

Position Paper: On the WA government's Response to Recommendations of the Disability Royal Commission Report

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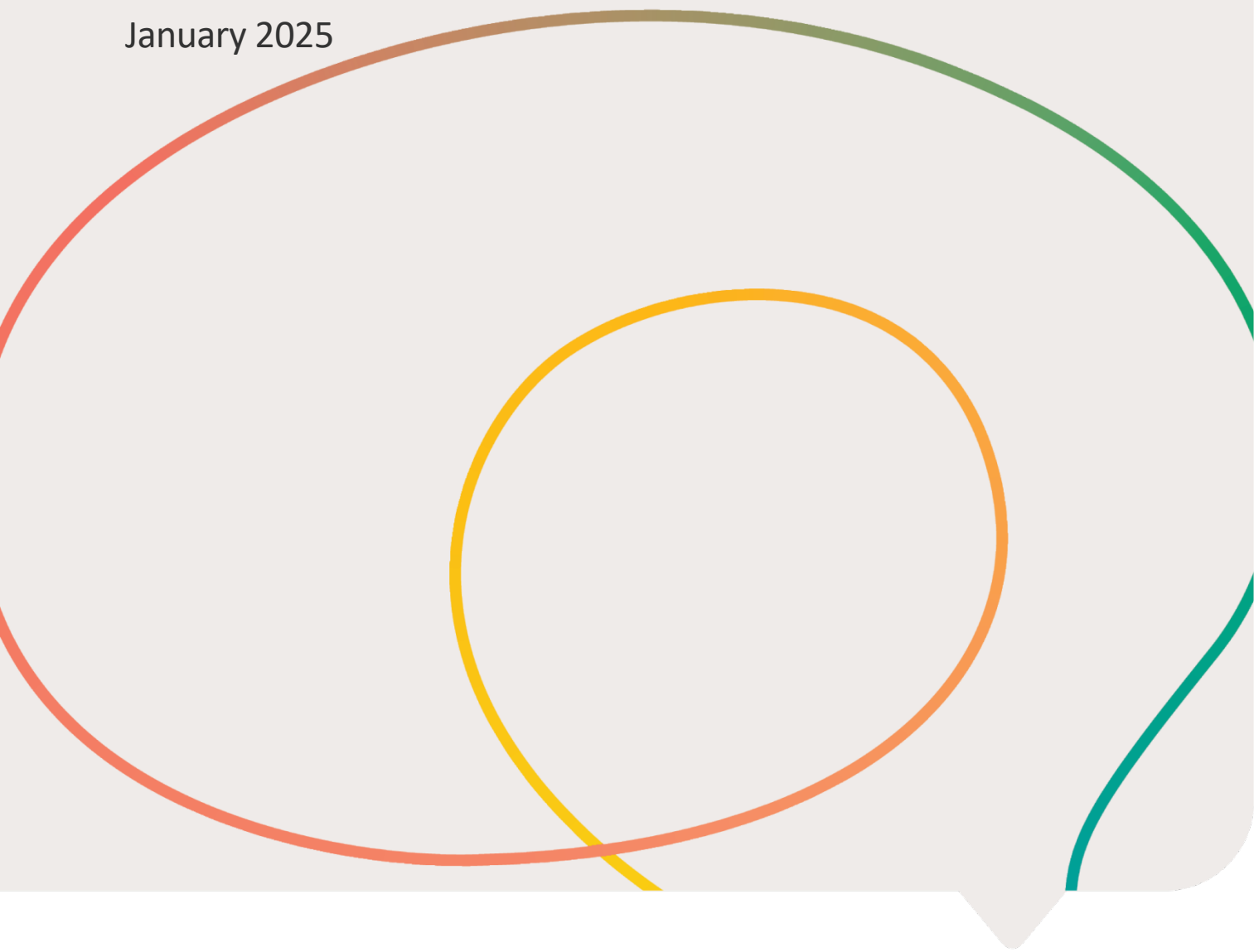


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Introduction

1. Background

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (hereafter, the DRC) was established in April 2019 to investigate and report on the extent of violence against, and the neglect, abuse and exploitation of, people with disability, and provide recommendations for reforms to address this. The DRC heard from almost 10 000 people and took 7 944 submissions, hearing the experiences of people with disability as well as carers, family, support persons, support providers and other health and support professionals from across Australia.

The DRC released its final report in September 2023. The report contained 222 recommendations, 132 of which are relevant to WA. The recommendations were organised into categories that responded to nine of the 12 volumes of the full report.

The WA government released its response to the DRC in late August 2024, almost one full year after the release of the report. Of the 132 recommendations, the WA government has accepted five, accepted in principle 94, accepted in part one, and is considering further 32 of the recommendations. Where recommendations are under further consideration and not subject to an existing timeline, the WA government has said it will provide an updated position as part of mid-2025 reporting.

In December 2024, the WA government released their WA Disability Royal Commission Implementation Roadmap (hereafter, the WA Roadmap), outlining its activities towards implementation of accepted recommendations, development of a position on recommendations that are under consideration, and short-term priorities. It also commits in this document to engaging people with lived experience to inform implementation, naming a range of disability advocacy organisations including CoMHWA. CoMHWA hopes that this commitment will result in the voices, expertise and needs of people with psychosocial disability being embedded in implementation activities and the development of positions on recommendations yet to be accepted.

1.1 CoMHWA's response

Consumers of Mental Health WA (CoMHWA) is Western Australia's peak body for and by mental health consumers (people with a past or present lived experience of mental health issues, psychological or emotional distress, neurodivergence and psychosocial disability). We are a not-for-profit, systemic advocacy group independent from mental health services that exists to listen to, understand and act upon the voices of consumers. We work collaboratively with other user-led organisations and a diversity of stakeholders to advance our rights, equality, recovery and wellbeing. Many of CoMHWA's members are people with psychosocial disability, and we often hear from our members of the urgent need for reform and transformation to better promote the rights of people with psychosocial disability.

We focus in this discussion paper on specific responses from the WA government to recommendations concerning issues we hear about most often from our members. However, CoMHWA supports the recommendations of the DRC report and urges the WA government to prioritise action to address the recommendations relevant to State governments.¹ An [appendix](#) with summaries of recommendations in the DRC report by volume is provided at the end of this paper.

¹ There are two recommendations, 7.14 and 7.15 expressing contrasting views on segregated education. CoMHWA supports recommendation 7.14 which aims to phase out segregated education, because this is the recommendation that is representative of the wishes expressed by many

1.2 Language

Consumers of Mental Health Western Australia uses the term ‘mental health consumer’ or simply ‘consumer’ throughout this paper. The term is used refer to people who identify as having a past or present lived experience of psychological or emotional distress, irrespective of whether they have received a diagnosis of mental illness or accessed services. Other ways people may choose to describe themselves include ‘peer’, ‘survivor’, ‘person with a lived experience’ and ‘expert by experience.’ In this position paper, CoMHWA uses the term ‘people with psychosocial disability’ as this is the language used in the DRC report and connects to specific recommendations in the report. We acknowledge that many of our members may prefer different terminology, such as the term consumer. Additionally, while this paper may occasionally use the term ‘mental illness’ when referring to how the mental health system and the services it provides understand mental health challenges, it is our position that people have the right to use the language and frameworks of meaning that they feel best describe their experiences, including mental health challenges, social and emotional wellbeing, distress, psychosocial disability, trauma and so on. We advocate for alternative ways of understanding mental health challenges outside of a deficit-based, medical model and beyond disability-oriented approaches that have fixed and limiting views on how mental health issues may or may not be permanent. These definitions are based on consumers’ call for respect, dignity and choice in how we choose to individually identify. As individuals we choose different ways to name and describe our experiences that may confirm or trouble ideas about ‘mental illness.’

people with disability. The WA government indicates in its response to the DRC recommendations a preference towards 7.14, though it has marked both recommendations as subject to consideration.

CoMHWA's positions: The needs of people with Psychosocial disability and the WA government's DRC response

1. Clarity is needed to demonstrate greater commitment from the WA government

CoMHWA is disappointed that the WA government has not committed more meaningfully to protecting the rights, autonomy, inclusion and safety of people with disability by accepting more of the recommendations of the DRC. CoMHWA understands that where intergovernmental collaboration, consultation and other lengthy processes are required, the WA government may not be able to action recommendations immediately. The WA government indicates that some recommendations are subject to reviews of existing arrangements and measures, and processes of consultation. The WA Roadmap says that the WA government has committed to developing a position on all recommendations currently marked as under further consideration by mid-2025, and has provided some direction on the activities it is taking as part of its consideration.

While the WA Roadmap goes some way to providing an update on implementation, more clarity is required around those recommendations accepted and accepted 'in principle' which the WA government has thus far offered little information around in terms of follow up actions or consultation. The WA government has decided upon 8 priority reform areas to guide its own actions, into which it has sorted the recommendations of the DRC that it has accepted. However, it does not explain which specific recommendations have been sorted into which specific reform areas. It has chosen to report on progress it is making in implementing recommendations within these reform areas, and so, while it is good to see that progress is indeed being made, it is challenging to understand which specific recommendations have been progressed and how. A clear list of actions and a timeline for steps towards consideration of each recommendation, and towards implementation of those that have been accepted or in-principle accepted, would provide greater clarity. This would provide people with disability in WA a clearer sense of when they can expect action taken to protect and uphold their rights and dignity, which have for too long been undermined.

2. State legislation must promote the rights of people with psychosocial disability

The WA government has marked recommendation 4.22 on strengthening disability rights protection in state and territory laws as 'for further consideration.' WA's legislation does not include robust provisions to protect and enshrine the rights of people with psychosocial disability in WA, as several sections (such as use of restraint, for example) under legislation relevant to mental health consumers are not aligned with aspects of human rights instruments to which national and international commitments have been made, including the United Nations Convention for the Rights of People with Disability (UNCRPD) and the Optional Protocol to the Convention Against Torture (OPCAT).¹ The absence of a legal framework ensuring adherence to these commitments reduces accountability and means that people with disability have fewer pathways through which to advocate for their rights. The WA Roadmap indicates that the WA government is developing a position on a disability-inclusive approach to implementation of the OPCAT, alongside other measures to improve protection of the rights of people with disability in detention settings.

The WA government has accepted ‘in principle’ recommendation 4.30 on vilification because of disability, noting that a final decision is expected to be made following broader examination of Western Australia’s criminal anti-vilification provisions. Yet, the WA government has already undertaken recent examination of provisions under relevant legislation, and so has data from the 2022 Law Reform Commission of WA’s (LRCWA) Review of the *Equal Opportunity Act 1984 (WA)* to inform a decision to accept this recommendation. This Review notes that WA law references protections on the basis of impairment, not disability, and that there are no specific anti-vilification provisions in the *Equal Opportunity Act 1984 (WA)*. It further states that current criminal law prohibitions are not adequate to address the issue as existing criminal law does not include protection for people with disability in anti-vilification provisions.² The WA government should provide clear timelines and mechanisms whereby such an examination will take place, including how it plans to respond to the LRCWA’s Review of the *Equal Opportunity Act 1984 (WA)*.

As described in our *Election 2025: An Election for Mental Health*, CoMHWA is strongly in favour of both a federal Human Rights Act and a WA Human Rights Act. Even if a federal Human Rights Act were implemented, state and territory laws would still be required to embed respect for human rights in the culture and functioning of Western Australia’s public sector. Victoria, Queensland, and the ACT have all been proactive in putting into place Human Rights Acts at the state/territory level, and these have created more robust protections for people with disability in those places.³ A WA Human Rights Act could, by providing for rights to healthcare similar to those outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), create the conditions to ensure equitable and affordable access to healthcare services. It could also enshrine protections from rights breaches in the form of restrictive practices and coercive treatment, enabling the WA government to address more of the recommendations of the DRC report and act on those recommendations it has accepted in principle.

3. Embedding the leadership of people with psychosocial disability is essential to ensure timely implementation of recommendations

As urged in People with Disability Australia’s *Open letter to the Prime Minister, the National Cabinet and the Opposition Leader*, which CoMHWA supported, “centring people with disability in all relevant decision-making processes and progressing their inclusion across all areas of life leads to better outcomes for all,” and excluding people with disability from decision-making increases their risk of violence, abuse, and exploitation.⁴ The WA government has accepted or accepted in principle a series of 5 recommendations around governing for inclusion which concern development and reviews of National disability agreements, strategies and plans, and implementation of the CRPD. We are encouraged by the acceptance of these recommendations, and by the WA Roadmap’s commitment for the WA government to work with the Commonwealth, states and territories towards a nationally consistent approach to reporting on implementation of recommendations. CoMHWA looks forward to more transparency in the reporting.

We are especially keen to see the WA government detail a timeline for establishment of a mechanism for identifying a focal point, including people with disability and psychosocial disability in leadership positions, for matters relating to implementation of the Convention on the Rights of Persons with Disabilities (CRPD). This would work to embed the leadership of people with Disability in the implementation of DRC recommendations in WA to enable accountability. As of its most recent update, the Commonwealth Government has now designated its own focal point,⁵ and so the onus is now on the WA government to do the same to ensure that work is supported at a state level.

4. Swift action should be taken to make use of the current window of reform to embed supported decision-making in WA's Guardianship and Administration Act

Of the 16 recommendations made in *Volume 6: Enabling autonomy and access* on embedding the principles of supported decision-making and improving processes around guardianship and administration requiring WA government response, most are marked as subject to further consideration because the WA government has been awaiting the final report of The Law Reform Commission's Review of the *Guardianship and Administration Act 1990 (WA)*. The first discussion paper on this Review has now been released, and so we are hopeful the WA government will update its positions on these recommendations and take actions towards implementation. It was good to see that the WA government has accepted in full recommendation 6.17 to ensure Public Trustee fees and charges are transparent.

CoMHWA has contributed submissions to this review, and the review is taking the DRC recommendations into account.⁶ One of our key recommendations, reflecting consultation with our members, was that it is important to establish supported decision making as standard practice for people under guardianship orders. Many of CoMHWA's members have previous or ongoing experience with guardianship, and often those experiences are complex, sometimes involving exploitation, lack of communication, and lack of discussion about decisions affecting their lives. The *Guardianship and Administration Act 1990 (WA)* (GAA Act) does not currently reference supported decision making, and this often results in guardians making decisions for those in their care without their involvement and without communication around the reasoning, context and implications of those decisions. Such practices undermine the autonomy of those under guardianship orders. The numbers of applications for guardianship and administration orders has increased in WA since 2018,⁷ and people experiencing mental health challenges, including psychosocial disability, make up the largest proportion of people under those orders.⁸ The recommendations of the DRC report provide additional impetus for the review of the GAA Act to result in meaningful reforms so that the human rights and dignity of those under guardianship orders in WA are respected and upheld.

5. Clear legislative pathways, transparent reporting of data and specific targets are needed to eliminate restrictive practices

The WA government has accepted in principle the 4 recommendations about restrictive practices for WA government comment. CoMHWA believes that the use of restrictive practices should be abolished, as they undermine human rights and cause psychological and physical harm, and the DRC report contains a number of recommendations aimed at eliminating restrictive practices. As such, we hoped to see a stronger commitment than an in-principal acceptance of these recommendations. The WA government has noted it will consider existing legislation, arrangements, mechanisms and possible mechanisms to explore what is needed prior to taking actions in line with these recommendations. CoMHWA has previously undertaken work showing how existing arrangements and legislation are not equal to the task of eliminating restrictive practises, and in many cases, actively perpetuate the use of such practices. For example, the *Mental Health Act 2014* is not sufficient to meet the requirements of 6.35 concerning legal frameworks for the authorisation, review and oversight of restrictive practices, as, among other things, the parameters set out in the Act do not accord with the DRC report's recommendations that legal frameworks ensure restraint

only be used as a last resort and for the shortest time possible. Therefore, new work must be undertaken to implement the recommendation in mental health settings.

In response to recommendation 6.36 asking for immediate action to provide that certain restrictive practices must not be used, the WA government writes that “further consideration will be undertaken as to how certain and prohibited restrictive practices are mitigated in existing arrangements within health and mental health settings to meet the principles of this recommendation.”⁹ The language of ‘mitigation’ implies that the WA government is unable to commit to enforcing the cessation of those practices that are already prohibited, seeking instead to lessen the frequency of such practices occurring. The response to this recommendation leaves unclear which certain and prohibited practices alluded to might still be under consideration in these settings. Similarly, the WA Roadmap identifies as a short-term priority the development of a new legislative model for authorisation of restrictive practices, but could make clearer how this model will prioritise reduction and elimination of such practices.¹⁰ CoMHWA urges extensive consultation with people with psychosocial disability as a part of developing such a model.

The WA government’s response to recommendations concerning data collection around use of restrictive practices, and targets and performance indicators to drive reduction and elimination, cites the need “to take into account the capacity, technology and privacy considerations of related data collection and reporting” and “existing arrangements of health, mental health and justice settings.”¹¹ Data on restraint in mental health in WA does not meet requirements of these recommendations, as it does not currently include instances of restrictive practices not defined in the MHA (such as chemical or psychological/emotional restraint), or which occur outside of authorised mental health settings (such as emergency departments, in transport or in non-authorised hospital wards).¹² Without clear targets and performance indicators, there is no accountability. Without data, it is impossible to see what progress, if any, is being made towards reducing and eliminating restrictive practices. The WA Roadmap notes that the WA government plans to work with the Commonwealth, state and territory governments towards an agreed approach to improving collection and reporting of restrictive practices data.

6. Concrete commitment to longer-term resourcing for advocacy would promote respect for the interests and rights of people with psychosocial disability

CoMHWA routinely hears through our networks and from our own Individual Advocacy service of the increasing demand for advocacy services, and the pressure on both individual and systemic advocacy programs to do more work with less funding. Data from our Peer Pathways program shows advocacy is a consistent area of support consumers are seeking, but often their ability to connect with an advocacy program is hampered when services reach capacity and have to close their waitlists. This results in people with psychosocial disability going without the support needed to ensure their voices are heard and their rights are promoted, and, in the event that those rights have not been respected, being unable to pursue pathways to redress and resolution. Short-term funding cycles mean a lack of consistent support, and projects and pathways to support being closed off when funding ends. Advocacy is an essential support that must be funded over the longer term. Enhancing access to independent non-legal advocacy is a core action CoMHWA identifies in our *Election 2025* platform as essential for creating a mental health system in which consumers are respected and have their needs met.

The WA government has accepted in principle several recommendations of *Volume 6: Enabling Autonomy and Access* concerning development, support of and funding for disability advocacy programs, however, it has commented that the implementation of many of these is subject to resourcing, among other things. The WA government has not made any specific note of an update on resourcing advocacy funding in the

WA Roadmap, though it does indicate that it is progressing work around the National Disability Advocacy Framework (NDAF) and Disability Advocacy Work Plan, which aims to improve access to advocacy services.¹³

7. Understandings of family and domestic violence must account for the specific experiences of people with psychosocial disability

CoMHWA hears from members of experiences of family and domestic violence and the significant barriers faced to receiving support. People with psychosocial disability are especially likely to have experienced violence, and often encounter barriers to getting support.¹⁴ Among those barriers are factors that have particular impacts upon people with psychosocial disability, such as fear of being placed under guardianship orders, and factors that are exacerbated by stigma around psychosocial disability, such as fear of not being believed.

Developing a disability-inclusive definition of family and domestic violence is essential to recognising the violence and abuse experienced by people with psychosocial disability which is not captured by existing and narrow definitions. For example, people with psychosocial disability may experience violence and exploitation in relationships with carers and other support people,¹⁵ and the commonplace understanding of family and domestic violence typically does not cover such contexts. We also hear accounts from consumers of their experiences with threats of having the authorities called so they will be placed under Community or Involuntary treatment orders as a form of coercion and control.¹⁶ Consumers may also experience either withholding, or forcing medication,¹⁷ which typical understandings of violence might not account for. Violence experienced in the context of residential environments, group homes and shared living situations including psychiatric hostels is also not captured in typical definitions, but has profoundly distressing and enduring effects for consumers who experience it.¹⁸ An inclusive and consistent state and national definition is needed to recognise and increase efforts to prevent and reduce family and domestic violence experienced by people with disability.

The WA Roadmap identifies further work being done as part of the review of the *Restraining Orders Act 1997* to reevaluate and explore a nationally consistent definition of family and domestic violence that is disability inclusive. We look forward to seeing an update towards these actions, and note that any inclusive definition should also include people with psychosocial disability.

8. People with psychosocial disability have rights to equal inclusion in education and employment

CoMHWA supports the recommendations of the DRC report that aim to support the full participation of people with psychosocial disability in employment and education. We echo the report's points about need for an end to segregated education and segregated employment, following the long list of other disability advocacy organisations who have joined Disabled People's Organisations Australia's calls for an end to segregation.¹⁹ We note that the WA government has yet to accept a recommendation ending segregation in education. Promisingly, it has expressed a preference for recommendation 7.14 which calls for phasing out segregated education over recommendation 7.15, which proposes alternative approaches that do not do this, which we applaud, and we await the outcome of consultations and activities being undertaken to provide an updated position on this recommendation. The WA Roadmap identifies plans for progressing towards consideration of recommendations regarding ending segregated education and employment in the DRC report that it the WA government have yet to accept.

Similarly, the WA government have also marked as subject to further consideration recommendation 7.32 on ending segregated employment by 2034. People with psychosocial disability have the lowest employment rate of any disability group (26%) and among the highest unemployment rate (24%). More people with disability report difficulties finding work than people without disability.²⁰ The WA Roadmap outlines the consultation and collaboration the WA government is undertaking to work towards an updated position on this recommendation, including public consultation with people with disability who are supported employees and with systemic advocates, and CoMHWA feels it is essential that this consultation includes people with psychosocial disability.

9. Actions on recommendations to enshrine tenancy protections, increase supply of accessible housing and phase out group homes are essential to ensuring inclusion and access to housing for people with psychosocial disability

CoMHWA has heard from many of our members of the impact of low housing supply, affordability, and suitability, factors which have been exacerbated by the current increasing cost of living pressures and housing crisis. Experiences of mental health challenges and distress are interrelated with experiences of homelessness and difficulties accessing and maintaining appropriate, affordable and secure housing. People with mental health challenges are often disadvantaged when navigating tenancy, social housing, and supported housing.²¹ The WA government have marked key recommendations concerning housing as subject to further consideration or accepted in principle, which points to a need for increased commitment and greater clarity around plans and actions to be taken to ensure accountability.

The WA government's decision not to accept major aspects of recommendation 7.35 to increase the availability and supply of accessible and adaptive housing for people with disability through the National Construction Code is disappointing in a context in which people with disability, in particular, people with psychosocial disability, experience unmet housing need and homelessness in increasing numbers.²² About 1 in 3 social housing households include at least one person with disability, meaning this affects a good chunk of the social housing supply.²³ WA is not going to adopt the Australian Building Codes Board (ABCB) Livable Housing Design Standard, despite the majority of other states and territories having already adopted the standard. It is unclear how the challenges faced by the building and construction industry would impact the adoption of this standard. They are unlikely to increase costs unduly, as the estimated increase is only 2,900-4400 dollars per home.²⁴ People with disabilities face few choices if they are not supported to live independently in the community through the availability of suitable housing.²⁵

The WA government's response to recommendation 7.35's call to set appropriate targets for new crisis housing construction and refurbishment that meet the voluntary ABCB Livable Housing Design Standard, which comments that livable design principles are considered in refurbishments "where practical" leaves unclear the criteria for judging application of these principles either practical or impractical.²⁶ This constrains the access of people with disability to suitable crisis housing, at a time where crisis housing is already under increased pressure and there is a lack of supply equal to demand, and raises the question of where people with disability will go when crisis housing options are not available to them.

The WA government have marked as subject to further consideration recommendation 7.37 to increase tenancy and occupancy protections for people with disability until a second round of reforms to the *Residential Tenancies Act 1987* is proposed. However, the opportunity for implementing this recommendation is there in the reform window itself, and will likely be lost if timely reform action is not

taken. Amendments are urgently required to prevent people with disability from being left with no options for housing. The WA Roadmap notes actions toward considering this recommendation, which include continuing to consult with stakeholders on the *Residential Tenancies Act 1987*, but no specifics about the nature, extent and timeline of this consultation are given. A dearth of affordable housing makes more precarious the situation of people with disability if they are left without occupancy and tenancy protections. Housing affordability is itself a mental health issue, as in WA, 30% of households who describe their housing as unaffordable rate their physical and mental health as poor, compared to just 8% rating their health as excellent.²⁷

The WA government marks as subject to further consideration the recommendations to plan to phase out group homes: 7.4, which recommends a roadmap to phase out group homes within 15 years, and 7.44, which recommends a roadmap to phase out group homes over a longer, generational timeline. While part of its rationale for not accepting either recommendation for the time being is the need to consult on and explore an appropriate timeline, part of its rationale aligns with the joint response of all governments which supports a “diverse range of inclusive housing options for people with disability that support them to exercise choice and control over their living arrangements,” seemingly considering that group homes might be a part of this. This decision will impact consumers who are in psychiatric hostels and group homes. There is a shortage of supported housing with mental health support, and without a commitment to a plan to transition out of group homes, there is little impetus to develop alternative accommodations that meet the needs of people with psychosocial disability.²⁸ As the Mental Health Advocacy Service described in their Annual Report 2023-24, in these facilities “safety issues are rife, the care provided is minimal and Advocates report frequent breaches of people’s dignity, humanity and rights.”²⁹ MHAS also notes that transition to contemporary approaches to supported accommodation has been slow, which represents a “lost opportunity to create a pathway to outcomes for a better life for future cohorts of people with psychosocial disability who need accommodation and support.”³⁰ The WA Roadmap indicates some work is being undertaken in consideration of this recommendation, including consultation with people in group homes and their families and carers, so CoMHWA looks forward to the WA government developing a clearer position and commitment.

It is good to see that the WA government has identified improving access to housing as a priority the WA Roadmap, however, the actions it has identified do not fully address the issues identified above. Without further commitment, and in combination with the WA government’s decision not to accept all of recommendation 7.35, the future of housing for people with disability looks grim. They face little protection from no-fault eviction, their needs not being taken into account in decision-making and disputes around evictions, and, in the event they are evicted, fewer options for appropriate crisis accommodation and housing.

10. Coordination is needed to interface between state and NDIS services and supports to ensure people with psychosocial disability do not continue to go without access to essential supports

Since key changes to NDIS legislation have been finalised, and there are now transitional rules in place defining what is and is not considered an NDIS support, the WA government needs to take urgent action to ensure that people with psychosocial disability are not left without essential supports that fall outside of the NDIS. We are hearing from NDIS participants with psychosocial disability that changes in the NDIS are making it more difficult for them to access NDIS supports, and are in some cases leaving them without supports for which they previously had funding.

CoMHWA often hears from members in regional, rural and remote areas that access to services of any kind, especially NDIS services, is very difficult and sometimes impossible. In our *Submission to the NDIS Regional Experience Inquiry* in February of 2024,³¹ we reflected the experiences of consumers who in some cases only have one provider available, and that provider may not be able to meet all of their needs or may have a lengthy waitlist, which leaves some participants with no options for support. For NDIS participants living in regional, rural and remote areas, the core NDIS principle that individuals have choice and control over what services they would like to use is undercut by the lack of services and providers. Action is urgently needed as per recommendation 7.35 to coordinate with the Australian Government around funding arrangements for providers of last resort to ensure that essential support providers receive block funding to guarantee service provision in those communities at risk of losing or at risk of continuing to experience a lack of essential services.

As we noted in our *Feedback to the National Disability Insurance Scheme Amendment*,³² NDIS participants in custody often lose access to NDIS supports and this can be experienced as a kind of extra-judicial punishment. The WA Roadmap identifies that the WA government is currently examining the support systems in place to meet the needs of people with disability interacting with the justice system. CoMHWA has often heard that such supports are insufficient to meet the needs of people with psychosocial disability.³³ The WA Roadmap also notes that the WA government is working with the Commonwealth and other states and territories to clarify respective roles and the interface between NDIS and the justice system. Now that the transitional rules specifying supports considered NDIS supports has been made available which explicitly excludes funding of supports in custodial settings,³⁴ it is essential that the WA government move to explore mechanisms for funding of individual supports that will enable individuals in these settings to access supports essential for their daily living. Long term, work done with the Commonwealth and other states and territories around the NDIS-justice system interface could focus on amending the transitional rules around NDIS and people in custodial settings such that they are no longer prevented from accessing NDIS supports while in those settings. It is CoMHWA's position that the rights outlined in the CRPD —to which Australia is a signatory—should not be breached for any person living with disability in society. The WA government should accept key recommendations including 8.17 concerning NDIS Applied Principles and Tables of Support concerning the justice system and take action to ensure individual supports are adequately funded, including exploring mechanisms for joint funding or co-commissioning.

11. The leadership of First nations people with psychosocial disability must be prioritised in developing culturally appropriate service systems and workforces

The WA government has accepted in principle all of the recommendations requiring a state government response in the DRC report's *Volume 9: First Nations people with disability*. CoMHWA supports the Gayaa Dhuwi Declaration,³⁵ which makes clear that the leadership of First Nations people with disability is essential to the development of better supports and systems that meet the needs of Aboriginal and Torres Strait islander people with psychosocial disability and mental health challenges. The WA Roadmap describes work done to develop an appropriate shared decision-making mechanism with First Nations people to inform policy design, reform and implementation at a national level. CoMHWA believes that leadership of First Nations people within WA is crucial to implementation of recommendations, and would like to see clear and specific reporting on actions taken. CoMHWA's *Election 2025: An Election for Mental Health* advocates for secure, sustainable and longer-term commitments from the WA government to fund

Aboriginal Community Controlled Health Services that deliver services based on Social and Emotional Wellbeing and advocates for a funded commitment to the upcoming Gayaa Dhuwi Declaration Implementation Plan. These actions could support implementation of recommendations across the DRC, but in particular, would work to enact recommendations 9.11 on building on the Disability Sector Strengthening Plan, which promotes actions around achieving outcomes to do with the National Agreement on Closing the Gap, and 9.13 on remote workforce development, which promotes development of First Nations local workforces in remote communities and supporting Aboriginal Community Controlled Organisations.

12. Reporting, oversight and complaint mechanisms should be established to ensure accountability of services to people with psychosocial disability

The WA government has marked pivotal recommendations to establish nationally consistent adult safeguarding functions, and to undertake disability death review schemes, as subject to further consideration. The rationale given is that time is needed to review existing arrangements and consider mechanisms for implementation prior to final decisions being made. The WA Roadmap describes working with Commonwealth, State and Territory governments on an agreed position and scope for safeguarding protections, including a national agreement on disability death reviews, which shows promising progress made towards establishing a position on these recommendations.

Without robust, consistent frameworks backed by oversight, reviews, complaints, data collection and reporting mechanisms, there is no accountability. People with psychosocial disability routinely experience harm and mistreatment in services, and greater oversight and accountability is needed to ensure safeguarding and review when consumers have these experiences. As CoMHWA's contribution to the HaDSCO review noted, complaints mechanisms are often unable to respond in a timely, thorough and impactful manner.³⁶ Safeguarding must be accompanied by promoting autonomy and increasing the extent to which services are accountable to consumers through real pathways for effective self-advocacy, complaints, and increased transparency in the ways in which services operate. Robust and accessible complaint pathways, with real avenues for resolution and reconciliation, are urgently required.

Appendix: Summary of the Disability Royal Commission Report Recommendations

Volume 4: Realising the human rights of people with disability

The major recommendations from this volume are related to the development of a proposed Disability Rights Act, which would create a legal framework to enforce the principles and recommendations of the UN's Convention on the Rights of People with Disability. Other recommendations under this section unpack other duties the Act would impose on the Government, including the duty to provide an interpreter and to provide information in accessible formats. This volume also proposes that a rigorous complaints mechanism should be implemented to the Act, and that this should be co-designed with people with disability. There are further recommendations that relate to the duty of the government to eliminate disability discrimination, including steps to create a way to identify and reprimand offensive behaviour or vilification of a person because of their disability, both in public and in private.

Of the two recommendations requiring a WA response in this section, the WA government has accepted 'in principle' one, and the other is subject to further consideration.

Volume 5. Governing for inclusion

This recommendations from this volume include that all commonwealth and state/territory agreements, strategies and plans be reviewed, and that a new National Disability Agreement be developed through the Disability Reform Ministerial Council. This agreement would lay out how the government can develop and implement the recommendations proposed by the Disability Royal Commission. This section proposes that a National Disability Commission be established as an independent statutory body under the Disability Rights Act to monitor and oversee the Act and promote best practice and innovative approaches to improving outcomes for people with disability.

Of the five recommendations requiring a WA response in this section, one has been accepted and four have been accepted 'in principle.'

Volume 6. Enabling autonomy and access

This volume makes many recommendations that relate broadly to the goal of supporting people with disability to have more independence and control over their lives, including decisions that relate to their health care and finances, including recommendations about:

- Creating more accessible information and communications, for example providing more Auslan interpreters who are appropriately trained, and implementing a national plan to promote accessible information.
- Embedding the principles of supported decision-making. There are recommendations that notions of capacity and decision-making should explicitly align with the UNCRPD, including that all people should be presumed to have capacity to make decisions and may need support, and that substitute decision making should only be done as a last resort. There are also recommendations about how supported decision making should be taken up as a duty for public advocates and guardians, and for specific funding to be allocated to statutory bodies to promote supported decision making.

- Improving processes around guardianship and administration, including the creation of guidelines to maximise the participation of people with disability in their own tribunals, the duty of guardians to build capacity for people with disability to attain more financial independence, and transparency of public trustee fees.
- Government commitment to increasing funding for disability advocacy programs, and to collect data on these program to inform further funding. There are also recommendations that insist on making advocacy programs more aware of and safe for the needs of priority groups including First Nations people, LGBTQIA+ people and people from a Culturally and Linguistically Diverse background.
- Improving the right to equitable health care, including amending the Australian Charter of Healthcare Rights, improving access to supports and adaptations in public health care settings, developing specialised health and mental health services for people with cognitive disability and supporting better navigation of the health system for people with disability.
- Strengthening the legal frameworks for restrictive practices including better monitoring and oversight, promoting reduction and elimination approaches, and prohibiting restrictive practices in certain forms or circumstances (e.g. no seclusion for children, people who are already in mechanical restraints, or people who are actively self-harming or are suicidal; no restrictive practice as punishment or pacification; no chemical restraint in education settings, etc.). There are also recommendations for better and more transparent data around the use of psychotropic medication and on restrictive practice more broadly.

There are 31 recommendations in this section requiring a WA government response. Just one has been accepted, 12 are subject to further consideration, and the remainder have been accepted ‘in principle.’

Volume 7. Inclusive education, employment and housing

Volume 7 contains many recommendations related to the rights of people with disability to access equitable education, employment and housing.

Section A recommendations are related to improving access to education including:

- Legal entitlement for students with disability to enrol in a local mainstream school, protections from inappropriate use of ‘exclusionary discipline’ in schools (excluding a student from school activities as a form of punishment because of their disability), improving policies on reasonable adjustments for students with disability and facilitating partnerships and collaboration between non-mainstream and mainstream schools (and phasing out ‘special education’ more broadly).
- Mandating culturally appropriate inclusive education units, and to improve transition pathways from school to tertiary education or the workforce for people with disability.

Section B recommendations focus on improving equitable access to and support for people with disability in the workforce, including:

- Ensuring Government Disability Employment Services involve and are informed by people with disability, and that DES staff receive regular good quality training and education. There are also calls to create specific targets for disability employment in the public sector and to introduce consistent adjustment principles and adjustment passports so that people with disability are supported in their workplace through policy and procedures.
- Improving legislation around disability employment including the Fair Work Act and the Disability Discrimination Act, as well as reforming pathways to report complaints or breaches such as the Fair Work Ombudsman or the proposed development of a Disability Employment Rights Council.

- Raising wages, ensuring there are good and clear pathways to employment from the NDIS and DSP supports, and moving away from segregated employment by 2034.

Part C's recommendations address accessible housing for people with disabilities including:

- Inclusion and prioritisation of people with disability in national and state plans, strategies and approaches. Greater numbers of accessible and adaptive housing, improved social housing policies, better standards and oversight of supported residential services and stronger tenancy and occupancy legislation that better protects the rights of people to keep their homes, including an end to 'no grounds' evictions.
- Asking for the government (including the NDIA) to commit to a policy of 'no leaving into homelessness' for people with disability.
- Recognition of people with disability in developing the National Housing and Homelessness Plan to better understand and meet the needs of people with disability.
- Phasing out group homes within 15 years, with interim recommendations to reform group home conditions and increase the availability and range of alternative accommodation.

There are 32 recommendations in this section requiring a WA government response. One has been accepted, one has been accepted 'in part,' seven are subject to further consideration, and the remaining 23 have been accepted 'in principle.'

Volume 8. Criminal justice and people with disability

Recommendations in volume 8 relate to protecting the human rights of and supporting people with disabilities in a range of criminal justice settings. The Commission demonstrates an alignment with the OPCAT (Optional Protocol to the Convention Against Torture) and calls for education and training for workers in the criminal justice system to be aware of and to implement the principles of OPCAT.

Several recommendations address improving human treatment for children with disability in youth detention including the prohibition of solitary confinement, better training for staff on working with people with disability in youth detention centres, and a plan to improve staff retention to ensure adequate staffing.

Some recommendations related to protecting the rights of people found unfit to be tried, including a call to end indefinite detention and to provide information on how to support people with disabilities for anyone working in courts, including lawyers.

There were recommendations made to improve screening, assessing and identifying disability in custody including the development of national practice guidelines and policies relating to screening for disability and identification of support needs in custody in order to reduce the reliance upon self-disclosure. There were calls for trauma-informed approaches to be used in screening.

Other reforms in this volume included clarifying which NDIS supports will be available for people in the criminal justice system; a call for a co-design process to improve police responses to people with disability; raising the age of criminal responsibility to 14; and the amendment of current definitions of family and domestic violence to include all domestic settings and all relationships in which people with disability experience family and domestic violence.

There are 20 recommendations in this section requiring a WA government response. Two have been accepted, four are subject to further consideration, and four have been accepted 'in principle.'

Volume 9. First Nations people with disability

Recommendations for this volume aim to improve cultural safety for people with disability in a variety of settings including criminal justice and the NDIS disability service sector. Key recommendations include block funding for the community-controlled sector, a designated position for a person with disability to sit on the board of the NDIA, a new line item in the Pricing Arrangements recognising cultural supports and return to Country trips, and co-designed policy guidelines on funding family supports. There were also recommendations around elevating First Nations disability policy on a higher level including the establishment of a First Nations disability forum, the development of disability inclusive cultural safety standards and more efforts and incentives to develop a First Nations disability workforce in remote communities.

The WA government has accepted ‘in principle’ all six recommendations requiring its response.

Volume 10. Disability services

This volume made recommendations for the reform of disability services, especially the NDIS, to become safer, more accessible and focus on human rights. Recommendations included a call to provide a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services; to improve access to adequate independent and good quality support coordinators for people with disability with complex needs including being at heightened risk of violence, abuse, neglect or exploitation, particularly those living in supported accommodation, and for the NDIA to offer advocacy support for people living in supported accommodation.

There were also recommendations to embed supported decision making principles in disability services, and to improve attraction and retention of disability support workers through establishing a national disability support worker registration scheme. Many recommendations were made with the view of improving safeguarding practices including more transparent communication during complaints and making the complaints process more accessible as a whole, including: a requirement to investigate certain kinds of complaints, creating guidelines and best practice models for providers on safeguarding, requirements to consider redress for breaches and publish data about the unregistered provider market, and improved processes to screen workers.

The WA government has accepted ‘in principle’ the 14 recommendations requiring its response.

Volume 11. Independent oversight and complaint mechanisms

This volume includes recommendations about broader, high-level efforts to create national consistency in adult safeguarding, including the development of national frameworks for safeguarding. This volume also recommended making major reforms to making complaints including a “one stop shop” that combined complaint reporting, referrals and support with a view to making the complaints process more accessible, inclusive and supportive. Several recommendations highlighted reforms to protect human rights, including a recommendation to enshrine key OPCAT provisions in legislation and to ensure nationally consistent community visitor schemes where people with disability in hospital or supported accommodation have the right to community visitors to check whether they are receiving humane treatment and are having their rights upheld. There were also recommendations to establish disability death review schemes and nationally consistent reportable conduct schemes for better data on incidents of serious harm to a person with disability using a disability service.

There were 15 recommendations requiring a response from the WA government, of which eight are 'subject to further consideration' and seven are accepted 'in principle.'

Volume 12. Beyond the Royal Commission

The recommendations in this volume relate to how we ensure that the recommendations from the report are implemented and evaluated in order to make lasting change to protecting the rights of people with disability. The Report asks for state and territory responses to the recommendations, outlining which recommendations are rejected or accepted and why, as well as a plan for implementation, by the end of March 2024. Further recommendations propose a timeline for regular benchmarks to check whether states and territories are meeting their commitments and outline a plan for how data will be collected to measure how outcomes are improving.

The WA government has accepted 'in principle' the seven recommendations requiring its response.



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