

# NSW Government Submission

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

December 2022



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# Executive Summary

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The NSW Government welcomes the opportunity to make a submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission). This submission outlines what the NSW Government is doing to make our mainstream service systems more accessible and inclusive for the state's more than 1.3 million people with disability. This is an ongoing process, involving changes to laws, policies and procedures to ensure that services in NSW are fully inclusive.

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As has been highlighted by the Royal Commission, better data on disability is needed so that governments invest in services and supports that work best for people with disability. Work undertaken through the National Disability Data Asset, including NSW pilots, as well as ongoing efforts to strengthen Indigenous Data Governance and Sovereignty, reflect the NSW Government's commitment to collecting better data on disability.

In NSW, rights set out in the United Nations Convention on the Rights of Persons with Disabilities are enlivened in a range of ways, including through legislation, strategies and strong safeguards. NSW's implementation of Australia's Disability Strategy is a key reform shaping the inclusion and rights of people with disability in NSW. The *NSW Disability Inclusion Act 2014* and the NSW Disability Inclusion Plan provide the legislative framework and practice approach to build a disability inclusive NSW.

The rights of people with disability have been strengthened in NSW through the creation of the NSW Ageing and Disability Commission. Alongside this, continued investment in advocacy through the Disability Advocacy Futures Program promotes, protects and secures the rights of people with disability. The priority for this program is individual disability advocacy to access NSW Government services, in addition to providing systemic and representative advocacy.

The Royal Commission has drawn attention to the over-representation of Aboriginal people with disability in several state systems, including criminal justice and child protection. Addressing this over-representation is a major focus of the NSW Government and our efforts are being bolstered by record investment to implement Closing the Gap initiatives and partnerships with Aboriginal communities.

Investment in culturally safe and inclusive child and family services is one way NSW is looking to improve outcomes for Aboriginal people with disability. New funding for the Brighter Beginnings program will bring health and development checks to all children in NSW preschools and expand the number of Aboriginal Child and Family Centres across the state. NSW is also continuing to implement the Family is Culture Report, with recent attention focussed on advancing legislative recommendations following the passage of the Family is Culture Bill in November 2022.

NSW sees diversionary options as critical for people with disability to reduce their contact with the criminal justice system. Increased investment and expansion of the Justice Advocacy Service and the Statewide Community and Court Liaison Service means more people with cognitive impairment and psychosocial disability will have access to diversion and supports.



The NSW Youth Justice system is centred on diversion and takes a tailored and holistic approach. Across both the adult and youth systems there has been increased investment in Aboriginal specific approaches, such as the recent expansion of the Youth Koori Court and Circle Sentencing.

NSW has taken significant steps to improve the safety and security of women and girls. These changes are particularly significant for women and girls with disability given they are much more likely to experience sexual and domestic violence. Landmark changes include the introduction of affirmative sexual consent to the *Crimes Act 1900* (NSW) and the creation of a standalone coercive control offence. Alongside this, NSW has made significant investments to expand key supports such as Safer Pathway and to deliver and operate new women's 'core and cluster' refuges. NSW has also announced that it will establish a Women's Safety Commissioner.

NSW Health is committed to providing services in an equitable, accessible and efficient way. In addition to a focus on making mainstream services accessible for people with disability, there are a number of specific health services and initiatives in NSW focused on better meeting the needs of people with disability. NSW is also investing in culturally appropriate health models and services.

Education plays an important role in the lives of children and young people with disability. Given that one in five students in NSW have a disability, making sure that the education system is inclusive is essential. This is why the NSW Department of Education has a specific Disability Strategy and has implemented many key aspects, such as the recent Inclusive, Engaging and Respectful Schools policy reforms.

While these changes are moving us in the right direction, the NSW Government knows there is more to do to make its community and systems more inclusive and safe for people with disability. NSW is committed to creating this change through implementing major national reforms, particularly Closing the Gap and Australia's Disability Strategy. Overlaying this are NSW reforms, such as Family is Culture and numerous NSW Law Reform Commission reports, which the NSW Government is in the process of implementing. The NSW submission highlights work underway as part of these existing reforms and underscores their continued value.

The NSW Government acknowledges the contribution the Royal Commission has already made to the way the rights of people with disability are thought about and respected. No doubt the Royal Commission's final report will also help drive further positive change.



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# Introduction

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# 1

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## Focus of this submission

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Mainstream services are a critical part of service provision for people with disability. The NSW Government is continuing to make its mainstream service system more accessible and inclusive, and this submission outlines some of this work. This is an ongoing process that continues to be informed by an understanding of the needs, wants and rights of people with disability. Recognising that particular thought must be given to the unique experiences of diverse populations, this submission also sets out work underway to better respond to the needs of Aboriginal people with disability.

The NSW Government has participated in nearly all hearings held by the Royal Commission and provided information on a range of issues. This submission adds to the information already provided and shows some recent changes to improve rights recognition and service provision for people with disability. While this submission does not replace the evidence and information already provided, in some cases material has been repeated for clarity. This submission should be read with the other evidence and information provided by the NSW Government.

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## Convention on the Rights of Persons with Disabilities

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People with disability have clear rights set out in the United Nations Convention on the Rights of Persons with Disabilities, as well as the broader international human rights instruments. The NSW Government realises its obligations under the Convention in a range of ways:

**The Disability Inclusion Act 2014 (NSW)**<sup>1</sup> was developed by the NSW Government to fulfil its commitments to the previous National Disability Strategy and its obligations under the Convention on the Rights of Persons with Disabilities.

- **The Anti-Discrimination Act 1977 (NSW)** makes unlawful both direct and indirect discrimination on the basis of disability.
- **The establishment of the NSW Ageing and Disability Commission** as an independent agency focused on protecting older people and adults with disability from abuse, neglect and exploitation and promoting their rights.
- **Implementation of Australia's Disability Strategy 2021-2031** to promote positive attitudes towards people with disability across the community.
- **The NSW Disability Inclusion Plan 2021-25 and disability inclusion action plans** provide a whole of government strategy to promote community inclusion of people with disability.

More information on the Disability Inclusion Act 2014 (NSW), the NSW Ageing and Disability Commission and NSW's implementation of Australia's Disability Strategy 2021-2031 is provided in the following sections.

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## Evolution of disability services in NSW

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Prior to the creation of the National Disability Insurance Scheme (NDIS), the NSW Government was Australia's largest commissioner and provider of disability services. In the years leading up to the NDIS, NSW had started significant reforms to provide services in a way that better respected the rights of people with disability and to support inclusion. Key reforms that reshaped the way people with disability are supported in NSW were Stronger Together: a new direction for disability services in NSW 2006–2016 and Ready Together.<sup>2</sup>

Some key changes that occurred over this time included:

- **Increasing the involvement of people with disability** and their peak bodies in consultation and decision making. Over 2010 to 2011, NSW held Living Life My Way consultations involving some 4000 people over 350 sessions. This informed the NSW Government's move to more person-centred service delivery that aimed to increase the choice and control of people with disability.
- **Transitioning away from large residential centres** towards housing that realised the right of people with disability to live in the community, with support and improved access to mainstream services.
- **Legislating disability inclusion planning** across all government departments and local councils with the introduction of the *Disability Inclusion Act 2014*.
- **Promoting greater respect of people with disability through public campaigns**, such as 'Don't DIS my ABILITY' which was held between 2004-2010 and involved more than 150 events, recognising the talents of people with disability in NSW.

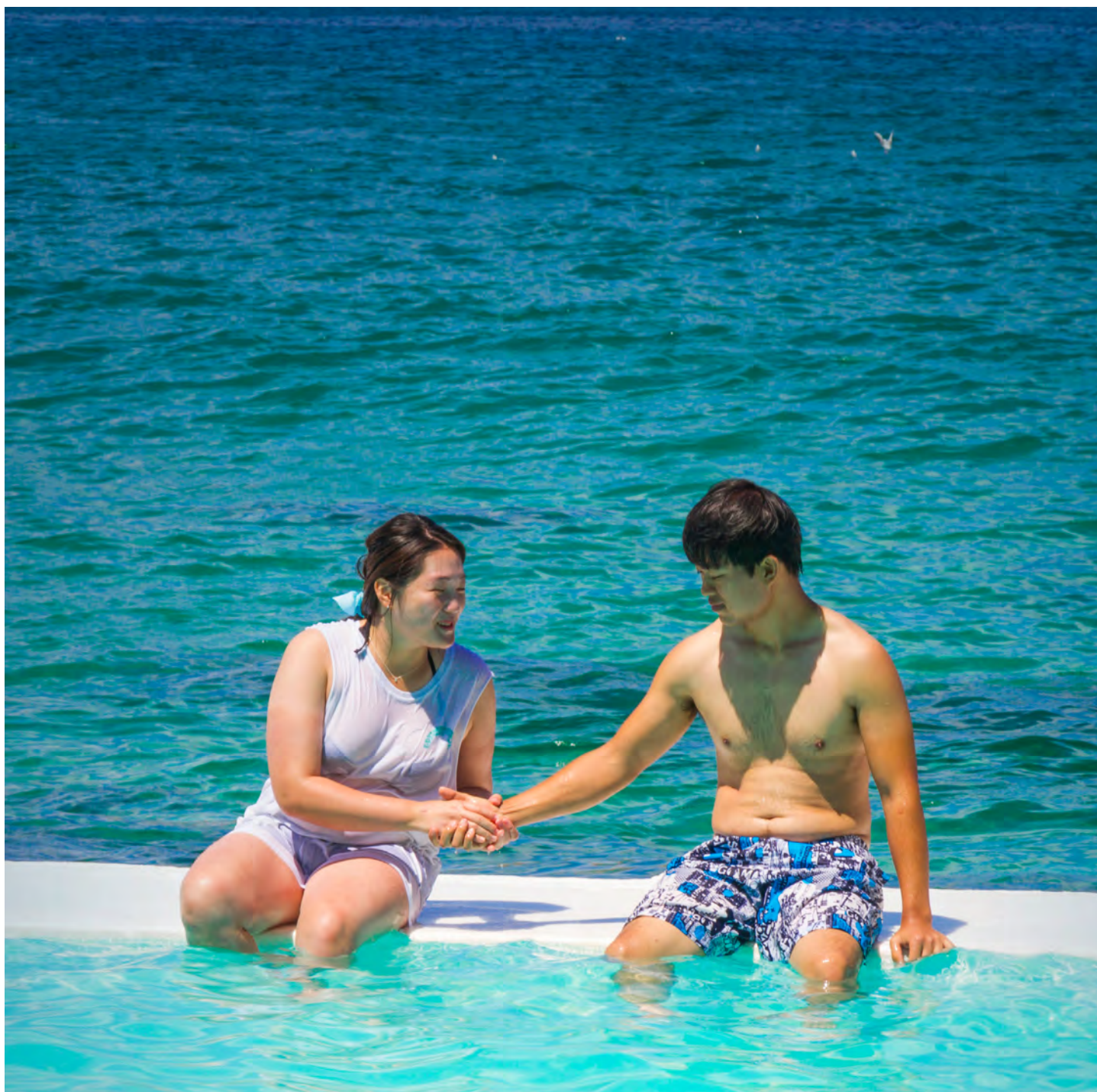




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NSW was the first state to sign up to the NDIS following the 2011 release of the Productivity Commission report *Disability Care and Support*. The NSW Government passed the *National Disability Insurance Scheme (NSW Enabling) Act 2013* to support the transition of funding, resources and individuals into the NDIS. Following trial (2013/14 to 2015/16) and transition (2016/17 to 2017/18), full scheme NDIS was in place in NSW from 1 July 2018 and available to all eligible participants.

While specialist disability services are no longer directly funded or delivered by the NSW Government, and are largely provided through the NDIS, the delivery of inclusive and accessible mainstream services to people with disability remains a core responsibility of the NSW Government. NSW mainstream services are open and available to people with disability but there can be barriers to access and adjustments need to be made. NSW continues its work improving services, including working towards universal design and making reasonable adjustments, so that mainstream services are safe, accessible and meet the needs of people with disability.



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# Data on disability in NSW

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NSW acknowledges that better data on disability is needed to support investment in services and supports that work best for people with disability. This section notes work that has been undertaken through the National Disability Data Asset, including NSW pilots, as well as ongoing efforts to strengthen Indigenous data sovereignty to deliver better data in NSW.

## Snapshot of NSW disability figures

There are over 1.3 million people with disability in NSW, which is almost one in every five people.<sup>3</sup> This includes over 160,000 people who are participants in the NDIS.<sup>4</sup>



Over  
**1.3 million**  
people with disability in NSW



People over  
65 with a disability:  
**629,300**



**172,000**  
students with disability  
in NSW Government  
schools

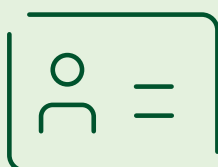
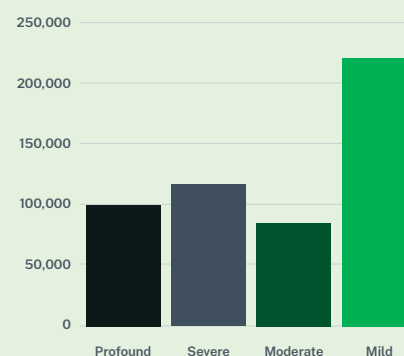


**10.4%**  
unemployment  
rate for people  
with a 'mild' disability

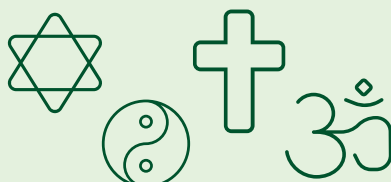


**240,000**  
Disability Support  
Pension recipients

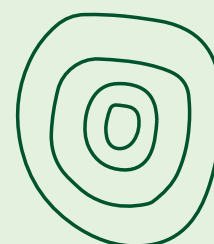
### Types of disability



Over  
**42,000**  
Companion Card holders



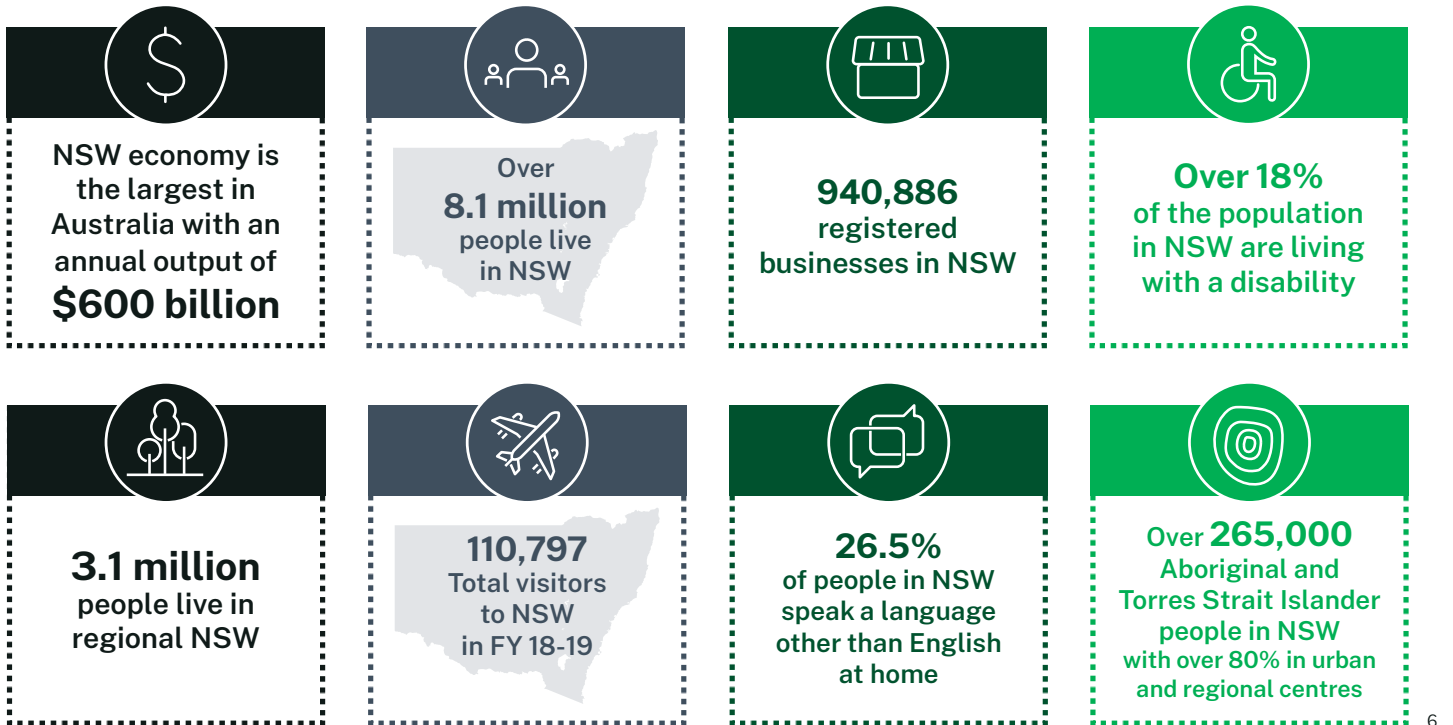
Over **275 languages**  
are spoken and  
**144 religions**  
practiced in NSW.



NSW has Australia's  
largest population of  
Aboriginal people.

## General NSW demographics

Given the diversity of the NSW population, and the scale of the service system, achieving rapid transformational change is challenging. Efforts to improve the system for people with disability need to reflect this diversity and involve voices from across society.



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## NSW data improvements

### Disability data collection

NSW has followed the work of the Royal Commission and has heard the issues raised there, and elsewhere, about the availability of high quality data in relation to people with disability. The NSW Government recognises that reliable, high quality data will help guide the design of programs and policies and improve outcomes for people with disability.

Currently there is no single universally applied definition of disability used in Australia. Instead, a number of operational definitions of disability are used across states, territories and the Commonwealth. Definitions vary depending on the setting and their purpose.

### NSW Government Data Strategy

The NSW Government is undertaking significant data reform to improve the way data is used and shared. This includes developing the NSW Government Data Strategy,<sup>7</sup> which will grow NSW's maturity in the use of data for better community outcomes. The Strategy highlights the work being done to establish a National Disability Data Asset as a practical case example of how NSW is improving data collection and use, and recognises the need to respect Indigenous Data Sovereignty. Indigenous Data Sovereignty reflects the right of Aboriginal peoples to govern the creation, collection, ownership and application of their data.



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## National Disability Data Asset

One way that NSW is working to address shortcomings in data collection is through its involvement in the National Disability Data Asset. NSW led the development of a new national approach to sharing data to drive improved outcomes for people with disability by initiating the development of a National Disability Data Asset and led two key pilot projects. The findings of these pilots are now available on the National Disability Data Asset website.<sup>8</sup>

The National Disability Data Asset comprises a collection of linked, de-identified data from across multiple Commonwealth, state and territory service systems. It has been co-designed and co-governed by the Commonwealth, state and territory governments and the disability sector. The National Disability Data Asset will:

- overcome the existing problem of fragmented and poor-quality data relevant to understanding the outcomes of people with disability
- enable a better understanding of how people with disability are supported through services, payments and programs and what outcomes are achieved
- provide, for the first time, a person-centred view of the pathways people with disability take through service systems, as well as other drivers of inclusion and outcomes.

## Indigenous Data Sovereignty and Indigenous Data Governance

As part of the NSW Data Strategy, the NSW Government is consolidating whole of government data policies to support safe use and sharing of data across government, including engaging with Aboriginal communities to implement Indigenous Data Sovereignty and Indigenous Data Governance principles.

One of the key action areas under *NSW Closing the Gap Implementation Plan 2022-2024*<sup>9</sup> is designing an Indigenous Data Sovereignty and Indigenous Data Governance model to increase Aboriginal communities' sovereignty over data about Aboriginal people.

In the 2022-23 NSW Budget, as part of its delivery of Closing the Gap, the NSW Government is investing \$47 million to support strong data and governance to drive the Government's partnership approach with Aboriginal communities.



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# Key reforms shaping inclusion in NSW

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NSW is in the process of implementing significant national reforms that will improve the inclusion and rights of people with disability in NSW. This section provides a snapshot of how NSW is implementing Australia's Disability Strategy, in particular actions that NSW has committed to in the Targeted Actions Plans. Information is also provided on NSW's investment in and implementation of Closing the Gap, recognising the importance of this reform to support inclusion and better outcomes for Aboriginal people with disability.

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## Australia's Disability Strategy

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NSW worked closely with the Commonwealth and other states and territories to develop Australia's Disability Strategy 2021-2031 and is committed to its implementation.

Australia's Disability Strategy provides a framework to build a more inclusive and accessible society and drive change in systems outside the NDIS. To deliver on this vision, NSW has committed to actions in the five Targeted Actions Plans.<sup>10</sup> The Targeted Actions Plans outline short term actions to progress key areas of the strategy.

The Targeted Actions Plans focus on:

- **Safety:** NSW continues to strengthen safeguards through the NSW Ageing and Disability Commissioner, including through a planned review of the *Ageing and Disability Commissioner Act 2019* (NSW), as well as developing and implementing improved information sharing and referral arrangements with NSW and the Commonwealth. NSW agencies are strengthening the way they provide services to people with disability and looking at ways to reduce and eliminate the use of restrictive practices.
- **Employment:** This includes actions to increase the employment of people with disability in NSW, particularly in the NSW public sector. Another action is to improve the transition of young people with disability from education to employment, which includes implementation of the NSW Education Department's Disability Strategy.
- **Emergency Management:** NSW is working closely with partners, including the disability sector, to support provider preparedness, capture lessons learned and develop resources to support engagement and readiness for people with disability.
- **Early Childhood:** Actions include a review of current early identification and referral pathway processes across key NSW agencies and to implement the Aboriginal Child and Family Investment Strategy. NSW is also increasing the capacity of Aboriginal Child and Family Centres to provide quality early childhood education and integrated health and family services.
- **Community Attitudes:** An important way that NSW will deliver on this is through Disability Inclusion Action Plans, which include a focus area on positive community attitudes and behaviours. A number of NSW agencies are undertaking actions to improve workforce skills, knowledge and capabilities to work effectively with and meet the needs of people with disability.

The NSW Ageing and Disability Commissioner is required by legislation to monitor, assess and report on NSW's implementation of Australia's Disability Strategy.

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## Closing the Gap

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Work being undertaken as part of the new National Agreement on Closing the Gap will deliver better approaches and supports for Aboriginal people with disability in NSW.

In July 2020, NSW signed up to the new National Agreement on Closing the Gap. This reform sets the framework for how NSW will improve outcomes for Aboriginal people across education, employment, health and wellbeing, justice, safety, housing, land and waters, and languages. The Priority Reforms focus on changing the way government work with Aboriginal and Torres Strait Islander people.

The NSW Government and NSW Coalition of Aboriginal Peak Organisations, in consultation with Aboriginal communities, have developed the *NSW Closing the Gap Implementation Plan 2022-2024*, which is NSW's second plan. This plan represents a new way of working together with Aboriginal communities and is driven by self-determination and shared decision-making. It is an approach that recognises change must be led by Aboriginal communities.

The new plan acknowledges intersectionality and reflects the particular circumstances of Aboriginal people with disability and the need to bring an Aboriginal lens to key disability reforms, such as Australia's Disability Strategy.

There are a number of initiatives that consider the unique needs of Aboriginal people with disability. NSW is working with the NSW Coalition of Aboriginal Peak Organisations, including the First Peoples Disability Network, to further these implementation goals.

The NSW Government will invest \$189.6 million to support several of the new programs and approaches outlined in the plan. This will help build an evidence base for innovative and effective approaches designed and implemented with Aboriginal communities, and enable an expansion of this approach in future years.

More broadly the 2022-23 NSW Budget will invest \$715.8 million in Aboriginal policies, programs to help meet NSW's Closing the Gap targets.





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The 2022-23 NSW Budget includes a strong focus on:

- investing in Aboriginal economic empowerment
- supporting Aboriginal children and young people to thrive
- delivering health and wellbeing in Aboriginal communities
- improving the justice system
- investing in appropriate Aboriginal housing and infrastructure, and improving land rights
- supporting Aboriginal languages and culture, and respecting and acknowledging the past as the cornerstone to a diverse NSW
- delivering improved data and governance in partnership with Aboriginal people.

To support delivery of Closing the Gap, the NSW Government is improving how it reports spending on Aboriginal people and communities. The September 2022 Comprehensive Indigenous Expenditure Report goes beyond the State's commitments under the National Agreement on Closing the Gap and identifies funding that is specifically targeted at Aboriginal people, as well as general funding that benefits Aboriginal people.<sup>11</sup>



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# Legislative and policy framework for inclusion

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In NSW, the *Disability Inclusion Act 2014* (NSW) and the NSW Disability Inclusion Plan provide the key legislative framework and practice approach to creating inclusive and accessible communities and services. This section describes these frameworks, as well as the important role played by the Disability Council NSW in advising the NSW Government.

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## NSW Disability Inclusion Act

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The *Disability Inclusion Act 2014* commits the NSW Government “to creating a more inclusive community in which mainstream services and community facilities are accessible to people with disability to help them achieve their full potential”.

In line with the United Nations Convention on the Rights of Persons with Disabilities, the Act highlights that “people with disability have the same human rights as other members of the community, and that the state and the community have a responsibility to facilitate the exercise of those rights”. The Act relates to the “accessibility of mainstream services and facilities, the promotion of community inclusion and the provision of funding, support and services for people with disability”.

The *Disability Inclusion Act* was reviewed, following a public consultation process in 2020, and amendments introduced in July 2022. The review found that the objects and the principles of the Act remained valid.

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## NSW Disability Inclusion Plan

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The NSW Government implements the *Disability Inclusion Act* in a number of ways, including through the current NSW Disability Inclusion Plan 2021-2025 launched in November 2021. The NSW Disability Inclusion Plan strengthens the state’s accessibility framework and outlines work underway to improve outcomes for people with disability.

The plan provides a whole of government strategy to:

- promote community inclusion of people with disability
- identify how NSW agencies and local councils will improve access to mainstream services and community facilities for people with disability
- encourage collaboration and co-ordination across public authorities in the provision of supports and services.

The NSW Disability Inclusion Plan aligns with Australia’s Disability Strategy and obligations under the United Nations Convention on the Rights of Persons with Disabilities.

All local councils and NSW Government agencies have disability inclusion action plans, which put the principles of the NSW Disability Inclusion Plan into practice.



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## Disability Council NSW

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The Disability Council NSW is the official advisory body to the NSW Government. The Act provides a rights-based framework for the Council. The Council's main responsibilities under the Act are to:

- monitor the implementation of NSW Government policy
- advise the Minister and public authorities on emerging issues relating to people with disability, and about the content and implementation of the NSW Disability Inclusion Plan and disability inclusion action plans
- promote the inclusion of people with disability in the community and promote community awareness of matters concerning the interests of people with disability and their families
- consult with similar councils and bodies, and people with disability
- conduct research about matters relating to people with disability.





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# Protecting and promoting rights

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The protection and promotion of the rights of people with disability has been strengthened in NSW through the creation of the Ageing and Disability Commissioner and continued investment in advocacy through the Disability Advocacy Futures Program. This section provides background on the role and functions of the Ageing and Disability Commission, as well as information on the types of advocacy funded through the Disability Advocacy Futures Program.

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## Key safeguarding bodies in NSW

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The NSW Government understands that complaints processes may be confusing and complex, with people not always knowing where to go, and with various organisations having different legal responsibilities. In NSW there is a no-wrong door approach, where people are referred to the appropriate organisation if their complaint falls outside an organisation's mandate.

There are a number of safeguarding bodies in NSW but the key bodies for people with disability experiencing abuse and neglect include:

- **NSW Ageing and Disability Commission:** To access information or make a report about the abuse, neglect and exploitation of adults with disability and older people living in their home and in the community.
- **NSW Ombudsman:** To make complaints about NSW public sector agencies and community services.
- **NSW Health Care Complaints Commission:** To report complaints about health service providers in NSW.
- **Anti-Discrimination NSW:** To ask questions or make complaints about disability discrimination covered by the *Anti-Discrimination Act 1977* (NSW).

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## NSW Ageing and Disability Commission

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The NSW Ageing and Disability Commission is an independent agency of the NSW Government. The *Ageing and Disability Commissioner Act 2019* (NSW) provides extensive powers to the Ageing and Disability Commissioner to respond to reports about adults with disability who are subject to, at risk of, or living in circumstances that will result in, abuse, neglect or exploitation – including investigative powers.

The Ageing and Disability Commission was formed in July 2019 to fill critical gaps in the response to allegations of abuse, neglect and exploitation of adults with disability and older people in their family, home and community. It was established in response to the NSW Ombudsman's special report to the NSW Parliament, *Abuse and neglect of vulnerable adults in NSW – the need for action*,<sup>12</sup> and to reflect the commencement of the NDIS Quality and Safeguards Commission in July 2018. The special report called on the NSW Government to implement the NSW Law Reform Commission Report 145 Review of the Guardianship Act 1987 recommendation to establish an independent statutory position of a Public Advocate with investigative functions.<sup>13</sup>

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The Ageing and Disability Commission is advised by the Ageing and Disability Board, whose members include people with disability and Aboriginal people.

The Ageing and Disability Commission performs a range of critical functions, including:

- maintaining the NSW Ageing and Disability Abuse Helpline and responding to reports about abuse, neglect and exploitation of adults with disability
- coordinating the Official Community Visitor scheme to supported disability accommodation settings
- raising public awareness about abuse, neglect and exploitation of people with disability and community responsibilities
- working with NSW Government and non-government agencies, community and business partners to better recognise risk factors of abuse and support early notification
- producing training resources and online material including accessible and community language formats
- monitoring, assessing and reporting on the implementation of Australia's Disability Strategy in NSW.

An independent review of the *Ageing and Disability Commissioner Act 2019* (NSW) commenced in late 2022.

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## Advocacy

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Advocacy is critical to ensuring the voices of people with disability in NSW are heard and that their right to participate equally in the community is upheld. The introduction of the NDIS changed the disability advocacy system in NSW. The Commonwealth Government through its National Disability Advocacy Program, and the NDIS through its Information, Linkages and Capacity Building program, provide critical advocacy supports. To complement this, the NSW Government has continued its commitment to advocacy through the Disability Advocacy Futures Program, which supports people living with disability in NSW to access NSW Government funded and delivered services. This program is based on the recommendations of a 2019 Ageing and Disability Commissioner advocacy review.<sup>14</sup>

### Disability Advocacy Futures Program

As part of the 2020-21 NSW Budget, NSW has committed \$112.5 million over four years to fund disability inclusion services, including the Disability Advocacy Futures Program and policy functions. The program will:

- ensure that all people with disability in NSW have access to disability advocacy to support their ability to engage with NSW Government funded and delivered services
- deliver statewide local individual advocacy services
- deliver statewide specialist individual and systemic advocacy services for Aboriginal and multicultural communities.

The Disability Advocacy Futures Program includes three core advocacy services:

1. **Individual Disability Advocacy** to assist individuals to access services and supports. This represents 50 per cent of the total Disability Advocacy Futures Program funding pool and is distributed across 10 service groups or locations, including seven regional and three statewide groups that cover legal advocacy, multicultural communities and Aboriginal communities. A priority is to support upholding rights, accessing services and resolving disputes and complaints. This can include support to access educational opportunities, transport, cultural activities, participation in public events, or access to local infrastructure.
2. **Systemic Disability Advocacy** to address systemic issues affecting people with disability or particular groups of people with disability. NSW funds organisations to provide quality evidence-based advice, informed by the views and lived experience of people with disability. This represents 25 per cent of the total Disability Advocacy Futures Program funding pool and is distributed across seven contracts. One of these is a statewide cross-disability organisation and the other six are focused on people with intellectual, physical, psychosocial disability and multicultural communities, Aboriginal communities, and families and carers.
3. **Representative Disability Advocacy** to membership organisations run by or on behalf of people with particular disabilities. There are nine funded providers that will be primarily focused on groups of people with specific disabilities. These organisations seek to promote and represent the views and interests of their members and other people with similar disabilities. This represents 15 per cent of the total Disability Advocacy Futures Program funding pool.

In addition to the core advocacy services above, funding will be assigned for Special Purposes and Projects (5 per cent of funding pool) and Sector Development Activities (5 per cent of funding pool).

Information on the organisations funded through the Disability Advocacy Futures Program is provided on the NSW Department of Communities and Justice website.<sup>15</sup> Some of the funded organisations include the Intellectual Disability Rights Service, First Peoples Disability Network and Multicultural Disability Advocacy Association of NSW.





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# Culturally safe and inclusive child and family service

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Access to safe, effective services is critical to achieving the inclusion and wellbeing of children and parents with disability. It is evident from the work arising from the Royal Commission, as well as NSW reforms like Family is Culture, that access to culturally appropriate services and supports is vitally important for Aboriginal people with disability. This section sets out some important ways that NSW is working to improve systems and supports for children and parents with disability, with a particular focus on recent investments in early intervention and the delivery of the Family is Culture Report recommendations.

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## Investing in prevention and early intervention

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Early developmental checks are essential to identifying and providing children the supports they need to get the best possible start in life.

The importance of early checks is more acute for Aboriginal children. Only 34.3 per cent of Aboriginal children are assessed as developmentally on track in all five domains of the Australian Early Development Census, compared to 56.2 per cent of non-Indigenous children.<sup>16</sup> This suggests that existing services for the general population are not meeting the needs of many Aboriginal families, and that tailored approaches to service delivery are required.

NSW has recently announced a \$376.5 million investment over four years in child development and family support as part of the Brighter Beginnings initiative. Brighter Beginnings is a whole of government initiative focused on improving outcomes for NSW children and their families in the first 2000 days, from conception to school age.

As part of Brighter Beginnings, the following investments are being made:

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<b>\$111.2 million</b>	to bring health and development checks to all children in NSW preschool settings, in partnership with health professionals
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<b>\$98.7 million</b>	to continue and expand the number of Aboriginal Child and Family Centres across the state
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<b>\$70.9 million</b>	to expand the transformational Sustaining NSW Families clinical nurse home visiting program
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<b>\$57.2 million</b>	to develop the clinical interface of the Digital Baby Book
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<b>\$38.6 million</b>	to make Pregnancy Family Conferencing available to more parents across NSW
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Delivering health and development checks in preschool environments has the potential to provide thousands of parents with vital health information they may be currently missing out on to help ensure the best start in life for their child. Bringing the Sustaining NSW Families program to more Local Health Districts across the state means that many more families can be supported by a nurse-led home visit program, helping to strengthen the relationships between children and parents and carers, and building their capacity to give their child the best start in life.

More Aboriginal Child and Family Centres will help connect families with a mix of culturally safe services and supports for their child's development. Funding has been granted to grow operational service delivery at the existing nine centres, upgrade or expand the existing centres, and open a further six sites across NSW.

Expansion of the Pregnancy Family Conferencing program will mean more families experiencing disadvantage will be able to access early engagement and interagency care planning, so they can remain together.

### **Aboriginal Child and Family Centres**

In 2014, the NSW Government established the Aboriginal Child and Family Centres program to provide holistic, culturally safe services for Aboriginal families. These purpose-built, place-based centres offer a range of services for Aboriginal children and their families, including early childhood education, parent and family support, maternal and child health, and adult education. Services are tailored to the local needs of families.

In 2021, an evaluation of the program found that Aboriginal Child and Family Centres are providing high quality and cost effective early childhood education to Aboriginal children in a safe, trusted and culturally safe environment.

The Aboriginal Child and Family Centres are community-controlled organisations and operate as a community hub through referrals to deliver and coordinate integrated, culturally appropriate and needs-based services. This is improving outcomes for Aboriginal families, particularly in education, health, social and community empowerment.

The expansion of Aboriginal Child and Family Centres contributes to a key Family is Culture recommendation.



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## Progressing Family is Culture

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Implementation of Family is Culture is a key way NSW will meet the Closing the Gap target of reducing the rate of over-representation of Aboriginal children in out-of-home care by 45 percent by 2031.

NSW has committed to implementing the findings of the landmark independent, Aboriginal-led Family is Culture Review of Aboriginal over-representation in out-of-home care in NSW by 2024. This will be done in partnership with communities and aligned with the overall intent of the review, and will include a focus on progressing the disability recommendations.

The Family is Culture Review Report made 126 recommendations for structural reform to the child protection system, built on two key pillars of genuine reform: self-determination and accountability. The report and its recommendations provide a roadmap to a system that better supports Aboriginal children and their families and that will contribute to a long-term reduction in the number of Aboriginal children coming into contact with the child protection system.

NSW has provided information to the Royal Commission on its progress implementing the recommendations from the Family is Culture Review Report. Since the last advice was provided to the Royal Commission there have been some significant developments.

The NSW Government has announced a funding boost for Closing the Gap initiatives in the 2022 Budget, including three projects that help deliver on the Family is Culture recommendations:

- \$3.9 million over 4 years to an Aboriginal community-controlled organisation to strengthen Aboriginal-led commissioning through the development of policies and strategies to support practical commissioning, and piloting the commissioning approach for two community-identified projects or services
- \$8.6 million over four years for the Strong Families Our Way initiative to establish sustainable local community determined consultation mechanisms and develop options to progress self determination
- \$9.9 million over four years to pilot a Child and Family Advocacy and Support program to provide legal and non-legal advocacy to Aboriginal families at risk of having their children removed. This will include phone advice, advocacy, referral and support services and face to face service delivery in a small number of regional locations in Western NSW.

By 2025, NSW will fully implement the Aboriginal Case Management Policy. The Aboriginal Community Controlled Mechanisms, established under Strong Families Our Way, are a critical component of the Aboriginal Case Management Policy. These mechanisms will allow for direct community input into child protection policies and practices and support keeping Aboriginal young people with family and connected to community and culture.

NSW is also changing the way it tracks and reports progress on implementing the findings of the Family is Culture Review Report to strengthen transparency and accountability.

### Progressing Family is Culture legislative recommendations

Given the critical importance of progressing the report's legislative recommendations a decision was made to bring forward work in this area. On 13 October 2022, the NSW Government introduced the Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022. The Bill, which has now passed both houses of parliament, implements several recommendations of the Family is Culture Review Report.

In April 2022, the NSW Government released a discussion paper seeking input and advice on the Family is Culture legislative recommendations.<sup>17</sup>



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The Department of Communities and Justice consulted over 130 individuals and organisations, including a range of Aboriginal community organisations, legal and court stakeholders across NSW. Thirty one written submissions were received.

A consultation findings report was released in September 2022 which summarised the feedback received and how the NSW Government plans to progress each legislative recommendation.<sup>18</sup>

The NSW Government has passed legislation consistent with outcomes of the consultation. This implements 14 of the 25 legislative recommendations.

Some of the legislative changes include:

- Inserting the five elements of the Aboriginal Torres Strait Islander Placement Principle into the principles of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* (the Care Act) and to give effect to those principles and any necessary consequential amendments, including greater involvement of Aboriginal families and entities in processes.
- Amending the Care Act to place a positive obligation on the Department of Communities and Justice to take active efforts linked to the reasons for removal to prevent children from entering out-of-home care. ‘Active efforts’ should include timely, practical and responsive supports that are culturally appropriate, aimed at keeping families together, mitigate the specific risks faced by the child or young person, and be conducted in partnership with the child, young person, family, kin and community.
- Amending section 106A of the Care Act to remove the presumption that a child is in need of care and protection where there is evidence that the parent has had another child removed and not restored to their care. The Children’s Court will still be required to admit such evidence but it will not give rise to a rebuttable presumption that the child who is the subject of the care application is in need of care and protection.

The remaining recommendations require further consultation, which will commence in 2023.



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## Review of Structured Decision Making tools

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The Department of Communities and Justice is undertaking a review of Structured Decision Making tools, as was recommended in the 2019 Family is Culture report. As has also been raised by the Royal Commission, it is important that child protection agencies use decision making processes and tools that are fair and effective for Aboriginal parents with disability.

In line with this the Department of Communities and Justice, in partnership with Evident Change, will review and co-design revised assessment tools. Evident Change is a non-profit organisation that uses data and research to improve social systems. This review includes examining how the tools work for Aboriginal families.

The Structured Decision Making tools being reviewed include the:

- **Mandatory Reporters Guide**, which assists mandatory reporters to decide whether to report concerns of possible child abuse or neglect the Child Protection Helpline.
- **Screening Response and Priority Tool** used by the Child Protection Helpline to determine if a mandatory report meets the risk of significant harm threshold and if so, a recommended timeframe by which the Department should respond.
- **Safety Assessment Tool** used to determine if a child is safe to remain living with their family in the immediate period or if protective measures are needed.
- **Risk Assessment Tool** used to assess the likelihood a child will be reported over the next 18 months if supports are not put in place.
- **Family Strengths and Needs Assessment Tool** used to identify the child's and family's strengths that enable resilience and protection to maltreatment, and to identify and prioritise their needs to support a holistic and purposeful Family Action Plan. This tool is not currently in use in NSW but will be implemented as a part of the review.

A priority of this work is for the Structured Decision Making assessments to be culturally equitable and better assess the protectiveness and safety that culture provides. This will be done by co-designing changes with Aboriginal communities and Aboriginal community controlled organisations, as well as Aboriginal young people, parents and practitioners.

We are also engaging with the disability sector so the tools better respond to the needs of families where a child or parent/caregiver has a disability. This engagement is needed to build the capability of practitioners and managers working with parents with disability.



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# Diversion and access to justice

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NSW sees diversionary options as critically important to reduce contact of people with disability with the criminal justice system. This section sets out key legislative, policy and program efforts to support the diversion of young people and adults with disability. Information is provided on the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW), which provides the basis for diversion in NSW. Recent investment and expansion of key adult diversionary programs, Statewide Community and Court Liaison Service and Justice Advocacy Service, is also detailed. The NSW Youth Justice system is centred on diversion and takes a tailored and holistic approach. Some Youth Justice NSW disability specific efforts, including the implementation of its Disability Action Plan, are set out here.

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## Mental Health and Cognitive Impairment Forensic Provisions Act

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The *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) implements key recommendations made by the NSW Law Reform Commission in its two landmark forensic mental health reports: Report 135 *Diversion* and Report 138 *Criminal Responsibility and Consequences*. It recognises that people who come into contact with the criminal justice system and have a mental health impairment or cognitive impairment may require a different legal response, including access to treatment and support to reduce the risk of reoffending.

The *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* is a major reform that:

- modernises the language used by removing language such as ‘suffering’ and ‘disease of the mind’ to describe mental illness
- creates definitions for mental health impairment and cognitive impairment, giving courts a consistent standard to determine whether a person comes within the Act
- creates a statutory test to determine whether a person is fit to stand trial in the District Court or Supreme Court of NSW
- changes the special verdict in the higher courts from ‘not guilty by reason of mental illness’ to ‘act proven but not criminally responsible because of mental health impairment or cognitive impairment’
- lists statutory factors for magistrates to consider when deciding whether to divert defendants charged with less serious crimes in the Local Court, including whether the defendant is likely to endanger the safety of any victim or the community
- requires the courts to consider reasonable adjustments to the trial process and the length and complexity of the trial when considering fitness.

These reforms commenced in 2021 and were developed in consultation with victim groups, health professionals, disability advocates and legal experts. The NSW Government is committed to these reforms and they are being closely monitored.



## Improving responses to forensic patients with cognitive impairment

According to the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* a forensic patient is a person the Court has:

- found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place
- nominated a limiting term and ordered to be detained in a prison, hospital or other place
- found the criminal act proven but the person is not criminally responsible by reason of mental health impairment or cognitive impairment.

In 2021, a cross-agency Forensic Working Group took responsibility for monitoring the impact of the new Act. The Forensic Working Group is supported by a cross-agency Cognitive Impairment Subcommittee, which is responsible for developing strategies for care and treatment of forensic patients as per the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

As a key action from the Cognitive Impairment Subcommittee, the Department of Communities and Justice and the Ministry of Health are currently developing a NSW Framework for Forensic Patients with Cognitive Impairment (the framework). The aim of this framework, when agreed and finalised, will be to:

- respond to recommendations of the NSW Law Reform Commission Report 138 *Criminal Responsibility and Consequences*
- provide better support and supervision for ‘forensic patients with a cognitive impairment’, a client group in NSW which requires collaboration across multiple agencies.



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## Justice Advocacy Service

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The Royal Commission heard evidence of the success and significance of the NSW Justice Advocacy Service and a previous pilot Cognitive Impairment Diversion Program delivered by the Intellectual Disability Rights Service. The Royal Commission is aware of the positive independent evaluation of Justice Advocacy Service and the June 2021 NSW Government decision to invest \$28 million over four years to continue the service state-wide and expand it to include court-based diversion at six local court sites: Penrith, Gosford, Blacktown, Lismore, Parramatta and Downing Centre.

Justice Advocacy Service and its expanded court-based diversion service support the criminal justice system to better respond to the needs of people with cognitive impairment by delivering:

- individual advocacy to ensure victims, witnesses and suspects with a cognitive impairment understand and exercise their rights
- targeted case coordination to defendants with a cognitive impairment to support applications for a diversionary order under the *Mental Health Cognitive Impairment Forensic Provisions Act 2020*
- capacity building, including training, to justice sector staff who interact with people with a cognitive impairment.

Since the last advice to the Royal Commission, the court locations for the diversion component of this service have been selected. The Local Courts have been selected based on high volumes and likely demand, the local presence of the National Disability Insurance Agency and existing diversion services in the court (like the Statewide Community and Court Liaison Service).

Between July and October 2021, the Department of Communities and Justice led a commissioning process to inform the service design for the expanded model. The service model has been developed with a focus on client-centred outcomes and has been co-designed with people with cognitive impairment, court stakeholders (including Police, Local Court, Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT) and disability service providers and peaks. The Council of Intellectual Disability facilitated workshops with people with lived experience to support co-design of the service. The co-design process was completed in October 2021.

The expanded Justice Advocacy Service model commenced on 1 April 2022. Between 1 April and 1 July 2022, service design and recruitment for court-based diversion was finalised. Court-based diversion at six Local Courts was operational from 1 July 2022.

Process and outcomes evaluations are planned for 2023 (process evaluation) and 2025 (outcomes evaluation).

Between July 2019 and 31 March 2022, Justice Advocacy Service advocates and volunteers supported 4,070 clients with 12,466 supports provided. 1,352 (33 per cent) of these clients identified as Aboriginal and/or Torres Strait Islander people.



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## Statewide Community and Court Liaison Service

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The Statewide Community and Court Liaison Service program assists Local Courts to divert people who have mental illness. Court diversion programs have been shown to lead to better justice, health and life outcomes for people experiencing mental illness.

In the 2022-23 budget \$13.5 million was allocated to expand the Statewide Community and Court Liaison Service to an additional 36 new locations across the state, providing people with serious mental illness charged with low-level offences access to necessary treatment and care from Local Health District Mental Health Services as an alternative to custody.

Currently operating at 22 NSW Local Courts, this recent expansion will more than double the number of Local Court locations where people with mental health problems can be supported.

As a priority, more Aboriginal mental health workers will be appointed to the service to ensure culturally informed diversions and community care.

The service provides comprehensive assessments by mental health clinicians who provide recommendations to the magistrate, police prosecutor and defence solicitor, if appropriate. Over the last five years it has assisted with the diversion of more than 11,000 people. Of those who are referred to the service, 80 per cent are diverted to support services.



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## Reducing over-representation of Aboriginal people

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As is recognised by the Royal Commission and the NSW Government, Aboriginal people with disability are overrepresented in the criminal justice system.

Under the *NSW Closing the Gap Implementation Plan 2022-2024*, NSW will develop an approach to ensure all Closing the Gap criminal justice reform activities are culturally safe, therapeutic and trauma-informed, as well as focusing on mental health and disability.

On 18 July 2022, the NSW Government announced an additional \$20 million investment over four years in justice initiatives to contribute to a reduction in the over-representation of Aboriginal people in the criminal justice system. The package involves expansion of the Youth Koori Court, Circle Sentencing in the Local Court, and the Justice Reinvestment program. Investment includes:

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**\$5.8 million**

to expand the Youth Koori Court to the Children's Court at Dubbo and to provide more funding for Aboriginal Legal Service (NSW/ACT), Legal Aid NSW and a specialist Children's Magistrate to oversee the Youth Koori Courts including at Surry Hills and Parramatta.

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**\$4.2 million**

to expand the Circle Sentencing program from 12 to 20 high priority Local Court locations. Circle Sentencing is an alternative sentencing method in which a Local Court Magistrate works with Aboriginal Elders and Respected Persons, victims, respected members of the community and the offender's family to determine an appropriate sentence. This approach has been found to reduce rates of imprisonment and reoffending compared with traditional sentencing methods.<sup>19</sup>

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**\$9.8 million**

for new Justice Reinvestment pilots, which aim to divert people away from the criminal justice system by investing in evidence-based community-led initiatives that address the underlying causes of crime, with a focus on Aboriginal people. A Justice Reinvestment pilot site operates in Bourke.

As part of the 2022-23 budget, the NSW Government also announced:

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**\$10.0 million**

to establish an Aboriginal Bail Advocacy and Support Service aimed at reducing the number of Aboriginal women and young people remanded in custody. This funding will be used to pilot the service in Newcastle and Sydney.

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**\$7.3 million**

to work in partnership with community-controlled justice organisations, grow the rate of community-controlled service delivery and develop a quality improvement framework to embed cultural safety into the design and delivery of justice related policies and programs, laying the foundations for an Aboriginal Justice Partnership in NSW.



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# Young people with disability in contact with the justice system

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There is a disproportionate number of young people with disability in the youth justice system. In recognition of this, Youth Justice NSW is undertaking a range of service improvements as committed to in the Youth Justice NSW Disability Action Plan.

## Youth Justice NSW Disability Action Plan

The Youth Justice NSW Disability Action Plan 2021-2024 identifies actions to deliver more holistic and tailored services and supports to divert young people with disability from, and to support those already in contact with, the youth justice system.<sup>20</sup> Youth Justice NSW is part of the Department of Communities and Justice, and delivering the Disability Action Plan is an action in the Department's Disability Inclusion Action Plan.

As of June 2022, 30 of the 38 projects in the Youth Justice NSW Disability Action Plan have commenced and are on track and making good progress. Five projects have not yet been scheduled to commence. Two projects are complete:

- Youth Justice's client information system has been updated to better capture information about the disability and support needs of each young person. Changes have been made to data collection on disability types and sub-types, and to better capture disability status and NDIS information.
- A training workshop focused on identifying suspected Foetal Alcohol Syndrome Disorder has been delivered to Youth Justice psychologists. This included information on screening, assessment, and responses.

Other key Disability Action Plan achievements include:

- All Youth Justice psychologists have been trained and accredited in the Westerman Aboriginal Symptom Checklist Youth (WASC-Y & WASC-A), the first culturally and scientifically validated psychological test developed specifically for Aboriginal young people in Australia. It identifies Aboriginal young people at risk of depression, suicidal behaviours, drug and alcohol use, impulsivity, anxiety, and cultural resilience as a moderator of risk.
- The Bail and Accommodation Support Service (previously the Bail Assistance Line) processes have been adapted to include Disability Screening Questions from the Youth Justice Caseworker Assessment Guide to improve early identification of disability in young people.
- The Youth Justice NSW specific resource 'Youth Justice preparing for your NDIS planning meeting' has been drafted and released for pilot. An interagency NDIS flowchart has also been developed and piloted. This tool provides guidance to assist staff in Youth Justice NSW, Justice Health and Forensic Mental Health Network and NSW Department of Education working with young people to navigate the NDIS.
- Staff training, including the piloting of an updated 'Working with young people with disability' training module and the statewide delivery of an NDIS training module.

## Diversion of Aboriginal young people

Youth Justice NSW, delivers a range of programs, services and initiatives aimed at improving outcomes for Aboriginal young people involved in the youth justice system and reducing overrepresentation. This includes:

- the **Youth Justice Aboriginal Strategic Plan 2018-2022** and accompanying Performance Framework. Implementation has seen an increase in delivery and participation in Aboriginal specific intervention programs.
- **Aboriginal specific programs and interventions** including *My Journey My Life*, to address violence related behaviours in young men and an adapted version for young women, *Yinnar*. In addition, *Dthina Yuwali* supports Aboriginal young people to address drug and alcohol related issues. There is also an Aboriginal Reintegration and Transition Program in Nowra that provides intensive support for young Aboriginal people after they leave custody or community supervision.
- **Aboriginal cultural awareness training** and related Aboriginal programs to ensure that Aboriginal young people are supported through culturally appropriate practices.
- **recruiting, retaining and developing Aboriginal staff** to strengthen capacity to work with Aboriginal young people. In 2020, in response to staff feedback, Youth Justice NSW implemented Aboriginal specific assessment centres to enhance attraction and retention of Aboriginal employees. The engagement of the Youth Justice Aboriginal staff network helps embed Aboriginal cultural practices in all aspects of the service system.
- the **Small Grants Aboriginal Engagement and Innovative Activities Program**, which was developed in 2020 to provide new avenues for Aboriginal employees to embed Aboriginal cultural practices into their day to day work with Youth Justice clients.
- a **three-tiered consultation process to engage with Aboriginal people and their communities** at a state and local area level, as well as Aboriginal Community Consultative Committees that operate in Youth Justice Centres to bring together local Aboriginal organisations and communities to support Aboriginal young people in custody and post release.



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## Making resources and processes accessible

In response to a recommendation of the Royal Commission into Institutional Responses to Child Sex Abuse, Youth Justice NSW conducted a ground up review of its complaint handling policy and procedures. The new policy provides greater support for young Aboriginal people who make complaints. The policy provides an additional Aboriginal support person for the complainant as well as an Aboriginal Cultural Advisor role to provide cultural advice to the person investigating and responding to the complaint.

In custodial environments, young people now have access to the Locked Box: Feedback and Complaints Triage system (the Locked Box). The Locked Box provides a confidential way for young people to provide service feedback and make complaints about safety and the quality of care they receive in a Youth Justice Centre. Locked Box is fully operational in all Youth Justice Centres.

Locked Box was designed to respond to the potential lack of anonymity for young complainants under the former policy. Young people advised on the look, content and feel of the Feedback and Complaints Triage Form, which provides an easy, accessible (though not universal) way for young people to provide feedback to the Centre Manager and Youth Justice NSW.

Youth Justice NSW worked with the Centre for Intellectual Disability to develop a highly accessible, client-focused copy of the Youth Justice NSW Feedback and Complaints Guidelines and accompanying set of forms in clear English, which combines text with layout and imagery to simplify and explain information. The forms were tested with young people with disability.

In response to what we have heard from young people, Youth Justice NSW is delivering training to its employees to support them in creating client-facing documents in the Easy Read format.



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# Safety and security for women and girls

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Women and girls with disability are more likely to experience domestic, family and sexual violence. They experience significantly higher levels of all forms of violence, more intensely and more frequently. They are subjected to violence by a greater number of perpetrators and their experiences of violence last over a longer period. This makes better preventing and responding to domestic, family and sexual violence crucial to the safety of women and girls with disability. The NSW Government is committed to achieving this and is undertaking significant investments, along with policy and legislative reforms. This section outlines this work.

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## Women's Safety Commissioner

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The NSW Government has established the role of a Women's Safety Commissioner. This role will provide expert advice to government on continuing to improve the safety of women in NSW, including women and girls with disability. The Commissioner will strengthen cross-government efforts to prevent and respond to domestic, family and sexual violence. They will also play a role advocating for wider reform and efforts to address this violence outside of government.

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## NSW definition of domestic and family violence

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As noted by the Royal Commission,<sup>21</sup> NSW domestic and family violence legislation covers carer relationships and Aboriginal kinship networks in the definition of 'domestic relationship' in section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Section 5 also covers relationships between residents living in the same residential setting. Section 5A captures the relationship between a 'dependent' and their 'paid carer' within the definition of a 'domestic relationship'. This means that the protections, such as apprehended domestic violence orders, can be enforced in paid domestic care arrangements.

NSW law also recognises that domestic abuse extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years. The NSW Government passed legislation in Parliament in November 2022 to outlaw coercive control in intimate partner settings. The legislation included a definition of domestic abuse in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW):"



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## Increased funding and investment

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NSW is investigating and investing in opportunities to improve system responses to domestic, family and sexual violence. Our response includes significant investments across a range of areas, such as housing, crisis accommodation, counselling services, case management services, court advocacy, policing, education and health.

In the 2022-23 Budget, the NSW Government committed \$262.7 million to prevent domestic and family violence, reduce reoffending and support victim-survivor safety through the continuation of evidence-based early intervention, victim-survivor support and perpetrator interventions.

This included \$43.6 million over four years for expansion and enhancement of Safer Pathway to support victim-survivors of domestic and family violence. More information on Safer Pathway is provided in the section below.

In 2022-23, investment was announced of:

- \$18.0 million capital expenditure for the expansion of audio-visual link facilities to 53 additional courts and tribunals, to enable court participants, including victim survivors of domestic violence to appear remotely. Access to audio-visual links can reduce trauma for victim-survivors of domestic and family violence by allowing them to appear remotely and avoid being in the same room as their abuser.
- \$1.4 million (\$6.0 million over four years) and \$2.0 million in capital expenditure for Court Appointed Questioners to ensure domestic violence complainants are not directly questioned by a self-represented defendant. The *Criminal Procedures Act 1986* (NSW) was recently amended to prohibit self-represented defendants in domestic and family violence criminal proceedings, and related Apprehended Violence Order proceedings, from directly cross-examining complainants. This amendment was designed to prevent victim-survivors experiencing the trauma of being cross-examined by their own abuser.

Across 2021-22 and 2022-23, the National Partnership on Family, Domestic and Sexual Violence committed \$80 million from the Commonwealth Government and \$60 million of NSW funding.

In 2021-22 the NSW Government also invested in several support packages to help address the challenges experienced by domestic and family violence victim-survivors during the COVID-19 pandemic. These investments built on the October 2021 announcement of an additional \$484.3 million – the single biggest investment in tackling domestic and family violence in the State’s history. This included:

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### \$426.6 million

to deliver and operate new women’s ‘core and cluster’ refuges that will support up to an additional 2,900 women and children escaping domestic and family violence each year.

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### \$52.5 million

to deliver around 200 new social and affordable homes for women escaping domestic and family violence through the Community Housing Innovation Fund.

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### \$5.2 million

for specialist supports for 3,200 accompanied children and young people in homelessness services.

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## Core and Cluster model

The core and cluster model allows for independent living and privacy while also providing access to support. A key driver for this approach was the Royal Commission into Family Violence (Victoria) 2016, which found that the core and cluster model promotes safety, and importantly is accessible to people with disabilities. It provides private units and enables connections with the community, work and school. The NSW Government has been trialling the core and cluster approach over recent years.

Over four years from 1 July 2022 to 30 June 2026 the NSW Government will establish and start operation of new core and cluster refuges for women and children escaping domestic and family violence.

Over May and June 2022 Department of Communities and Justice worked with a wide range of stakeholders to inform the approach to delivering the new refuges. In May 2022, the Department of Communities and Justice released a discussion paper to gain knowledge and insights about the most effective way to deliver the new refuges.<sup>22</sup> One of the design features flagged was the need for disability access, including for accommodation units, common areas and outdoor spaces.

## Safer Pathway

The Safer Pathway program is the NSW Government's overarching response to domestic and family violence.

Safer Pathway is a multi-agency system response that aims to provide a consistent, coordinated and collaborative cross-agency response to victims of domestic and family violence across NSW.

Safer Pathway consists of a number of tools and services, including the following five key components:

1. **A Domestic Violence Safety Assessment Tool** to identify the level of domestic and family violence threat to victims.
2. **A Central Referral Point** to electronically manage and monitor referrals, primarily from NSW Police Force.
3. **A statewide network of service providers** – Women's Domestic Violence Court Advocacy Services for female victims (27 sites) and Local Support Services for male victims (5 sites) facilitate local responses and provide victims with case coordination and support.
4. **Safety Action Meetings** where representatives from relevant government and non-government agencies meet fortnightly to develop plans for victims at serious threat of death, disability or injury.
5. **Information sharing legislation** that allows service providers to share information about victims and perpetrators.

The Safer Pathway model provides case coordination and support to victim-survivors of domestic and family violence. After reporting their situation, victim-survivors are contacted by a domestic and family violence support worker who connects them with the various supports and services they require. This may include legal advice, housing, medical and psychological attention, and early childhood education and care.

In June 2022, the NSW Government announced that it will invest \$43.6 million over four years to further improve the Safer Pathway program. This includes increasing supports by providing intensive, coordinated and long-term case management services for victims with complex needs. It will also pilot ways to expand referrals into Safer Pathway to help more victim-survivors at risk of domestic and family violence, including those who are unwilling or unable to engage with NSW Police. This will improve the accessibility of the Safer Pathway system for more victim-survivors in NSW, including women and children with disability. The NSW Government will also upgrade the program's digital and IT systems, making them more efficient and user-friendly, allowing case workers to dedicate more of their time to directly helping victim-survivors.



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## Passage of coercive control legislation

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The *Crimes Legislation Amendment (Coercive Control) Act 2022* passed NSW Parliament on 16 November 2022 and received assent on 23 November 2022. This Act creates a standalone criminal offence of coercive control towards current and former intimate partners, supported by \$5.6 million in initial funding for education, training and awareness. With the passage of the Act, NSW has become the first Australian state or territory to have a dedicated standalone offence of coercive control. The offence cannot commence before 1 February 2024, to provide adequate time to implement these significant reforms through appropriate education, training and resourcing.

The Act delivered on the NSW Government's commitment to support NSW women, victim-survivors of domestic violence and frontline services by outlawing coercive control.

It is acknowledged that there has been a gap in protection for victim-survivors who have experienced ongoing and non-physical forms of abuse. This is a particular gap in protection for victim-survivors with disability. As identified in Australian Institute of Criminology research requested by the Royal Commission, women with restrictive long-term health conditions experienced coercive control at a rate nearly 3.5 times higher than other women during the COVID-19 pandemic.

These landmark reforms are the product of unprecedented consultation by the NSW Government, including at least eight rounds of consultation over two and a half years. The NSW Government's extensive consultation has included a public discussion paper in 2020; an extensive parliamentary inquiry by the Joint Select Committee on Coercive Control; a public exposure draft that received almost 200 written submissions; targeted consultations on cabinet in confidence exposure drafts; and almost 30 stakeholder roundtables.

An Implementation and Evaluation taskforce to oversee implementation of the state's landmark coercive control laws has been formally established and met for the first time in early December, ahead of schedule. The taskforce is a key statutory safeguard to support public awareness raising, implementation, education and training for police, judges, lawyers and frontline services. More than 10 reference groups, chaired by taskforce members, have been set up to consider and provide advice to the taskforce on the impact of the offence provisions on specific communities and elements of the offence. This includes a People with Disability reference group. The reference groups will meet for the first time in early 2023. The NSW Government will also develop a domestic and family violence workforce strategy that will support building domestic and family violence competency, including in relation to coercive control.





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# Affirmative sexual consent under the NSW Crimes Act

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On 1 June 2022, the NSW consent laws changed. These changes mean affirmative sexual consent is now legally required in NSW. The *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021* (NSW) implemented reforms that aim to:

- clarify consent provisions in the *Crimes Act 1900* (NSW), including that consent is a free and voluntary agreement that should not be presumed
- clarify that consent involves ongoing and mutual communication
- strengthen laws to confirm that consent can be withdrawn, and that if someone consents to one sexual act, it does not mean they have consented to other sexual acts
- ensure fairer and more effective prosecutions of sexual offences
- address misconceptions about consent in trial proceedings
- improve victim-survivor experiences of the justice system, and juror understanding of the complexities of sexual offending and reporting through the introduction of new jury directions.

These nation-leading changes were made as part of the NSW Government's response to the recommendations of the NSW Law Reform Commission in its report: *Report 148: Consent in relation to sexual offences (the Consent Review)*. The NSW Government supported, or supported in principle, all 44 recommendations made.

The reforms go further than the NSW Law Reform Commission's recommendations in an important way – by providing that any belief in consent that an accused person had (or may have) at the time of sexual activity will not be reasonable if the accused did not say or do anything to ascertain consent. There is an exception to this requirement for an accused person with a significant mental health or cognitive impairment.

This reform may bring particular benefits to women with disability. The reforms to the Crimes Act will improve recognition of the ways people can be coerced into sexual activity, including through 'force, fear of force or fear of serious harm of any kind'. The Crimes Act also recognises circumstances when a person is 'overborne by the abuse of a relationship of authority, trust or dependence'. This was recommended by the NSW Law Reform Commission in response to feedback that the law needed to capture abuse by a carer of a person with disability.<sup>23</sup>

To support this reform, the NSW Government launched the third phase of its highly successful sexual consent awareness campaign "Make No Doubt" in May 2022 with Saxon Mullins and Chanel Contos. The NSW Government debuted Make No Doubt in 2018 and followed up with a second phase in 2019. The evolving sexual assault prevention campaign aims to empower people to check consent every time they engage in sexual activity. The campaign was further relaunched on 31 October 2022 in the lead up to the end of year party season and will run until January 2023.

The NSW Government is working with judges, legal practitioners and police to ensure they are well-informed and prepared for the changes to consent law. This includes working with the Judicial Commission of NSW, which provides a continuing education and training program for judicial officers.

The NSW Government's suite of consent reforms included establishing a research project to improve our understanding of victim-survivor experiences with the criminal justice process, led by the NSW Bureau of Crime Statistics and Research.<sup>24</sup>

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## Key strategies

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### NSW Women's Strategy

In the NSW 2022-2023 Budget, \$19 million over four years was committed to implement the NSW Women's Strategy 2022-2026.

The NSW Women's Strategy provides a policy framework to help improve the lives of women by addressing the structural issues that affect gender equality. Women with disability are a focus community in the strategy and have been an integral part of its development. Targeted consultation occurred with the Disability Council NSW and the Council for Intellectual Disability, with the Council for Intellectual Disability also facilitating two focus groups with women with intellectual disability to inform the strategy.

The NSW Women's Strategy will work alongside the annual Women's Opportunity Statement, with both seeking to address the additional barriers experienced by women with disability that limit their opportunities for economic and social participation.

An additional \$43 million over four years will deliver key initiatives under the Strategy, alongside other cross-government initiatives.

### Women's Opportunity Statement and Women's Economic Opportunity Review

The NSW 2022-2023 budget included the first NSW Women's Opportunity Statement, supported by a \$16.5 billion investment towards advancing women's economic participation and early childhood development.

The Expert Panel of the Women's Economic Opportunity Review, which informed the statement, identified the need to seek out the voices of women in NSW, including the views of women with disability. Consultation occurred throughout February and March 2022 and included People with Disability Australia, the Council for Intellectual Disability, Disability Council NSW and Women with Disabilities Australia. Twenty-five qualitative focus groups were held, including one specifically for women with disability. This advice was used to inform the Women's Opportunity Statement.

Going forward, a Women's Opportunity Statement will be published every year.

### NSW Domestic and Family Violence Plan 2022-2027

The Department of Communities and Justice is leading the development of the NSW Domestic and Family Violence Plan 2022-2027, a five-year whole of government plan to address domestic and family violence in NSW.

The draft plan identifies people with disability as a priority group and acknowledges they may experience multiple challenges that increase the likelihood, impact and severity of violence. It recognises the additional barriers people with disability can face to seeking support and securing safety.

This plan builds on the significant work and reforms already underway in NSW and replaces the NSW Domestic and Family Violence Blueprint for Reform 2016-2021.

The development of the new plan is being informed by consultation with key government agencies, as well as consultation with advisory groups, peak organisations, sector representatives, Aboriginal organisations and victim-survivors. The final plan is expected to be released later this year.

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## **NSW Sexual Violence Plan 2022-2027**

Sitting alongside and complementing the Domestic and Family Violence Plan 2022-2027 will be the NSW Sexual Violence Plan 2022-2027. Like the Domestic and Family Violence plan, the Sexual Violence plan identifies people with disability as a priority group. In both the upcoming plan and the former Sexual Assault Strategy 2018–2021, disability is considered through an intersectional approach to select prevention and early intervention initiatives. The new Sexual Violence Plan is expected to be released later this year.

Under the previous Sexual Assault Strategy, the NSW Government delivered the Community Builder's program, which provides a suite of resources for people with intellectual disability who have experienced sexual violence, their families or support people and service providers. These resources aim to improve access to appropriate and inclusive support for people with intellectual disability and increase the ability of service providers to respond effectively to their needs. As part of this strategy, the Mental Health Commission of NSW completed an evidence check of the intersections between mental health and sexual assault.

## **NSW Health Strategy for Preventing and Responding to Domestic and Family Violence 2021-2026**

Domestic and family violence is an urgent public health issue that has multiple and serious health impacts. The NSW Health Strategy for Preventing and Responding to Domestic and Family Violence strengthens the public health system's role in preventing and responding to domestic and family violence.

The strategy acknowledges that women with disability experience significantly higher levels of all forms of violence more intensely and frequently, and are subjected to violence by a greater number of perpetrators. Priority areas of the strategy are to increase identification and improve early intervention, with a focus on priority populations. An action underway is the development and implementation of a Sexual Assault and New Street Services Access Strategy for people with disability, discussed below.

## **NSW Health Sexual Assault Services and New Street Services Access Strategy for People with Disability 2021-2025**

NSW Ministry of Health, the Disability and Sexual Violence Team at the NSW Education Centre Against Violence, University of New South Wales and Flinders University have worked in partnership to develop the NSW Health Sexual Assault Services and New Street Services Access Strategy for People with Disability 2021-2025 (the Access Strategy). This work has come out of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Building the capacity of disability services to respond to sexual violence through co-produced and co-delivered training is a key priority of the Access Strategy. The NSW Education Centre Against Violence Disability and Sexual Violence team is also funded to provide co-designed foundational and specialist training for service providers working with people with disability who have experienced sexual assault, as well as other forms of violence, abuse, neglect and exploitation.

## **Youth Justice Domestic and Family Violence Strategy 2019-2022**

Youth Justice's Domestic and Family Violence Strategy responds to the specific needs of young people, including young people with disability, who are victims and or users of violence in the home with a focus on providing them the specialist support that they need. This strategy is being implemented through 24 actions. It will be evaluated following its conclusion in 2022.

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# Health services and strategies

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NSW Health aims to provide services in a non-discriminatory, equitable and efficient way. In addition to a focus on making mainstream services accessible for people with disability, there are a number of specific services and initiatives focused on better meeting the needs of people with disability. This section outlines some of the specialist supports and services available to people with disability in NSW and investments in Aboriginal specific mental health support. Ongoing efforts to improve workforce capability to better support people with disability and improve accessibility of information are also detailed.

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## Specialist disability supports and services

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### Statewide Intellectual Disability Health Service

NSW has a statewide Intellectual Disability Health Service operating in every Local Health District. The focus of the specialised Intellectual Disability Health Service is supporting and building the capability of the health system to meet the health care needs of people with intellectual disability in NSW. The Service is made up of a network of six teams and nine clinical positions across NSW. These teams provide specialist advice to health staff who are treating a person with intellectual disability in hospital, developing a network of care around a person and their family, and creating relationships between service providers that previously were not connected. They also provide short term and targeted support to people with disability around a specific health issue.

The Intellectual Disability Health Service offers:

- comprehensive health assessment and recommendations for a person with intellectual disability who has an unresolved complex or chronic health need that cannot be met by accessing usual care pathways, including:
  - referrals for other health assessments and health services
  - recommendations for support services
  - dietary advice, advice on medication, physical activity, social activity
  - advice on managing ongoing care.
- capacity-building for health professionals, including:
  - webinars, skills training and other education sessions
  - joint consultation, case conferences and advice on assessment/care of people with intellectual disability.

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The Intellectual Disability Health Service creates resources that can be used by both health staff, people with disability and their carers in their interactions with the health system.

The Intellectual Disability Health Service continues to deliver virtual specialised training sessions, to staff, GPs and general practice teams on the needs of people with intellectual disability.

Due to the significant impact the COVID-19 pandemic continues to have on the health system, a decision was made to cease a planned evaluation of the service. A formal evaluation will be recommissioned at the appropriate time.

## Intellectual Disability and Mental Health Hubs

Two statewide Intellectual Disability Mental Health Hubs have been established to help people with intellectual or developmental disability access appropriate mental health care. They also support the capacity of service providers to deliver targeted care. One Hub is for children and young people, and one Hub is for adults. The Hubs offer:

- a combination of face-to-face support and virtual care
- specialised assessment, care planning, reporting and recommendations
- education, training and support for mental health clinicians and disability workers providing care to people with intellectual disability.

Since they were established in June 2020 these Hubs have provided training to over 2000 health and disability professionals. Online training has included mental health assessment of people with intellectual disability, modifying therapeutic interventions, using sensory strategies, and attachment difficulties in children with autism spectrum disorder.

The Social Policy Research Centre and the Department of Developmental Disability Neuropsychiatry, University of NSW have commenced an evaluation of the Hubs. Initial qualitative feedback indicates that people with disability and carers find the Hubs contribute to improved wellbeing, with families feeling more understood, involved and consulted as a result of accessing the Hubs.

Further feedback highlighted the Hubs have a positive impact on improving access to mental health care, building the capacity and confidence of providers to work with people with intellectual disability, and contributing to further promotion of the role of mental health services in working with people with intellectual disability. Feedback indicates that training opportunities are building the confidence and competence of health and disability professionals in working with people with intellectual disability and co-occurring mental health needs.

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## Investing in cultural models and services

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### Aboriginal mental health models of care

The Aboriginal Mental Health and Wellbeing Strategy 2020-2025 outlines NSW Health's commitment to researching and implementing culturally appropriate models of care for Aboriginal people. In recognition, the NSW Government is investing \$10.1 million over four years from 2022-23 to implement and sustain Aboriginal mental health models of care in partnership with the community-controlled sector.

The funding will provide 12 grants of \$200,000 per year over four years to Districts, Networks and Aboriginal Controlled Community Health Organisations to co-design and sustain culturally appropriate mental health models of care across NSW. The funding will also be used to engage an Aboriginal led business to evaluate the initiative.

NSW Health has commissioned an Aboriginal led organisation to develop an evidence-based Aboriginal mental health models of care framework that will support the development and implementation of localised models.

The process will support knowledge sharing and connected care between Aboriginal health services, NSW Health and people and families accessing services and ultimately improve service access and extend the number of access pathways for Aboriginal people and communities needing mental health and social and emotional wellbeing support.



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## Expansion of Building on Aboriginal Community Resilience

Mental health is a pressing need highlighted in the 2019 and 2021 NSW Closing the Gap community engagements. Expansion of the Building on Aboriginal Community Resilience initiative is a key commitment provided through the NSW Implementation Plan for Closing the Gap 2022-24.

Closing the Gap stakeholders are working on a detailed Delivery Plan for Building on Aboriginal Community Resilience. The Plan builds on the NSW Budget 2022-23, which includes \$9.8 million over 3 years to expand Building on Aboriginal Community Resilience.

In 2023, NSW Health will explore opportunities to expand the current initiative to a further 12 Aboriginal Community Controlled Health Organisations with flexibility to address community-led priorities.

The proposal aims to build upon the success of the current initiative to deliver reliable, responsible and sustainable programs across an increased number of Aboriginal communities. It provides for strong program monitoring and evaluation, including by impacted communities.

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## Improving workforce understanding of intellectual disability

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NSW continues to focus on improving access of people with disability to health services through capacity building resources and training for health professionals. NSW Health is working on education and training to improve knowledge and attitudes of health professionals, and their skills in communicating with people with cognitive disability and their families.

### Implementation of the Essentials

The Agency for Clinical Innovation has developed 'the Essentials', an online tool that aims to build capacity in health services to provide high quality care to people with intellectual disability. The Essentials is used and adapted as a self-assessment tool and includes a collection of supporting resources that can be implemented at Local Health District level to support change. The Essentials is also used by the Intellectual Disability Health Service and the Intellectual Disability Mental Health Hubs.

The Agency for Clinical Innovation Intellectual Disability Network executive group drove the development of the Essentials. Its role has recently shifted to include guidance for the Essentials statewide implementation. This group's membership includes advocates, carers, senior health clinicians and managers, NSW Ministry of Health staff and senior representatives from other government sectors. In 2020, a person with intellectual disability joined the executive group.

To further strengthen the input of people with intellectual disability two advisory groups, one of young people with intellectual disability and another of carers, have been established. The Agency for Clinical Innovation is working with the NSW Ministry of Health to develop system guidance on inclusive governance groups.

The Agency for Clinical Innovation Intellectual Disability Network promotes and develops the Essentials through forums, webinars, panels, newsletters and training throughout the health system. Following consultation, the Agency for Clinical Innovation is revising the Essentials, including incorporating references to trauma informed care, violence, abuse and neglect, and the role of telehealth.

To assist other jurisdictions, the Agency for Clinical Innovation Intellectual Disability Network has produced a draft edition of the Essentials for use by other states and territories. This is currently undergoing consultation before release.



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## Get Skilled Access

Another disability related capacity building and inclusion initiative is a partnership with the Get Skilled Access. Four NSW Health Hospitals are participating in the Get Skilled Access pilot program. The pilot program is focused on increasing the disability inclusive practices of Australian health professionals through education and training designed and delivered by people with disability. This project aims to develop disability inclusive practice educational resources and training, led by people with disability experience and expertise.

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## Accessible information for people with disability

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### Making NSW's COVID-19 response accessible

NSW's COVID-19 response has considered the needs, rights and experiences of people with disability. NSW has developed and used accessible communications about COVID-19 including:

- online videos, Easy Read resources and Auslan interpreters at media events
- accessible websites, digital media alerts and screen-reader compatibility
- alternatives for those who do not use smart phones, COVID-19 safe check in card and proof of vaccination.

A number of steps have also been taken to support the accessibility of vaccination clinics, such as:

- fast-track priority entrance, registration, waiting areas, low sensory spaces, additional time, interpreter services and training of staff for disability support
- agile alternatives to established clinics, such as pop-up clinics, mobile clinics and in-home vaccination services
- bespoke services for complex cases, such as sedation for vaccination
- accessible online booking platforms and registration systems.

The NSW Government is also providing access to up to 7.9 million free Rapid Antigen Tests to vulnerable individual and families, including people with disability, to support early identification and management of COVID-19.

### Accessible communication policy

NSW Health is committed to addressing the accessible communication needs of their patients, consumers and staff. To date:

- a short policy has been drafted outlining principal steps and key considerations for developing accessible communication materials
- resources covering guidelines, templates, training modules and other support tools is being produced to complement the policy
- Easy Read explanations of key aspects of a number of existing policies are being drafted to make these policies accessible for a wider audience.

It is anticipated that this will be completed by the end of 2022.

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## Accessible information on oral health

A current initiative of NSW Ministry of Health is the Oral Health for People with Disabilities Project. The project focuses on providing appropriate oral health information for ‘carers’ of children and adults in their care. The oral health information and resources have been developed in consultation and collaboration with carers and consumers. It is anticipated that ‘Easy Read’ and digital video resources will be available on the website in 2023.



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Inclusive education  
for children and  
young people

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Education plays an important role in the lives of all children and young people, including children and young people with disability. It contributes to their future potential and prepares them for rewarding lives. A key priority of the NSW Government is to deliver the highest quality education no matter where a child or young person lives or their circumstances. Given that one in five students in NSW has a disability, making sure that we have an education system that is inclusive is essential. This is why the NSW Department of Education (Education Department) has a specific Disability Strategy. Many of the commitments made in this strategy have been delivered and there is more work underway. This section outlines recent key work undertaken as part of the strategy, including investments in early education and the Inclusive, Engaging and Respectful Schools policy reforms.

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## Delivering Education's Disability Strategy

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As provided in a NSW Government submission to the Royal Commission,<sup>25</sup> the NSW Education Department has a dedicated Disability Strategy.<sup>26</sup> This strategy commits the Education Department to an agenda of reforms to achieve strong educational and wellbeing outcomes for students with disability in NSW public schools. Since that submission to the Royal Commission, there has been significant progress in the strategy's implementation.

A notable development is the Inclusive, Engaging and Respectful Schools policy reforms. This includes a new:

- Inclusive Education Policy for students with disability
- Student Behaviour Policy and Procedures
- Restrictive Practices Framework and Restrictive Practices Reduction and Elimination Policy and Procedures.

These policies work together to support the inclusion and engagement of students, particularly students with disability. More details on the Inclusive, Engaging and Respectful Schools reforms are provided below.



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## Early childhood education and care

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Early childhood education and care services in NSW provide early learning from birth to school age. Children with disability can enrol at any early childhood education and child care service in NSW, and access support and reasonable adjustments at these services. There are also some services aimed at families with specific circumstances, or tailored for children with additional needs. Most children with disability will benefit from inclusive early childhood education, including greater engagement with peers and positive effects on play and behaviour.

The Education Department monitors, supports and regulates early childhood education services across NSW. The Education Department regulates around 6,000 early childhood services.

In 2021-22 the NSW Government funded nearly 700 community and mobile preschools, and over 3,000 long day care services, under the Start Strong initiative. Start Strong, which aims to increase the number of children participating in a preschool program, requires services to give priority access to children with disability and provides additional equity funding for children with disability or additional needs. Children from low income families and Aboriginal families also receive equity funding and priority access.

Alongside Start Strong, the Disability and Inclusion Program provides funding and support to enable children with disability and additional needs in community preschools to participate in a quality early childhood education on the same basis as their peers. An external review of the Disability and Inclusion Program is underway.

The Education Department also operates approximately 100 preschools. The operating guidelines for Education Department preschools set out specific requirements in relation to children with disability.

About 32 per cent of year-before-school population in NSW are enrolled in Community and Education Department preschools. In 2021:

- of the 4,203 children enrolled in Education Department preschools 226 were identified as children with disability<sup>27</sup>
- of the 46,350 children enrolled in NSW community preschools and 3,274 were identified as children with disability.<sup>28</sup>



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## Primary and secondary education

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In 2021 there were:

**2,215** government, 598 Catholic and 358 Independent schools in NSW.

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**8,993** students were registered for home schooling through the NSW Education Standards Authority.<sup>29</sup>

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**802,776** students were enrolled in NSW government schools, and 441,059 in non-government schools.<sup>30</sup>

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### NSW government school settings

NSW supports choice and our options include mainstream, support class in mainstream and schools for specific purposes. This aligns to the UN Convention on the Rights of Persons with Disabilities and Commonwealth position. We are also committed to continuously learning and adjusting based on evolving research into evidence-based practices to support students with disability.

The overwhelming majority of students with disability in NSW learn in mainstream schools, with roughly 83 per cent learning in mainstream classes within mainstream schools.<sup>31</sup> About 13 per cent of students with disability attend support classes in mainstream schools. Only 4 per cent of students with disability attend schools for specific purposes. Support classes and schools for specific purposes provide a range of specialist and intensive support to students.

The NSW Government is committed to strengthening inclusive practice across all settings. By providing a range of education options NSW seeks to respond to individual student need.





**TABLE 1:** Data on students with disability enrolled in mainstream schools and schools for specific purposes

School type	Disability	Percentage
<b>Students with disability attending mainstream classes in mainstream schools</b>	Students with cognitive disability	47.5%
	Students with social emotional disability	27.9%
	Students with physical disability	5.1%
	Students with sensory disability	2.2%
	<b>Total</b>	<b>83%</b>
<b>Students with disability attending support classes in mainstream schools</b>	Students with cognitive disability	7.4%
	Students with social emotional disability	4.9%
	Students with physical disability	0.2%
	Students with sensory disability	0.8%
	<b>Total</b>	<b>13%</b>
<b>Students with disability learning in schools for specific purposes</b>	Students with cognitive disability	2.5%
	Students with social emotional disability	1.3%
	Students with physical disability	0.1%
	Students with sensory disability	0.1%
	<b>Total</b>	<b>4%</b>



## Data on students with disability at NSW government schools

In 2021 there were over 144,000 students enrolled in NSW government schools that met one of the Nationally Consistent Collection of Data for Students with Disability (NCCD) categories. This includes students who have a diagnosed or an undiagnosed imputed disability.<sup>32</sup> The NCCD enables schools, education authorities and governments to better understand the needs of students with disability and how they can be best supported at school.

NCCD is data collected annually from schools based on the professional judgement of teachers. The four disability categories captured include cognitive, social-emotional, physical and sensory. Where students have multiple disabilities or do not readily fit into one category, the school team will use their professional judgment to select the disability category that requires the greatest level of adjustment to support the student's participation in education.<sup>33</sup> Figures on the number and percentage of NSW government students identified as fitting one of the four NCCD categories are provided below in Table 2.

**TABLE 2:** Students identified as having one of the four NCCD categories enrolled in NSW government schools in 2021

Disability type	Number	Percentage
Cognitive	83,135	57.5%
Physical	7,809	5.4%
Sensory	4,479	3.1%
Social/Emotional	49,274	34.1%
<b>Total</b>	<b>144,697</b>	

The Australian Curriculum, Assessment and Reporting Authority reports that for 2021, 21.7% of NSW students were identified as requiring adjustments due to disability. In 2015, this figure was 17.9%.<sup>34</sup>





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# Inclusive, Engaging and Respectful Schools

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In February 2022, the NSW Education Department launched its Inclusive, Engaging and Respectful School policy reform.<sup>35</sup> A primary aim of this reform is to strengthen the engagement and participation of all students in schools, including those with disability, complex and challenging behaviours, and additional needs. It aims to build a more inclusive education system where every student is known, valued and cared for, and all students are learning to their fullest capability. Based on international and Australian best-practice, the policies have been developed with the input of teachers, principals, parents, carers and leading educational experts.

Inclusive, Engaging and Respectful School consists of below new policies, procedures and framework:

- Inclusive Education Policy for students with disability
- Student Behaviour Policy and the Student Behaviour Procedures
- Restrictive Practices Framework, the Restrictive Practices Reduction and Elimination Policy and the Restrictive Practices Planning Procedures.<sup>36</sup>

The Inclusive Education policy for students with disability and the Student Behaviour Policy and Procedures came into effect at the start of Term 4 2022, and the Restrictive Practices Framework and Restrictive Practices Education and Elimination Policy and Procedures will come into effect at the start of Term 1 2023.

The key changes are:

- introducing maximum consecutive school days for a suspension and maximum days of suspension across a calendar year in the Student Behaviour Policy and Procedures
- providing more support for students with disability to access the curriculum
- early intervention and targeted support for vulnerable student groups by ensuring that students receive individual support from all staff and student behaviour is appropriately addressed
- providing clear principles for decision-making when planning and using restrictive practices to support NSW to reduce and eliminate their use
- clarifying the practices that are never permitted for use in NSW public schools or government preschools
- increased access by schools and students to an expanded dedicated workforce comprising specialist staff, including allied health and behaviour support services
- improving access to behaviour specialists for schools and students.

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## The Inclusive Education Policy for Students with Disability

The purpose of the Inclusive Education Policy is to provide guidance to support the inclusion of students with disability and additional needs in NSW public schools. The policy applies to all staff employed by the Education Department, including all contractors, consultants, volunteers and committee members working with the Education Department. The policy outlines the roles and responsibilities of staff to provide an inclusive education for students with disability. This includes ensuring all students with disability are welcomed, included and supported by reasonable adjustments and personalised support to fully participate in all aspects of school life.

The policy reiterates the rights of students under the Disability Standards for Education 2005 and describes effective practice, including working in partnership with students, parents and carers, external service providers and the community, to achieve the best outcomes for students with disability.

### Inclusive Practice Hub

On 12 November 2021 the Education Department launched a new initiative, the Inclusive Practice Hub.<sup>37</sup> The Inclusive Practice Hub contains over 140 evidence-based resources to support teachers and leaders to meet the needs of students with disability and additional needs.<sup>38</sup>

The Education Department is currently developing a monitoring framework for the Inclusive Education Policy initiative which will capture the Inclusive Practice Hub.

### The Student Behaviour Policy and Procedures

The Student Behaviour Policy and Procedures were created in recognition that suspension rates are disproportionately high for (among others) students with disability and that supporting positive student behaviours is essential for quality learning, as well as the wellbeing and safety of all students and staff.<sup>39</sup> They aim to support all students, including those with disability, to stay in school and ensure every student is safe, engaged and can continue learning with positive behaviour support. They form a key part of the Student Behaviour Strategy, which seeks to embed and promote key principles to supporting positive student behaviour.<sup>40</sup> Among others, these principles include developing inclusive, prevention focused approaches, providing students a continuum of care to meet their needs and strengthening workforce capacity.



## The Restrictive Practices Framework, Policy and Procedures

The Restrictive Practices Framework provides all education staff, volunteers, contractors and visitors with guidance on the use of restrictive practices in NSW public schools. It recognises that restrictive practices should only be used as a last resort and prohibits certain practices that interfere with basic human rights, are unlawful and unethical in nature, and are incompatible with the NSW Disability Principles. It also describes what conduct and interventions are considered restrictive practices, and gives examples of types of restrictive practices.

The Restrictive Practices Framework sets out common principles upon which the use of restrictive practices in NSW public schools must be guided, including:

- Using the least restrictive practice possible to meet the individual needs of the child or young person, and only after less restrictive approaches or strategies have been tried, and only when they are reasonably required to safely manage behaviour of concern or protect the rights or safety of students or others.
- Applying, and planning to apply, restrictive practices for the shortest time to ensure the safety of the child or young person, and others, and that the use of those practices are ceased or removed as soon as it is safe to do so.
- That restrictive practices, during and after their use, are monitored.
- The use of restrictive practices at both a student and system level are reviewed regularly.

The Restrictive Practices Framework highlights the duty of care that Education Department staff have to protect children, young people and other staff from foreseeable risk of injury, as well as their obligations to take reasonable care for the health and safety of themselves and others, and to cooperate with reasonable instructions and policies at the request of their employer, in compliance with the *Work Health and Safety Act 2011* (NSW). It also addresses the application of this duty of care in emergency and crisis situations, and when dealing with unintentional behaviour that may pose risks.





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## New specialists to support wellbeing and behaviour

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NSW is rolling out additional expert staff across the state to help schools develop holistic support for their students. Teachers will be able to access more support to assist students with complex and challenging behaviours.

The new positions include:

- an additional 130 Behaviour Specialist positions to join the current team
- 84 leadership positions in schools with seven or more support classes
- five Inclusive Education Coordinators to oversee behaviour and inclusion at schools across the State.

The range of specialists started during 2022, joining the more than 2000 staff who already provide wellbeing and behaviour support in schools on a daily basis.

The additional positions play a key role in the implementation of the Student Behaviour Strategy, associated Student Behaviour Policy and Procedures, and supporting children and young people to stay in school.

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## Changes to the disability criteria and Integration Funding Support

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NSW's Integration Funding Support helps schools to provide adjustments for students with disability in mainstream classes who have moderate to high learning and support needs as defined by the Education Department's disability criteria. The Education Department recognises that the present process focuses on, and depends on, students being diagnosed with disabilities, and that this is not reflective of contemporary needs-based approaches to disability support.

As a result, the Education Department is taking steps to shift the eligibility for, and allocation of, targeted disability support from a diagnostic assessment model to a needs-based assessment model. These steps include:

- defining new eligibility criteria for targeted support aligned to the Nationally Consistent Collection of Data for Students with Disability
- redesigning the Integration Funding Support summary profiling tool thresholds and funding structure to better reflect how schools meet students' disability needs and considering flow on implications of these changes to other forms of targeted support.



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## The Assessment for Complex Learners project

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The Education Department's Disability Strategy sets out that it will *'initiate a ground-breaking approach, developed in NSW schools, to track and report the learning progress of students with complex needs'*. To deliver on this commitment, the Education Department established the Assessment for Complex Learners project. The purpose of the project is to:

- understand and describe what learning looks like for students with complex learning needs and disabilities, particularly for students with intellectual and other related disabilities who need support establishing a first language
- identify, develop and trial assessment tools for students with complex learning needs and disabilities
- better identify and explicitly describe crucial skills (such as early language development) that are precursors to foundational literacy and numeracy skills (such as phonics and counting), so that educators can better assess, track and improve outcomes for all students, regardless of their disability.

The Centre for Education Statistics and Evaluation is currently leading this project. In 2020, the Centre for Education Statistics and Evaluation researched assessment tools and found that:

- no single tool can support the full range of students with disability, with a range of tools needed to best support the diversity of student needs
- all tools were useful and practical, but have some challenges when implementing
- all tools show evidence of being valid and reliable
- each tool will need investment and support to successfully implement.

The Centre for Education Statistics and Evaluation, together with the University of Melbourne, is conducting research on whether the Literacy and Numeracy Precursor Indicators assessment tool could join with the Passport for Learning, Students with Additional Needs, and the National Literacy and Numeracy Learning Progressions assessment tools. Mapping of the assessment tools has begun and scoping research to collect data on the links between these tools is underway.



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## The outcomes framework

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It is the goal of the NSW Government for all children and young people with disability in NSW public schools to thrive academically and socially, develop good physical, mental and emotional health, and gain the skills to live a fulfilling, independent life post-school.

The Education Department's Disability Strategy commits us to creating an outcomes framework that helps to track the learning growth, wellbeing and independence of students with disability to ensure this goal is being met.

The Education Department has developed a draft outcomes framework, which is informed by the evidence-based research and community consultation with students with disability, their parents and carers, and educators. The outcomes framework will help the Education Department to better measure the educational outcomes of students with disability and ensure we are achieving the best possible outcomes for students with disability.

Work is underway to test and refine the draft outcomes framework for students with disability in preparation for its release.



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Change ahead

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The NSW Government recognises the breadth of the work being undertaken by the Royal Commission, and the challenges creating a major agenda for change across multiple issues and systems. Doing this in a way that does justice to the diverse needs, wants and aspirations of people with disability adds a further layer of complexity but is undoubtedly fundamental. Many of the Royal Commission areas of inquiry are relevant to the work of NSW Government agencies and often echo reforms that are underway across the State.

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As has been highlighted throughout this submission, delivering on our Closing the Gap commitments is a top priority for the NSW Government. NSW is also dedicated to progressing Australia's Disability Strategy. Overlaying these national agendas are NSW reforms, such as Family is Culture and several NSW Law Reform Commission reports, which the NSW Government is in the process of implementing. NSW provides this information to enable the Royal Commission to consider the findings and recommendations of these relevant inquiries, in line with its terms of reference. Royal Commission recommendations that draw from these existing pieces of work and processes will ensure that the voices that contributed to these inquiries are heard.

NSW has observed the discussion of national level approaches and recommendations across many hearings. While acknowledging the potential value of nationally consistent approaches, it is important that any such recommendations equally recognise the differences across states and territories – including differences in populations, institutions and legislation.

The NSW Government acknowledges there is more to do to make its community and systems more inclusive and safe for people with disability. This awareness can be seen in the work outlined in this submission. The NSW Government looks forward to receiving the Royal Commission's final report, which will most certainly drive further positive change.





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