, to be quite frank, really just that fact of itself is unacceptable. To know that there are alternatives which just are not being used—I just do not see how as a humane society we can do that. With adults in many situations we cannot, but with children with disabilities you can virtually do whatever you want, in the name of bad behaviours or risk. I pay tribute to the families that are surviving this, because it is a hidden trauma in this country which is terribly depressing to watch. I just wanted to end with that, because I am so grateful that someone is interested in the subject.

Dr Anderson: It might pay to highlight the link between disability and challenging behaviours. Children with disabilities, or individuals with disabilities, are at risk for developing behaviours of concern because they often have skill deficits, especially those individuals who have impairments in social communication. They are not able to signal their needs and wants, and often challenging behaviour has a communicative function. That finally is the only thing that works for them. That means that automatically children with autism, but also other populations, such as migrant populations for whom English is a second language or who do not have the same cultural background or have not been brought up with and are not very familiar with the behavioural expectations in schools, are at higher risk.

Senator MOORE: Ms Phillips, you said you were pleased that someone had an interest in the subject. Have you found it difficult to find people who are interested in talking about the issue? You have given us a lot of information this afternoon. I know that the process is very slow and that there is not exactly a welcoming mat at some departments' doors on these issues, but have you genuinely found it difficult to find people who want to listen to the argument?

Ms Phillips: Absolutely impossible. There is no issue with my colleagues and independent advocacy agencies, but, for example, Victoria Police—the Human Rights Commission did a report on this a couple of years ago, *Desperate measures*, which talks about the failure by police to act, particularly in schools. If police ever raise something in a school, the staff will just say, 'Little Johnny was about to kick someone, so we had to lock him up,' and the case is dropped. I should say, though, that Victoria Police have, since that report, set up a stakeholder reference group, which I am on, and they are responding, so I hope to see change. Departments of education—no; they are completely disinterested. The Child Safety Commissioner is not disinterested but does not have the powers to look at it. The advocacy sector and the disability sector are very interested in it. We cannot get any changes. The Victorian Auditor-General's report came out, statutory authorities are making recommendations highlighting these areas and nothing has happened. Lots of people want to hear about it at my level, but that is not helpful when nothing goes on. We need government to listen and act—and it is obviously not going to happen at a state level, unfortunately.

CHAIR: You might have to wait for each case to get media before it is addressed.

Ms Phillips: Even with media you just cannot get a garden variety restraint and seclusion story in anymore because it is too boring. You need something terrible to happen, and I am afraid it might.

CHAIR: Thank you for evidence today and for your submissions. We really appreciate it. To think that we might actually have evidence based decision making would be, in some cases, quite novel, in my experience. As far as I am concerned, the more evidence the better. That brings us to the end of our program. The committee will reconvene at nine o'clock in Adelaide tomorrow. Thank you to all our witnesses today and to the secretariat and Hansard.

Committee adjourned at 17:12