



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

Research Report

Complaint mechanisms:

Reporting pathways for violence,
abuse, neglect and exploitation

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Acronyms

The below table sets out the significant acronyms used in this report.

Acronym	Meaning
ABS	Australian Bureau of Statistics
ADE	Australian Disability Enterprise
ADR	Alternative Dispute Resolution
AHPRA	The Australian Health Practitioner Regulation Agency
CALD	Culturally and Linguistically Diverse
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMC	Crime and Misconduct Commission
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DDP	Disability Determination Process
FACS	Family and Community Services
ECtHR	European Court of Human Rights
EDAC	Ethnic Disability Advocacy Centre
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ISO	International Organization for Standardization
LAC	Local Area Coordinator
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, Asexual
NDIS	National Disability Insurance Scheme
NPM	National Preventative Mechanism
OAG	OPCAT Advisory Group
OOHC	Out of Home Care System
OPCAT	Optional Protocol on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture
UK	United Kingdom
UN	United Nations

Introduction

This report understands a complaint mechanism as a procedure within an organisation, institution or governing authority which allows individuals to report negative experiences and problematic conduct and policy; seek individual rectification; and, where appropriate, trigger system change. Additionally, in this report, the term ‘complaint mechanism’ can refer to the diverse range of public bodies and agencies that are made responsible for handling complaints, which includes various commissions, ombuds, government departments and bespoke complaint or oversight agencies.

Some people with disability utilise complaint mechanisms to report violence, abuse, neglect and exploitation. As shall be discussed, the use of complaint mechanisms to report such experiences creates a number of unique challenges, including whether existing complaint mechanisms are fit for purpose, whether complaint mechanisms are able to guarantee equality before the law and equal rights to justice for people with disability, how complaint mechanisms relate to other reporting pathways, in particular police and courts, and whether complaint mechanisms are able to protect individuals from violence and create system change to prevent violence. Raising these concerns does not mean that complaint mechanisms may not be appropriate or desired pathways for people with disability who want to report and seek justice for violence, abuse, neglect and exploitation. Indeed, a complaint mechanism may be able to offer forms of just process and justice in outcome that are not available through police and courts. However, much care is required in the design of complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation to ensure that they are effective in terms of process and outcome, including in achieving a broader goal of violence prevention.

This report provides guidance to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) on the design of accessible and inclusive complaint mechanisms which function as a reporting pathway for violence, abuse, neglect and exploitation. Our report puts forward an ideal approach to creating accessible and inclusive responses to complaints of violence, abuse, neglect and exploitation of people with disability. The report utilises contemporary understandings of human rights, violence prevention, procedural justice and justice in outcome to identify the principles that should inform the design of complaint mechanisms to optimise their function as reporting pathways for violence, abuse, neglect and exploitation. The report centres lived experiences of people with disability, providing extensive accounts of people navigating complaint mechanisms in relation to violence, abuse, neglect and exploitation. The report further provides a mapping of the Australian complaint mechanism landscape, through a survey of website information, and where appropriate, policy or legislation, identifying some common features and limitations of existing complaint mechanism approaches, particularly in relation to the reporting of violence, abuse, neglect and exploitation.

Our conclusions in brief (explored in detail in Chapter 8) can be summarised as follows:

a) The Structural Drivers of Violence and Complaint Mechanisms. Much of the violence, abuse, neglect and exploitation experienced by people with disability is driven by structural factors, including as a result of segregation and institutionalisation. For a range of reasons, complaint mechanisms, even when designed in accordance with ‘best practice,’ can be poorly equipped to deliver either individual rectification or the large-scale transformational change required to address and prevent violence, abuse, neglect and exploitation.

b) Complaint Mechanisms, Equality before the Law, and Legally Authorised Violence.

Many complaint mechanisms are not necessarily equipped to provide justice in relation to violence, abuse, neglect and exploitation. This is because many complaint mechanisms are non-independent and combine regulatory oversight with complaint resolution processes. They are thus potentially established with a policy goal to regulate services and maintain codes of conduct, and not necessarily designed to respond to violence, abuse, neglect and exploitation from a victim-centred and justice-focused perspective. Further, if there is a social or institutional expectation that some people with disability should use complaint mechanisms, rather than police or courts, to report violence, abuse, neglect and / or exploitation, then this potentially undermines equality before the law since this means some people with disability do not have access to the forms of justice that are available to the rest of the community. This problem is further complicated by the existence of legally authorised forms of violence, such as restrictive practices. However, despite these concerns, it is acknowledged that many people with disability utilise complaint mechanisms to report violence, abuse, neglect and exploitation, and that in some cases these pathways may be preferred over the criminal justice system due to the different forms of just process and justice in outcome that they may offer.

c) Improving Process and Outcome. Based upon this report's survey of website information, and where appropriate, policy or legislation, there are many improvements that can be made to many existing complaint mechanisms at the level of stated process and outcome to enhance their ability to respond to violence, abuse, neglect and exploitation. Improvements can be made through access to and consistency of information; dedicated reporting pathways for violence, abuse, neglect and exploitation; application of accessibility standards and the availability of supported decision making; increased clarity on how complaint mechanisms interact with and complement police and courts; and increased clarity on outcomes available as a result of a complaint, including for system transformation.

d) An Independent Complaint Mechanism for Violence, Abuse, Neglect and Exploitation.

While improvements to existing mechanisms are possible, there remains a need for an independent complaint mechanism to respond to violence, abuse, neglect and exploitation, with strong perceived independence, neutrality, transparency, trustworthiness, effectiveness and capacity to support and recognise the voice of complainants. At present, this independent, dedicated, pathway for reporting violence, abuse, neglect and exploitation experienced by people with disability does not appear available within the existing terrain of relevant Australian complaint mechanisms.

e) A National Redress Scheme. Much violence, abuse, neglect and exploitation is historical in nature, including violence, abuse, neglect and exploitation that is supported by legally and socially authorised forms of segregation, institutionalisation and society wide discrimination. There is a pressing need for governments and society to acknowledge the role of historical injustices committed against people with disability in creating the conditions for current mass scale violence. In this context, a National Redress Scheme would serve an important role as both a form of transitional and transformative justice, and as an additional pathway for reporting violence, abuse, neglect and exploitation that is historical in nature.

f) Improved Processes for Police and Courts. While out of scope for this report, improvements in responses of police and courts to violence, abuse, neglect and exploitation experienced by people with disability would work in a complementary way with improvements to complaint mechanism pathways, and ensure equality before the law and equal rights to justice for people with disability.

Methodology

The findings of this report are based on a research project. Guiding the project's approach to exploration, consideration, and conceptualisation are a number of principles that 'go back to basics', including: (1) centring lived experiences of people with disability and the perspectives and expertise of Disabled Peoples Organisations, (2) taking into account violence prevention as a priority strategy for system design and for the resourcing of complaints mechanisms, (3) operationalising human rights principles of freedom from violence, equality before the law, procedural justice and justice in outcome, and (4) recognising the importance of diversity and intersectionality to responding to violence, abuse, neglect and exploitation of people with disability.

The research comprised the following:

- A survey of the scholarly literature, justice and human rights norms, complaint standards to understand how a complaint mechanism might be structured, and to appreciate the design principles that might follow from human rights, violence prevention, procedural justice and justice in outcome approaches.
- A mapping of the Australian complaint mechanism landscape, with a focus on relevant complaint mechanisms at Federal, State and Territory levels across disability-specific areas, as well as health and social services, education and criminal justice. The methodological approach involved a survey of website information, and where appropriate, policy or legislation, to understand publicly stated processes on how the complaint process functioned and the information available to potential complainants.
- An examination of scholarly literature, reports and submissions to capture the lived experiences of people with disability navigating complaint mechanisms, with a focus on experiences of complaint processes, outcomes and where complaints are not made in relation to violence, abuse, neglect and exploitation. In regards to this third research approach, a broad survey of the literature was conducted by searching library databases for key terms including 'people with disability', 'complaint', 'experiences' and 'perspectives', along with terms relevant to the domains of interest identified in the mapping, such as 'health settings' or 'prisons'. The scholarly literature, reports and submissions retrieved were then purposively sampled.¹ Due to the scope of the project, the literature assembled does not represent a complete or exhaustive picture of complaint experiences, however for each domain of focus - education, criminal justice system, disability services, and health settings – literature was assessed until a saturation of data was reached, that is, until few new themes emerged.

While the focus was on Australian complaint mechanisms and the lived experience of people with disability in Australia, international literature was also included to shed light on complaint experiences more broadly, especially in contexts of jurisdictional similarity such as Canada and the United Kingdom (UK). Complaint mechanisms such as the European Court of Human Rights have also been included as these are relevant to the human rights concerns laid out in this report.

The project adopted a disability human rights methodology, aligning with the centrality of human rights to the Disability Royal Commission's work. This methodology includes elements that are both *participatory* – that is, including Disabled People's Organisations in elements of the scoping, monitoring and finalisation of the project – as well as *emancipatory* – that is, seeking explicitly to arrive at conclusions that will realise the rights of people with disability.² The project included an Expert Reference Group comprising key national experts on complaint mechanisms, human rights and the experiences of people with disability. The Expert Reference Group served a function in ensuring that the disability community 'have ownership and guidance of research in all phases of the research process.'³ The Expert Reference Group also played a vital role in ensuring the project was informed by lived experiences of people with disability in a context where the timeline for the project deliverables did not provide scope for empirical research.

Limitations

Due to time constraints, this report does not provide a new empirical study of the experiences of people with disability using complaint mechanisms to report violence abuse, neglect and exploitation. While there are a range of scholarly literature, reports and submissions that describe the experiences of people with disability navigating complaint mechanisms, in general there is a need for more empirical research to understand experiences reporting violence, abuse, neglect and exploitation, particularly in relation to First Nations people with disability, people from culturally and linguistically diverse backgrounds with disability and LGBTIQ+ people with disability.

While this study incorporates a survey of website information, and where appropriate, policy or legislation, to understand how a range of complaint mechanisms operate, it does not offer an analysis of the performance of Australian complaint mechanisms in complaint resolution. Further, while some complaint bodies manage mandatory reportable conduct schemes (discussed briefly in Chapter 1), and these are interconnected with the functions of some complaint mechanisms, these schemes have not been examined as part of this report. This means that in practice complaint mechanisms may utilise a range of reporting pathways and procedures additional to those available in a mechanism itself, or provide outcomes that have engaged such additional pathways and procedures that are differentiated and improve on publicly stated complaint processes. As described above, further empirical study of the experiences of people with disability reporting violence, abuse, neglect and exploitation would reveal much needed information on the performance of this wider range of existing mechanisms in relation to procedure and outcome.

The report does not explicitly focus on reporting of violence, abuse, neglect and exploitation to the police, and the processing of these reports by courts, nor does it extend to civil litigation in relation to violence, abuse, neglect and exploitation. However, as noted below and through the report, the performance of the police and courts are of high relevance for consideration of how complaint mechanisms which respond to violence, abuse, neglect and exploitation function. As such, while the report does not study police and court processes in detail, nor comprehensively reflect on the experiences of people with disability navigating them, the current operation and future reform of police and courts nevertheless are of relevance to the findings of this research.

The project acknowledges that while many people with disability make complaints, other third parties, such as parents, family members, community visitors, advocates and staff utilise complaint mechanisms as well. Chapters 5, 6 and 7 include the accounts of some of these third parties in making complaints. However, across the report we have attempted to prioritise the voices and experiences of people with disability, in line with the first 'back to basics' principle outlined above – to centre the lived experiences of people with disability.

Structure

The report is structured as follows. Chapter 1 provides an overview of complaint, complaint mechanisms, current complaint standards, the relationship of complaint mechanisms to police and courts, and a summary of the approach to complaint mechanisms taken by a highly relevant recent inquiry: the Royal Commission into Institutional Responses to Child Sexual Abuse. Chapter 2 examines contemporary human rights norms and law, and their implications for complaint mechanisms, and discusses our understandings of violence prevention. Chapter 3 provides an outline of procedural justice principles and justice in outcome in order to understand what principles should underpin process and redress when designing complaint mechanisms. Chapter 4 describes the results of our mapping of the Australian complaint mechanism landscape, and the capacity of existing mechanisms to act as viable reporting pathways for violence, abuse, neglect and exploitation. The next three chapters provide a summary of the lived experience data gained through a survey of scholarly literature, reports and submissions. Chapter 5 outlines experiences of some people with disability who do not complain, or who are prevented from complaining about violence, abuse, neglect and exploitation. Chapter 6 describes experiences of complaint processes. Chapter 7 explores some people with disability's experiences of the outcome of a complaint about violence, abuse, neglect and exploitation. Chapter 8 provides a summary of our observations and conclusions. We have included the comprehensive *Australian Complaint Mechanism Landscape Table* we developed as part of our project at Appendix A.

Chapter 1: What is a Complaint Mechanism?

This Chapter explores the meaning of ‘complaint mechanism’. This is important in order to have a clear sense of the scope, purpose, possibilities and limitations of such a mechanism, specifically in responding to violence, abuse, neglect, and exploitation of people with disability. We begin by offering a basic definition and consider the principles that guide the operation of complaint mechanisms internationally and within Australia. We then turn to identify a series of tensions and complexities about the role and use of complaint mechanisms in the context of violence, abuse, neglect and exploitation experienced by people with disability. These tensions and complexities provide some contours to our analysis in subsequent chapters.

In this Chapter, we also explore the term ‘complaint’, noting the tension between the centrality of this term in recognising a complainant’s pain and grief, and its pejorative connotations which may undermine the complainant’s full recognition as a legitimate victim-survivor who should be heard. This tension is explored by Sara Ahmed in her recent book *Complaint!*,⁴ and we turn to this book in order to draw out some critical threads around the relationships between complaint, power, and institutions, which provide a useful context to reflect on the individual and structural dynamics of complaint mechanisms in the context of violence, abuse, neglect and exploitation of people with disability. This context is followed by a discussion on the relationships between complaint mechanisms and criminal and civil justice systems. In contrasting complaint mechanisms to two other pathways often associated with responding to violence, abuse, neglect, and exploitation, we seek to raise questions around the relationship between complaint mechanisms and justice. Last, we turn to consider some of the lessons on complaint mechanisms offered by the Royal Commission into Institutional Responses to Child Sexual Abuse. These lessons signal the challenges of complaint mechanisms when responding to violence, particularly in institutional contexts.

1.1 What is a complaint mechanism?

In this report, we understand a complaint ‘*mechanism*’ as a procedure within an organisation, institution or governing authority which allows individuals to report negative or problematic experiences, conduct or policy; seek individual rectification; and, where appropriate, trigger system change. In using the term ‘*complaint mechanism*’ here, we are referring to the diverse range of public bodies and agencies that are made responsible for handling complaints; this includes various commissions, ombuds, government departments and bespoke complaint or oversight agencies. It is important to note that there is great diversity in the size, institutional standing, independence and resources of differing complaint mechanisms. For example, most service organisations have a feedback and complaint process which can be understood as a ‘complaint mechanism’; however, this differs substantially from the complaint approach and process utilised by a body that is granted statutory independence, such as an Ombudsman.

Further, how we understand the structure of complaint mechanisms can vary. ‘Complaint mechanism’ can be understood by reference to a typical set of guiding principles and the process of reporting, investigation, and response. In this section, we examine standards for complaint mechanisms (also sometimes referred to as ‘grievance mechanisms’) at an international and domestic level.

1.1.1 International guidance on complaint mechanisms

There are international standards that apply to the design of complaint mechanisms. Key international examples are the International Organization for Standardization (ISO) standard for complaints mechanisms (e.g. 10002:2018), the UN Guiding Principles on Business and Human Rights, the Guidance Note: Supplemental Guidance Grievance Redress Mechanisms – United Nations Development Programme (the ‘UN Guidance Note’), and the European Standards on Legal Remedies, Complaints and Mechanisms and Effective Investigations at Borders.

The UN Guiding Principles on Business and Human Rights are a non-binding agreement produced by the Human Rights Council to provide guidance for states and organisations on how business can comply with human rights. Article 22 sets the expectation that when human rights have been breached, they should be remedied through legitimate processes.⁵ Principle 31 provides the criteria for these grievance mechanisms, which are:

- a. Legitimate: ‘enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.’
- b. Accessible: ‘being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.’
- c. Predictable: ‘providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.’
- d. Equitable: ‘seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.’
- e. Transparent: ‘keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake.’
- f. Rights-compatible: ‘ensuring that outcomes and remedies accord with internationally recognised human rights.’
- g. Source of continuous learning: ‘drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.’
- h. Based on engagement and dialogue: ‘consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.’⁶

The UN Guidance Note was produced as a guide to aid organisations involved in development projects. It includes an evaluation tool to assess the adequacy of their grievance mechanisms. This guide adopts the above UN Guiding Principles on Business and Human Rights.⁷ The UN Guidance Note suggests there is a typical model of how grievance mechanisms usually look, such that a grievance mechanism should:

-
1. Receive and register the grievance
 2. Acknowledge receipt, assess through agreed process, assign to the person/department who is responsible for formulating a response
 3. Propose response
 4. Agreement on response
 - a. If yes – implement
 - b. If no – review response and determine whether it needs to be referred to another party or closed.⁸

The European Standards on Legal Remedies, Complaints and Mechanisms and Effective Investigations at Borders set out human rights standards stemming from the European Court of Human Rights (ECtHR) and EU law in relation to effective remedies for human rights violations at borders. Key expectations of complaint mechanisms incorporating these human rights standards include:

- The complaint mechanism authority does not need to be a judicial body but should adhere to similar standards including independence, procedural safeguards, and the power to deliver an enforceable decision
- The complaint mechanism authority should be independent and distinct from law enforcement agencies
- The complaint mechanism provides procedural safeguards to the complainant
- The complaint mechanism is capable of providing a legally binding enforceable decision
- The complaint mechanism should treat complaints thoroughly and expeditiously
- The complaint mechanism provides an appropriate remedy/sanction
- The complaint mechanism provides reasons in relation to the outcome decided
- There are no excessively restrictive barriers to lodging a complaint and the system is genuinely accessible
- Direct and confidential access to the mechanism should be ensured including protection from intimidation or reprisals⁹

1.1.2 Australian guidance on complaint mechanisms

Standards Australia (the domestic standardisation organisation which works in partnership with ISO) has produced an Australian interpretation of the ISO standard on complaint mechanisms (AS/NZS 10002:2014).¹⁰ This interpretation was produced in 2014 and relates to an earlier version of the ISO standard, published in 2004 (ISO 10002:2004). Note the 2004 ISO Standard has since been updated and replaced multiple times; Standards Australia is currently conducting a review of the Standard.¹¹

The Standards Australia document provides a general outline for a three-step grievance mechanism. The three steps are:

- Step 1: frontline early resolution
- Step 2: official internal complaint resolution
- Step 3: external complaint resolution

These steps are then framed by the following set of guiding principles articulated in the Standards Australia document:

- Enabling complaints
 - People focus
 - Proactively seeks complaints and feedback
 - Treats complainant with respect
 - Complainant is actively involved in the process
 - Ensuring no detriment to complainant
 - Visibility and transparency
 - Information about how to make a complaint is well publicised
 - Accessibility
 - Should be designed to be accessible for all
 - Support should be provided when necessary
 - Enable representation of the complainant
 - No charges/free
- Managing complaints
 - Responsiveness
 - Prompt acknowledgement
 - Efficient systems, set timeframes.
 - Actively managing the complaint through the process
 - Objectivity and fairness
 - Objective and unbiased management of the complaint
 - Manage conflicting interests appropriately

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- Equity
 - All complaints are addressed in a predictable and equitable manner in accordance with the process
 - Privacy and disclosure
 - Prioritise privacy
 - Communication
 - Managing the parties
 - Conduct of parties
 - Policy should set expectations
 - Work health and safety
 - Grievance process adequately considers work health and safety
 - Complaints involving multiple parties
 - Grievance mechanism should respond to multiple parties
 - Empowerment of staff
 - Staff are appropriately empowered to implement the complaints management system if required
 - Accountability, learning and prevention
 - Accountability
 - Policy makes clear which members of staff are ultimately responsible for the different parts of the grievance mechanism
 - Continuous improvement
 - Prevention of ongoing disputes

As we shall see in Chapter 3, these principles correspond to at least some core requirements of procedural justice, including respectful treatment and transparency of processes.

The Australian Human Rights Commission has also created a guide for organisations addressing employee complaints about discrimination and harassment.¹² The Australian Human Rights Commission's guide is not based upon either the ISO or the UN Guiding Principles on Business and Human Rights. Rather, the Australian Human Rights Commission provides a set of guiding principles for internal complaints mechanisms, which stipulate that complaints processes should be:

- Fair
 - Fairness to both the complainant and the subject of the complaint
 - A chance for the complainant and subject of the complaint to present their version of events and to respond to decisions
 - Decision maker is impartial

-
- Confidential
 - Information about the complaint only provided to those who need to know about it
 - Transparent
 - The process and possible outcomes of the complaint should be clearly explained and the individual updated regularly
 - Reasons for decision are provided
 - Accessible
 - Easy to access for all
 - Easy to understand
 - Efficient
 - No undue delay

Internal complaints mechanisms should also include:

- Protection from victimisation
- Protection from vexatious complaints

The Australian Human Rights Commission guidance also outlines a process consisting of four stages: “Initial contact point”; “Early resolution”; “Formal resolution” and “Outcome from the process.”

Relevant to rights based approaches to complaints handling is the 2019 National Office for Child Safety *Complaint Handling Guide: Upholding the Rights of Children and Young People*.¹³ This guide embeds both the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse and the United Nations Convention on the Rights of the Child (CRC). The Guide emphasises the voice of the child or young person, recommending that:

Children’s and young people’s participation needs to be meaningful, not merely tokenistic. Children and young people can provide a unique perspective on how they think an organisation is functioning. They can also often identify problems before adults think of them— complaints processes are no different. Organisations need to involve children and young people in responses to individual complaints and in the overall design of a complaints system. This will facilitate ongoing service improvement and provide a safer environment.¹⁴

The guide embeds this approach by including a step in recommended complaint processes that plans for the involvement of the child / young person in the complaint process.¹⁵ As we shall explore in Chapter 3, recognition of the voice of the complainant is essential to satisfy just processes.

1.1.3 Summary

Across the international and Australian guidance detailed above, there are some common features articulated for complaint mechanisms. Complaint mechanisms are commonly expected to be: accessible, equitable, transparent, fair, consistent, safe and respectful. Interestingly, the focus in these guidance documents is predominantly on complaint access and process, rather than the outcomes of complaints. Note also, and relevant to this report, the standards above do not specify any special processes for dealing with violence, abuse, neglect and exploitation.

1.2 What is complaint?

‘Complaint’ has multiple meanings in the Oxford English Dictionary, including:

1. ‘The action of complaining; the utterance of grief, lamentation, grieving’.
2. ‘An expression of grief, a lamentation, a plaint.’
3. ‘Outcry against or because of injury; representation of wrong suffered; utterance of grievance.’
4. ‘An utterance or statement of grievance or injustice suffered.’

What is common across these varied meanings of the word ‘complaint’ is the emphasis on communicating an experience of being wronged or injured that has caused pain, distress or sorrow. These definitions of complaint centre the individual who has been wronged or injured, placing their affective experience at the core of the meaning of ‘complaint’. By definition, complaint thus implies a relationship of power: an individual who has been wronged pleads recognition from others in relationship to this injustice. The etymology of ‘complaint’ is from the Latin ‘*complangere*’. The second part of this word - ‘*plangere*’ - means ‘to lament, bewail, originally to strike, beat, beat the breast or head in sign of grief’.

Both the primary meaning of ‘complaint’ and its etymology suggest that an inherent feature of a ‘complaint’ mechanism should be that it provides an opportunity to communicate experiences of being wronged or injured. There should also be due recognition of the associated pain, distress, and sorrow for these experiences. As such, this meaning and etymology underscore the significant experiences that complaint mechanisms are tasked with responding to, both as vehicles for communicating injustice, and as mechanisms for providing recognition to the complainant.

The meaning of the noun ‘complaint’ can be contrasted with one of the more pejorative meanings of the verb ‘complain’. While ‘complain’ can mean ‘to give expression to sorrow or suffering’ (reflecting the meaning of complaint discussed above), complain also has meaning as an intransitive verb (i.e., verbs with no direct object): ‘To give expression to feelings of ill-usage, dissatisfaction, or discontent; to murmur, grumble’. This latter meaning of the *verb* ‘complain’ characterises the person who complains in a pejorative way: they are difficult, get upset over trivial and petty matters, are aimless in their expressions, and irritating to listen to. This

particular meaning of complain signals the risk that in the context of complaint mechanisms, those who complain might be ascribed negative cultural meanings that undermine the legitimacy of their complaint.

In her book, *Complaint!*, Sara Ahmed picks up on the pejorative meaning of ‘complaint’, in exploring the experiences of complainants in a particular institutional context (universities).¹⁶ Ahmed observes that ‘complaints are not heard’ and ‘we are not heard when we are heard as complaining’¹⁷: ‘To be heard as complaining is not to be heard. To hear someone as complaining is an effective way of dismissing someone. You do not have to listen to the content of what she is saying if she is *just* complaining or *always* complaining.’¹⁸

Ahmed offers three sets of insights that are particularly relevant to this report. First, Ahmed identifies a number of impacts of complaints on those who complain. Individuals who complain become viewed negatively. They can be understood as engaging in ‘tiresome’ behaviour that is a waste of the complainants and others’ time and energy.¹⁹ People who complain ‘become a container of negative affect, a leaky container, speaking out as spilling over.’²⁰ The complainant becomes positioned as a problem and this positioning is hard to shake. As Ahmed puts it, ‘making a complaint can change your sense of self, what you can do, who you can be.’ One person Ahmed spoke to ‘likened becoming a complainer to being ‘the problem child’:

‘In getting to that point, the complainer, you never shed it, it is like the problem child: having done it, you cannot go back.’ A complaint becomes part of you, part of who you become, that problem child, you can’t shed it; you can’t shed her, having done it, made it, that complaint, ‘you cannot go back.’²¹

Complaining is a form of labour for those who complain. As Ahmed explains: ‘making a complaint is never completed by a single action: it often requires you do more and more work. It is exhausting, especially given that what you complain about is already exhausting.’²² These insights from Ahmed are central to directing the focus in our report to the negative impacts of complaint processes on those who complain. As we shall describe in Chapters 5, 6 and 7 of our report, some people with disability and their families and advocates have experiences of multiple complaints and ongoing pursuit of complaints that are never resolved.

The second insight by Ahmed of relevance to this report relates to power. Ahmed argues that complaints are intimately connected to institutions and power. Power is integral to complaint:

Power is not simply what complaints are about; power shapes what happens when you complain. ... The issue is not just that complaints procedures can be used by those with more power, but that complaints are more likely to be received well when they are made by those with more power.²³

In an institutional context, the journey of complaints tells a lot about the institution itself: ‘The path of a complaint, where a complaint goes, how far it goes, teaches us something about how institutions work’.²⁴ In particular, institutions function to resist complaints: ‘Complaint: a path

of more resistance. The institution becomes what you come up against.’²⁵ These insights are particularly relevant to complaint mechanisms in the broader institutional contexts in which violence, abuse, neglect and exploitation is often perpetrated against people with disability. As shall be discussed in Chapter 3 of our report, the perceived fairness of complaint processes impacts the way individuals understand the legitimacy of authorities; where institutions fail to treat individuals with respect and instead act with administrative impunity to violence, this will in turn undermine their perceived legitimacy.

The third insight of relevance by Ahmed relates to methodological approaches to exploring complaint. Ahmed argues that an exploration of complaint requires careful listening to those who have been denied the opportunity to be heard through complaint: ‘To hear with a feminist ear is to hear who is not heard, how we are not heard. ... The question of complaint is intimately bound up with the question of hearing, of how we express ourselves given what or who is passed over.’²⁶ Moreover, ‘hearing complaints can also be how you learn *how* complaints are not heard’.²⁷ Indeed, Ahmed proposes that this focus on the experiences of those who complain gives insights far beyond the complaint in itself, and into more fundamental issues about institutions and power: ‘if you ask those who complain about their experiences of complaint, you will learn so much about institutions and about power’.²⁸ These observations on the importance of ‘hearing’ complaint, correlate with work underway by Australian scholars on the politics of listening in the context of disability rights.²⁹

These methodological observations align with the approach we take in this report of understanding the current limitations and future possibilities of complaint mechanisms. We do this by reference to those with lived experiences of these complaint mechanisms, including those who were prevented from complaining at all. It is through this focus on the experiences of those who complain in Chapters 5, 6 and 7 of this report that we have gathered an evidence base for an approach to complaint mechanisms which is grounded in justice, deinstitutionalisation/desegregation and violence prevention. This grounding occurs in recognition of the role of some complaint mechanisms and processes in sustaining violence and dehumanisation and the ongoing legitimacy of institutionalisation and segregation of people with disability.

1.3 Understanding violence, abuse, neglect and exploitation

The Disability Royal Commission has adopted some consistent definitions for understanding violence, abuse, neglect and exploitation in relation to people with disability. Violence and abuse are defined together as follows:

Violence and abuse cover a range of behaviours towards people with a disability. These could include assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis.³⁰

Neglect is defined by the Disability Royal Commission as follows:

Neglect includes physical or emotional neglect, passive neglect or wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment.³¹

Finally, exploitation is understood in the following way:

Exploitation is when a person takes advantage of someone else. This could include improper use of another person or the improper use of or withholding of another person's assets, labour, employment or resources including taking physical, sexual, financial or economic advantage.³²

The above definitions provided by the Disability Royal Commission approximate the working understandings that will inform this report. However, it is worth pausing to consider some of the complexities that relate to how we define violence, abuse, neglect and exploitation.

The acts, behaviours and actors commonly labelled and considered 'violent' demonstrate that what is defined as 'violence' is political and shaped by power dynamics. By framing certain actions as violent (typically those deemed physical, criminal, explosive), and others as routine, 'mundane', or lawful, the terms of what is considered a cause of concern as a form of injustice on the one hand, or as acceptable and even beneficial on the other, are shaped by dynamics of power, and defined in a political sense. For example, NSW law allows for the use of corporal punishment against children in private settings where this is considered a form of 'lawful correction' under section 61AA of the NSW *Crimes Act 1900*. Though there is growing opposition to the use of corporal punishment against children, this example highlights the way in which social and legal support for this practice as bound up with adult-child power dynamics and the self-evident authority and benevolence of parents can blur our understanding of what comprises violence and what does not. Choices to define certain actions and actants as violent mirror social power dynamics, with dominant groups often delineating 'what counts' as violence against minority groups, including women, the LGBTIQ+ community, First Nations people, refugees and asylum seekers, culturally and linguistically diverse communities, and people with disability. In the context of people with disability, 'ways of naming and categorizing violence are part of ableist systems and ideologies that endanger disabled people in a myriad of ways.'³³

Common understandings and definitions of violence typically focus on forms of harm perpetrated by individuals, against individuals.³⁴ As a society, we also tend to understand violence primarily in terms of physical harm.³⁵ Overall, there is a tendency to focus on interpersonal and individual forms of violence, rather than institutional or structural forms of violence.³⁶ A focus on individuals as perpetrators of violence leaves the many systems, institutions and structures that enact violence unquestioned and unproblematised. For example, a *singular* focus on individuals who perpetrate violence in closed settings will fail to address the way in which segregation and institutionalised settings create the environments which

reproduce violence. Recent research in disability studies has highlighted that violence against people with disability is complex and multifaceted, and is not only enacted between individuals, but ‘ingrained in the relationships, institutions and cultural acts of our time.’³⁷ While violence against people with disability *is* perpetrated by individual actors and often involves physical acts, it is also enacted by institutions such as hospitals, the justice system, and disability services.³⁸ Further, while violence against people with disability is broadly thought to be prevented by law, some of this violence is instead regulated and indeed often permitted by law, seen in forms of ‘disability-specific lawful violence’ including restrictive practices, the forced sterilisation of women and girls with disability, and involuntary detention in mental health facilities.³⁹ The legal authorisation of violence assists to normalise and obscure the way violence operates.

That violence is both individual and structural deserves some further explication. Direct or individual violence is overt, is committed by individual person(s), and resembles commonly accepted definitions of violence as interpersonal and physical. Structural violence on the other hand ‘is silent, it does not show – it is essentially static, it is the tranquil waters.’⁴⁰ It is the unseen nature of structural violence which leads to systemic rather than overt forms of discrimination; it is ‘built into the structure and shows up as unequal power and consequently as unequal life chances.’⁴¹ Structural violence has no clear, discernible perpetrator, it resembles ‘the normal state of things’, is seen as natural, and, even when recognised as violence, is often framed as inevitable and necessary.⁴² In the context of violence against people with disability, Perry gives the following example to illuminate the dynamics between structural and direct violence:

Christopher... has applied for many jobs, and, despite his qualifications in computer-related studies and obvious skills, he has been rejected. He has been placed in sheltered accommodation in a deprived area of Hastings in a house, where the majority of his neighbours are much older people. The structures that keep him ‘in his place’, limiting his chances to achieve his potential, are the still waters in which he is a victim of regular direct violence.⁴³

Individual and structural violence are intertwined and enmeshed. In the above example, opportunities for direct violence depend on the presence of structural violence in the first instance. The closed, segregated nature of disability accommodation is the structural violence that enables direct, interpersonal violence to occur unchecked.

Goodley and Runswick-Cole highlight that violence against people with disability, whether occurring in institutions such as schools, or in more private settings such as the home, ‘says more about the dominant culture of disablism... than it does of the acts of a few seemingly irrational, mad, bad or mean violent individuals’.⁴⁴ That is, violence against people with disability is deeply embedded in our culture. It is not aberrant, random, or disconnected from dominant violent ideologies, but can instead be understood as the logical extension of the normalised values celebrated by cultures of ableism and disablism. These values include that having disability is akin to having a tragic and deficient life; and that disability should be eliminated or cured, rather than understood as part of human diversity.⁴⁵

In this context we note the complexity around the use of the word 'abuse' (a term often associated with children) in relation to violence against people with disability. The use of this term particularly in relation to adults with disability, can itself imply that those who are 'abused' lack legal capacity. Incapacity positions people with disability as less than full humans and legal subjects, and also affirms forms of lawful violence that occur through substituted decision making.⁴⁶

'Exploitation' can face similar definitional problems to 'violence.' Certainly there is much evidence of people with disability experiencing forms of exploitation, including from family, neighbours, and 'friends'.⁴⁷ There is also research which highlights that women with disability may in particular be exposed to forms of exploitation from intimate partners.⁴⁸ In these contexts, exploitation by friends, family members, neighbours and carers can be financial, sexual, can involve forced servitude, and forced criminality (e.g. coercing people with disability to be involved in criminal activity). However, exploitation is itself difficult to define, in part because there are many examples of relationships which have social and legal authorisation which might be understood as exploitative. For example, within market economies, wages are, to an extent, at least in Marxist understandings, exploitative by definition.⁴⁹ In a related sense, globally, low wage labour regimes can appear indistinguishable from debt bondage and forced labour, even if the former appears to be based upon consent.⁵⁰

These issues in wage labour are relevant when considering some forms of economic exploitation experienced by people with disability, including through legally authorised differential wage schemes. Australian disability enterprises (ADEs) are segregated work settings in which people with disability are employed to perform manual labour in the areas of assembly, packaging and production, among others.⁵¹ The legislation overseeing ADEs permits people with disability to be paid at a significantly lesser rate for the same work performed by people without disability, with people with disability sometimes receiving as little as a few dollars per hour.⁵² ADEs and other domains in which people with disability are lawfully exploited by government and business highlight a need to conceptualise exploitation broadly, to include both systemic, structural harms as well as those which occur on a more individual, local level.

The above discussion highlights what will be a continuing theme in this report: namely the complexity of how a complaint mechanism should respond where forms of violence, abuse, neglect and exploitation are socially or legally sanctioned and embedded within institutions. For example, it is widely acknowledged that people with disability are not provided the resources, recognition and rights to enable equal participation and inclusion in society: 'people with disabilities may be present in the community but most do not enjoy full participation in it.'⁵³ This means that in our society people with disability are systematically denied the right to flourish on an equal basis with others. At what point does this denial of rights constitute structural and institutional neglect, and how does it shape everyday experiences, such as the ability of people with disability to choose where and whom they live with, the ability to determine food choices, opportunities to move and use one's body, and the ability to shape friendships and intimate relationships? And how might people with disability complain about this neglect? Are existing complaint mechanisms equipped to respond to these issues? These are of course difficult questions, but they have bearing on how we understand complaint mechanisms as a pathway for reporting violence, abuse, neglect and exploitation.

1.4 How are complaint mechanisms related to civil and criminal justice processes through courts and tribunals?

A framework for complaint mechanisms for violence, abuse, neglect and exploitation of people with disability must advance rather than undermine rights to equality and access to justice. These human rights to equality and justice – which shall be described in more detail in Chapter 2 - will be undermined if people with disability are not given the same access to the police and courts as people without disability, including if courts and justice systems are not transformed to make them more inclusive and accessible. Further, rights to equal treatment and access to justice will be undermined if a complaint mechanism is designed with the intent that it be the primary or exclusive forum for responding to violence, abuse, neglect and exploitation of people with disability (including if such design becomes a justification for not transforming courts and justice systems). Indeed, this idea of people with disability being subject to ‘second-class justice’ has been more thoroughly explored in the context of people with disability as alleged offenders, where it is recognised that subjecting them to special hearings after a finding of unfitness, or to mental health courts on the basis of the special procedures and disposal options suited to their disability, is discriminatory.⁵⁴ The solution is to correct the mainstream justice system rather than introduce separate and inferior processes.⁵⁵ Indeed some scholars have argued that producing separate and inferior processes amounts to segregation of people with disability within the justice system.⁵⁶ As we shall argue in this report, this is a tension in relation to the design of complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation.

In this section we provide a snapshot of the processes utilised by the police and the courts in response to reporting of criminal cases of violence, abuse, neglect and exploitation. The aim of the section is to understand how the processes of the police and the courts differ from those of a complaint mechanism. Further, the section critically highlights the potential for reform within these areas.

1.4.1 The Police and Their Investigation Process

Many people can report violence, abuse, neglect and/or exploitation to police, including the victim-survivor and witnesses. This section provides an outline of the processes utilised by the police when violence, abuse, neglect and / or exploitation is reported, moving through the different stages of complaint, investigation, charges and victim-survivor protection. It is important to note that these processes vary by jurisdiction, and that stages such as investigation, bail, and prosecution are complex and rely on different legislation in each Australian state. The summary below is intended to provide an overview of some of these processes, and does give an account of the intricacies of the criminal justice process in each Australian jurisdiction.

When a victim-survivor or witness seeks to report violence, abuse, neglect and/or exploitation to police, they first need to make a statement. To do this, the victim-survivor or witness will be taken to a private interview room at the police station, where they will be asked for details of what has happened. This process can feel challenging and intrusive for many victim-survivors,

with police enabled to ask questions of a very personal nature; in this sense, unequal power relations shape the interview.⁵⁷ The police interview may be accompanied by other forms of expert verification: the police can also request that the victim-survivor see a doctor to obtain further evidence about any injuries that have been sustained, with the victim-survivor needing to sign a release for these medical documents to be used in evidence.⁵⁸

It is usually at this stage in the process that a decision will be made about investigation. This decision is typically based on the nature and circumstances of the offence that has taken place, police evaluation of the chances of solving the crime, consideration of the needs of the victim-survivor, as well as consideration of the perceived needs of the broader community.⁵⁹ If the decision is made to undertake an investigation, uniformed police officers will attend the crime scene, and are expected to keep the victim-survivor informed of the progress of the investigation.

If charges are laid, the victim-survivor will be informed. The victim-survivor will also be informed should police determine not to lay charges.⁶⁰ In each Australian jurisdiction, victim-survivors have the right to be informed about the progress of their case, including 'information about the charges laid, scheduled hearings and outcomes, including decisions made about acceptance of guilty pleas'.⁶¹ The rights and the reporting obligations of the police are laid out in various victims' rights legislation including the *Victims of Crime Act 1994* (ACT) ss 4(b), 4(d); *Victims of Crime Act 2001* (SA) ss 8(1)(a), (e); *Victims' Charter Act 2006* (Vic) ss 9(a), (c) and *Victims' Rights and Support Act 2013* (NSW) ss 6.5, 6.6.⁶² While these rights are laid out in legislation, studies have shown that victims are not always informed about their case and the related criminal justice processes.⁶³

Much like the decision to undertake an investigation, the decision to lay charges is typically based on the strength of the evidence collected, as well as considerations of community safety.⁶⁴ When a person is charged by police they are taken to a police station or a watch house, where they are placed under arrest. At this point, depending on the type and perceived seriousness of the matter, either the Director of Public Prosecutions or the police may decide not to proceed with taking the case to court. Such a decision may be made if the Director of Public Prosecutions or the police believe there is not enough evidence to support a criminal conviction,⁶⁵ or if the complainant does not wish to proceed with the case, or if there is new information that has been obtained that undermines the original charges. Victim-survivors are expected to be informed of any decisions made by the prosecution to modify the charges that have been laid, or of decisions by the Director of Public Prosecutions or police to not proceed with charges (see the above discussion).

If the decision is made to pursue a criminal conviction, bail authorities, including police, magistrates, judges, or the bail justice then decide whether it is appropriate to grant the defendant bail or to keep them in custody until their first court date.⁶⁶ The bail authority that makes this decision will vary across different jurisdictions and at different points of the justice process. This decision may be of significant concern to victim-survivors and witnesses, and in the state of Victoria, the Victorian Police Witness Security Unit is able to take any action

they deem necessary and reasonable to protect the welfare and safety of witnesses and their families. This may include temporary or permanent relocation.⁶⁷ In the ACT, police can seek restrictions on the accused's bail conditions, apply for a protection order in some circumstances, and undertake certain protective actions.⁶⁸

The above police processes differ from complaint mechanisms in fundamental ways. The police are an independent authority with substantial powers to investigate, charge and detail individuals. The formal interview, and any medical reports produce formal documents that can be tabled in court processes. The police have responsibility for conducting investigations and gathering evidence, and have powers to interview others as part of their evidence seeking. The police have powers to arrest alleged suspects, and with this the ability to remove perpetrators from the community. The police also have the power to protect victim-survivors and witnesses, and thus some capacity to prevent retaliation.

The above processes apply *theoretically* to the routine conduct of police processes when a report is made by a victim-survivor. However, these processes do not necessarily occur in ideal ways, especially for some population groups. As was recently demonstrated in the report for the Disability Royal Commission by Leanne Dowse et al, police have a poor record with people with disability. Indeed, that report concluded that:

police responses to people with disability are, on the whole, inadequate, are frequently damaging to the well-being of people with disability and can significantly negatively impact on their rights to justice. There is unequivocal alignment in the evidence emerging from the literature, the review of current police policy and practice and the views of Australia's leading advocates that while some individual police demonstrate good practices and approaches, on a systemic basis police do not respond effectively to promote safety and protect people with disability who are victim-survivors, witnesses and alleged offenders.⁶⁹

Certainly, Chapters 5, 6 and 7 of this report suggest that some people with disability have poor experiences with the police when they report violence, abuse neglect and exploitation. As Dowse et al argue, and we argue in Chapter 8 of this report, there is significant scope to improve police responsiveness, which in turn would reduce the need to utilise complaint mechanisms as a reporting pathway for violence, abuse, neglect and exploitation.

1.4.2 The role and importance of courts

Complaint mechanisms are not the primary forum conventionally associated with realising justice in relation to experiences of violence, abuse, neglect and exploitation in the general population. Instead, courts are understood as the forum for individuals to access redress when they experience such serious wrongs.

There are important characteristics of courts and their processes that can be contrasted against the functioning of complaint mechanisms. Courts form part of the judiciary. The judiciary is one

of three arms of government set out in the Australian Constitution (judiciary, executive and legislative).⁷⁰ The judiciary administers justice according to law, and its separation from the executive and legislative arms of government facilitates the independence of judicial decision-making which is central to upholding the rule of law. In contrast, complaint mechanisms are non-judicial; many such mechanisms sit in the executive arm of government as part of a range of processes for government accountability and dispute resolution along with other non-judicial mechanisms such as administrative tribunals, Ombuds, and alternative dispute resolution (ADR). The executive arm of government is responsible for administration and operationalisation of laws made by the legislative arm of government. The judiciary is independent - judges take an oath and declare conflicts of interests.⁷¹ In contrast, complaint mechanisms might not be independent if they are internal to specific systems or services or operated by the same body tasked with funding and accreditation of services. Courts are concerned with resolving disputes by determining the rights and obligations between the parties and deciding on redress by reference to these rights and obligations and related legal accountability. In contrast, complaint mechanisms are focused on facts rather than law, are not necessarily separated legally, organisationally and operationally from other policy goals such as regulating or funding services, and operate in a context where, at a governance level, services are not principally accountable to individuals but instead to regulators and members/shareholders.

Courts are seen as an essential forum for dispute resolution in society, not least of all because of their independence from the executive, their application of legal doctrine in decision-making, the public transparency of their hearings and decisions through the principle of open justice, and their carefully regulated processes. As well as serving individual justice, courts can have a unique role in facilitating structural legal change. First, courts situate a complaint in a context of public justice. By reason of the principle of 'open justice', court proceedings and decisions are available to the public (either directly through attending court or accessing the published decision, or through media reporting).⁷² Justice is delivered publicly and openly in a court so that the judiciary is accountable and the public have confidence in the justice system.⁷³ Moreover, the public can know what is argued and the evidence on which the courts proceed. Court judgments can enable public knowledge of injustices, notably those involving the government, corporations, or charities that might otherwise be concealed (particularly in a context where corporations and charities are not principally accountable to the individuals to whom they provide services, and can access public relations and marketing support to conceal or minimise information about injustices). As has been explored in the context of litigation by First Nations people in the context of the Stolen Generations, the resolution of a dispute in the absence of a court judgment means loss of a public record of the events, and this record is important in providing for a public account of broader issues relating to the treatment of marginalised populations.⁷⁴

Secondly, through its judgments, courts render an interpretation of law that contributes to the development of legal doctrine.⁷⁵ As such, court judgments can have the potential for structural reform because decisions in court judgments, through the structure of precedent, can impact on resolution of later matters or at least communicate to and educate the public on appropriate conduct. In contrast, decisions reached by complaint mechanisms and other mechanisms in the executive arm of government are not usually binding and cannot clarify or develop law.⁷⁶

1.4.3 The need to transform (rather than abandon) courts

While courts are conventionally understood as the pinnacle forum for individualised justice in Australia, they are not without their limitations. First, there are technical and doctrinal barriers, such as evidential rules that can make it difficult to establish causes of action or can re-traumatise victim-survivors who must recount their experiences within court or to ‘expert’ witnesses, as has been observed in the context of sexual assault criminal proceedings and institutional child sexual abuse civil litigation.⁷⁷ There are rules that can deny legal standing to some individuals with cognitive or psychosocial disability on the basis of mental incapacity,⁷⁸ and rules that grant immunity to certain perpetrators acting in official capacities (e.g., individuals acting in good faith under NSW mental health legislation or guardianship legislation are not personally liable).⁷⁹

Second, there are financial limitations. One of these is the expense of litigation, including the cost of lawyers and court fees.⁸⁰ Indeed, one of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse was to fund legal support, including representation in civil proceedings.⁸¹ Another limitation is the risk of adverse costs orders, as has been observed in the context of Stolen Generations litigation.⁸²

Third, participation in court proceedings can have serious emotional impacts. Having to re-tell one’s story to psychiatric experts and within court, and be cross-examined on this, can be re-traumatising and distressing. Court proceedings are known to be slow (despite reforms directed towards greater efficiency). At the same time, many civil matters are resolved through settlement rather than delivery of a final court judgment, and these settlements can prevent victim-survivors speaking publicly about the injustice and the settlement outcome and settlements can be difficult to enforce.⁸³

A fourth set of limitations are cultural. Anti-oppression activists and critical legal theorists argue that structural dynamics of oppression shape judicial decision-making in ways that can reinforce social hierarchies.⁸⁴ This has been extensively explored in relation to people with disability in the context of sterilisation⁸⁵ and in sentencing for homicide of people with disabilities.⁸⁶ People with disability experience challenges accessing the criminal justice system due to a range of factors such as reliance on the perpetrator for ongoing support, not being believed by family members, support workers, and police, being denied access to information about their rights and justice pathways, doubts over their legal capacity, and not necessarily being aware that they are experiencing abuse or crime.⁸⁷ Public Prosecutions across the country often decide not to prosecute sexual crimes because there are rarely witnesses besides the victim-survivor.⁸⁸ First Nations people with disability can be subject to cultural and political barriers that undermine their self-determination, insofar as the justice system is founded on the denial of pre-existing sovereignty, reflects western models of justice and modes of communication and narrative and is structured by a settler colonial dynamic that implicitly makes racist and dehumanising assumptions about First Nations people.⁸⁹

Finally, the court system can be limited in its capacity to respond to violence, abuse, neglect and exploitation of people with disability which is lawful, structural or historical. In relation to lawful violence, the delivery of justice through the interpretation and application of law is limited by law. Indeed, this is reflected in the Latin maxim *Ubi jus, ibi remedium* – meaning ‘where there is a right, there is a remedy’. On the one hand, this means that where law provides a right, there is a corresponding remedy for its breach. On the other hand, this means where there is no right, there will be no possibility in law for a remedy. Where violence, abuse, neglect and exploitation is permitted by law (such as non-consensual mental health treatment under mental health legislation, use of restrictive practices under guardianship and NDIS legislative frameworks, and payment of wages as little as 12.5% of the national minimum wage in ADEs), there will be no remedy available through the courts. Further, the legal authorisation of violence, abuse, neglect and exploitation can prevent people with disability accessing other forms of redress, such as victim-survivor’s financial assistance schemes. Victims’ assistance schemes are available in some jurisdictions to provide redress in the form of financial assistance and psychosocial support for victim-survivors of violence. However, these require individuals to have been victim-survivor of an act of violence, and this is typically defined as being that which constitutes violence under criminal law (see, e.g., definition of ‘act of violence’ in *Victims Rights and Support Act 2013* (NSW) which means ‘an act or series of related acts, whether committed by one or more persons’ that, inter alia, ‘has apparently occurred in the course of the commission of an offence’). People with disability who experience legally authorised violence will not have access to this option.

Further, and related, legal approaches have their limitations in addressing historical injustice. In relation to historical violence, abuse, neglect and exploitation, Mayo Moran observes that:

Repairing the problems of the past, in short, was not considered the job of law. This was not left to chance. It was doctrinally ensured through a network of rules and principles that confined the operation of law in a distinctive way: the all-important realm of private law responsibility only applied to recent discrete wrongs, thus ensuring that, by and large, the law left the past and its vast problems alone.⁹⁰

Some of the reasons for this are technical and doctrinal – the reduced availability of witnesses and documentation to support claims and meet high standards of proof in civil and criminal matters, the narrow scope of doctrines relating to institutional and vicarious liability, statutory or other immunities, and limitation periods that are directed towards ensuring fairness between the parties and broader economic and legal certainty to individuals who might potentially be subjected to litigation.⁹¹ There are also deeper reasons, related to law’s role in historical injustice. Mayo Moran notes the:

uncomfortable fact that all too often what we now consider invidious actually took a specifically legal form. The slave codes that detailed the workings of chattel slavery, the eugenics laws that authorized the state to sterilize people in the absence of consent, the legal regimes that mandated the involuntary taking of children from their parents – these are but a few examples of how the law itself was often a vitally important instrument in the great wrongs of history.⁹²

Further, in relation to violence, abuse, neglect and exploitation that is structural in nature, typically, causes of action require specific perpetrators, acts and causal relationships. Socio-legal scholars critique the limits of civil law in addressing structural harms that do not fit neatly into causes of action and models of legal responsibility, and that present evidentiary and procedural challenges, particularly where these harms occur over a longer timeframe, are perpetrated by multiple individuals, arise from the physical environment and models of care or regulatory, funding and legal frameworks, or have more complex systemic causal relations.⁹³ Reflecting on the tort class action related to Huronia Regional Center, a disability residential institution in Ontario, Canada, Rossiter and Rinaldi note that:

However, legal victory has not meant justice – or rather, to equate legal victory with justice in this circumstance may mean that the conditions for institutional violence are not adequately challenged. Rather, given the limits of what tort law can accomplish, this legal victory has involved the hierarchicalization and monetization of trauma, a weighing of the worth of trauma. Lost in the quantification of harm are the institutional dynamics and conditions that caused such harm, which cannot be quantified or even reasonably captured in the framework of legal storytelling. In leaving absent these conditions, the settlement problematically leaves open the possibility for institutionalization to reoccur.⁹⁴

Relevant to this report, this highlights the complementary roles that other justice processes – transitional and transformative – might play in relation to the courts; indeed, as we shall argue in Chapter 8, there is scope to imagine complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation being part of the work of social transformation to prevent violence against people with disability.

Above we have highlighted a number of barriers associated with the courts and the law in relation to justice. However, rather than the above described limitations signalling the redundancy of the courts and the law, these limitations indicate the need for transformation to ensure their role in justice is fully realised. There are certainly signs that reforms are underway. As more people with disability are working in the court system, physical access is improving such as accessible witness boxes and accessible bathrooms.⁹⁵ Further, in South Australia people with complex communication needs are now able to have a communication partner with them in court and with police as a result of the *Vulnerable Witnesses (Amendment) Act 2015* (SA). People with intellectual disability must be questioned using language that is appropriate to their cognitive abilities and understanding.⁹⁶ Victoria introduced a similar program in 2018 called the Intermediary Pilot Program, which gives ‘vulnerable’ complainants and witnesses, including children and adults with intellectual disability who are involved in sexual offence and homicide proceedings, access to an intermediary.⁹⁷ Intermediaries assess the communication needs of the vulnerable complainant or witness and potentially provide the court and police with strategies to help facilitate effective communication.⁹⁸ NSW has a similar program, however this is only available to children, not adults with disability.⁹⁹ Sections 13, 14 and 31 of the *Evidence Act 1995* (Cth) specifically allow for witnesses with communication disability to give evidence via ways that accommodate their disability, for example via a communication device. However, even with these reforms, there may be discrimination, and in order to avoid this, the judiciary needs to engage in professional development.¹⁰⁰

We also stress that there is scope to ensure that complaint mechanisms work in complementary ways with police and courts. Complaint mechanisms can have a role in supporting individuals achieving justice through the courts in relation to violence, abuse, neglect and exploitation. A complaint mechanism that has no formal legal or operational relationship to criminal justice and court processes and does not support individuals to report to police or seek legal advice in relation to civil action might result in contamination or depletion of the quality of evidence that could be used in court (noting the higher evidentiary requirements in court, as opposed to complaint mechanisms). At the same time, there are examples of oversight and monitoring bodies that can facilitate court action. The NSW Ageing and Disability Commission was established in July 2019 to investigate allegations that did not reach a criminal threshold and to coordinate a multiagency response to the issues.¹⁰¹ Under the *Ageing and Disability Commissioner Act 2019*, the Commissioner may share information with any relevant agency in order to assist that agency to make a decision or an assessment in relation to the safety, welfare or wellbeing of an adult with disability or older adult or to take action in respect to the safety, welfare or wellbeing of an adult with disability or older adult. Similarly, the NSW Ageing and Disability Commission can make an application to a court or tribunal.

The courts are conventionally understood as the pinnacle of justice, yet this status is premised on some assumptions about courts which ignore the structural oppression which shapes how they operate, and legal, financial and cultural barriers to accessing them. Courts and justice systems need further exploration by the Disability Royal Commission in order to ensure the justice they promise to all is available to people with disability on an equal basis to others, and that complaint mechanisms do not supplant the role of courts.

1.5 What are the lessons from the Royal Commission into Institutional Responses to Child Sexual Abuse on complaint mechanisms?

As we have flagged in this report, the use of complaint mechanisms to report violence, abuse, neglect and exploitation poses a complex set of problems, including whether they are fit for purpose in responding to violence. However, this report is not alone in navigating this issue. The 2017 Final Report of The Royal Commission into Institutional Responses to Child Sexual Abuse contained a substantial discussion of complaint and monitoring processes in Volume 7 ('Improving Institutional Responding and Reporting'). While the Royal Commission had a different focus from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, there are overlaps in the focus on violence and dedicated discussion of the experiences of children with disability. Relevant to this report, the Royal Commission into Institutional Responses to Child Sexual Abuse examined the requirements for complaint mechanisms that provide a pathway for reporting violence. This section provides an overview of some of these observations and findings made by the Royal Commission into Institutional Responses to Child Sexual Abuse.

1.5.1 Definition of Complaint

The Royal Commission into Institutional Responses to Child Sexual Abuse's focus on complaints mechanisms examined their efficacy for reporting violence against children. The Royal Commission into Institutional Responses to Child Sexual Abuse provided the following definition of a complaint:

A 'complaint' includes any allegations, suspicions, concerns or reports of a breach of the institution's code of conduct. It also includes disclosures made to an institution that may be about or relate to child sexual abuse in an institutional context. A complaint may be made about an adult allegedly perpetrating child sexual abuse or about a child exhibiting harmful sexual behaviours. It can be received in writing, verbally, or be the result of other observations, including behavioural indicators. We recognise the term complaint is used differently by some institutions. For example, instead of complaint, institutions have encouraged people to 'speak up' about their concerns, referred to both 'complaints or concerns', or used the term 'allegation'.¹⁰²

There are two important features of the above definition. First, in defining a complaint mechanism, the Royal Commission into Institutional Responses to Child Sexual Abuse differentiated between the institutional role of complaints in raising concerns about an institution's own practices and 'code of conduct', and the function of a complaint mechanism in reporting violence. It is recognised that an institution will maintain mechanisms that allow those who engage with it to raise concerns and grievances which in the first instance relate to the conduct of the institution: for example, where staff and practices fail to correspond with organisational policies and procedures. But the Royal Commission into Institutional Responses to Child Sexual Abuse also recognised that a complaint mechanism may be a pathway for reporting instances of violence and abuse, and that as a result these mechanisms may also be used as a procedure for alerting the institution to unlawful activity.

However, these observations by the Royal Commission into Institutional Responses to Child Sexual Abuse do not mean that existing complaint mechanisms are equipped for responding to child abuse. Indeed, the Royal Commission into Institutional Responses to Child Sexual Abuse makes note of the fact that many complaint mechanisms are not fit for purpose in reporting violence against children:

Federal, state and territory ombudsmen publish guidelines, manuals and fact sheets that outline the principles of good complaint handling and investigation frameworks. The principles reflect those of the Australian Standard, and are general complaint handling and investigation frameworks that do not have child sexual abuse as a main focus. Most principles are aimed at responding to complaints made by adults. Although ombudsmen deal primarily with complaints against government agencies, their guidelines are useful for non-government institutions, including those providing services to children.¹⁰³

This quote highlights the distinction drawn between a complaint mechanism intended to respond to breaches of an organisation's code of conduct, and one that is designed as a reporting mechanism for violence, abuse, neglect and exploitation: there is no reason to assume that a complaint mechanism has the ability to serve both purposes.

Second, the other important feature of the definition of 'complaint' provided by the Royal Commission into Institutional Responses to Child Sexual Abuse is that it offers a wide ranging and elastic understanding of the form a 'complaint' can take, which ranges from a formal written report to the implied duty to report behaviours that may indicate child abuse. In the Final Report, the Royal Commission provides further clarification of these pathways:

- listening to and taking seriously any child or adult survivor who indicates possible child sexual abuse
- listening to and taking seriously a peer of the victim who indicates possible child sexual abuse of the victim
- noticing any behaviour by staff members, volunteers, visitors or carers that constitutes grooming, child sexual abuse or a possible breach of an institution's code of conduct
- noticing changes in a child's behaviour and/or
- receiving a written complaint from the victim or another party.¹⁰⁴

It is instructive that a formal written complaint was regarded by the Royal Commission into Institutional Responses to Child Sexual Abuse as being only one (and the last listed) of many pathways by which a complaint might be registered. Importantly, many of the above pathways require the development of a strong internalised 'culture' around recognising potential complaints and facilitating pathways.¹⁰⁵

1.5.2 Total Institutions

The Royal Commission into Institutional Responses to Child Sexual Abuse drew heavily on research which highlighted the impact of institutions upon internal cultures, leaning on the perspective of sociologist Erving Goffman on so-called 'total Institutions'.¹⁰⁶ A total institution is described as 'a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.'¹⁰⁷ How a 'total institution' is defined is open to debate. However, it is instructive that the Royal Commission into Institutional Responses to Child Sexual Abuse provided the following expansive understanding:

Examples of total institutions identified in the research literature, some of which are institution types we heard about during the course of the Royal Commission, include boarding schools, immigration detention centres, military academies, youth detention facilities and children's residential institutions. However, the degree to which institutions display the characteristics of a total institution can vary. Commissioned research suggests that these institutions tend to conduct their operations in secret. The consequence of total institution cultures is that they can impede detection of and undermine appropriate responses to child sexual abuse when it occurs.¹⁰⁸

The impact of an institutional environment upon the internal culture of complaint making was regarded by the Royal Commission into Institutional Responses to Child Sexual Abuse as significant. This included internalised cultures of inaction, which prevented complaints leading to remedy or change.¹⁰⁹ Cultures of inaction are in part reproduced by leadership and organisational imperatives to avoid the ‘bad press’ associated with serious complaints:

it is likely that leaders are immersed in cultures that prioritise protecting the organisation’s public image and reducing its exposure to legal challenges, even at the expense of protecting the interests of workers, clients and other organisational stakeholders. Thus, while it may seem reprehensible, it should come as no surprise that organisational leaders tend to manage the response to disclosures of child sexual abuse in such a way as to minimise scandal and adverse legal consequences, even though this often results in poor responses to the abuse.¹¹⁰

Internalised cultures which prevent complaint making also potentially create the circumstances of retribution for those individuals who do complain. Indeed, the Royal Commission into Institutional Responses to Child Sexual Abuse noted that this was a problem faced by people with disability, for whom the potential need to withdraw from a service after making a complaint (in order to avoid retribution) was a reason that many people with disability did not complain in the first place.¹¹¹

1.5.3 Obligatory Reporting

The Royal Commission into Institutional Responses to Child Sexual Abuse did not limit their analysis to formal complaint mechanisms. The Royal Commission into Institutional Responses to Child Sexual Abuse noted that the complaints mechanism regime is supplemented by obligatory reporting requirements where a ‘person ... is required by either state or territory legislation to report known and suspected cases of child abuse and neglect to a nominated government department or agency (typically the child protection authority).’¹¹² Obligatory reporting regimes may also extend to reportable conduct schemes which obligate organisations to report to an oversight body.¹¹³ In some cases these are supplemented by legal duties where individuals must report violence, with some jurisdictions applying criminal penalties for failure to report.¹¹⁴ Finally, obligatory reporting regimes might work alongside ‘whistle-blower’ legislation that protects individuals who make complaints from retribution.¹¹⁵

While obligatory reporting schemes and whistle-blower legislation are beyond the brief of this report, they are potentially important complementary features of a complaint mechanism landscape in response to violence, abuse, neglect and exploitation. As such obligatory reporting schemes and whistle-blower legislation are worthy of careful investigation.

1.5.4 Redress Schemes

The other avenue for complaints noted by the Royal Commission into Institutional Responses to Child Sexual Abuse were redress schemes. A redress scheme acknowledges a history of institutional violence and the likelihood that many individuals may have experienced violence within these historical contexts. The redress scheme provides a way for individuals to report a prior incidence of violence and receive a response, including a potential redress payment. It is important to note that a redress scheme is not the same as a complaint mechanism, something the Royal Commission into Institutional Responses to Child Sexual Abuse made clear in its Final Report:

While processes for complaint handling and for providing redress may have similarities, they have different purposes. The purpose of a complaint handling process is to investigate a complaint to determine whether an incident has occurred, in order to make decisions about what protective and/or disciplinary measures need to be put in place, and what the institution can do to better prevent similar incidents from occurring in the future. The purpose of a redress process is to determine whether a person is eligible to receive redress for the abuse they experienced, including measures such as a direct personal response (that is, an apology) from the institution, access to therapeutic counselling and psychological care, and monetary payments.¹¹⁶

However, and relevant to historical allegations of child sexual abuse, a redress scheme is one pathway by which violence can be reported, potentially leading to a formal complaint against the institution.¹¹⁷ As such, redress schemes were effectively understood by the Royal Commission into Institutional Responses to Child Sexual Abuse as part of the complaints landscape.¹¹⁸

Redress schemes have a number of features that differ from both traditional complaint mechanisms and the criminal justice system. This includes the capacity to receive claims that are historical in nature, and the capacity for complaints to receive recognition and redress payments without either formal substantiation of allegation or without trial through the adversarial system (a redress scheme potentially grants redress on the basis of 'reasonable likelihood' and does not necessarily seek to make a finding on whether a potential perpetrator was responsible for abuse).¹¹⁹

1.5.5 Historical Abuse

A strong feature of the discussion of complaints mechanisms by the Royal Commission into Institutional Responses to Child Sexual Abuse was the capacity to respond to historical allegations of abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse defined historical abuse as follows:

Historical abuse relates to child sexual abuse that is not current or recent – that is, where a person who was sexually abused as a child is now an adult. In our case studies and private sessions, many survivors told us about incidents of sexual

abuse that occurred many years ago. We refer to these individuals as adult survivors. A complaint of historical abuse may be made to an institution by an adult survivor or a third party, such as a family member.¹²⁰

This focus on historical abuse relates to the typically long periods of time that victim-survivors may take before disclosing abuse.¹²¹ Volume 4 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Final Report revealed that victim-survivors will typically take many years before they disclose historical abuse:

Many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with us during a private session took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose.¹²²

The Royal Commission into Institutional Responses to Child Sexual Abuse noted that there were multiple barriers to disclosure including feelings of shame, actions and threats from perpetrators and institutional cultures, and noted that 'whether, when, how and to whom a victim discloses is influenced by their age and developmental stage, disability, gender and cultural or linguistic background.'¹²³ Further, children with disability may experience additional barriers to disclosure, including a lack of communication support, non-verbal or behavioural indicators of abuse not being recognised by adults, fear of losing crucial support services, and social myths of children with disability as unable to reliably recount their experiences.¹²⁴

The reality of the length of time involved in reporting some violence, abuse, neglect and exploitation has implications for the design of complaint mechanisms, which must be able to respond meaningfully to historical examples of violence. As the Royal Commission into Institutional Responses to Child Sexual Abuse discussed, historical allegations of child abuse have continuing relevance, as perpetrators may still be alive and employed within institutional contexts, and the complaint itself is of relevance for the institution in its design of complaint mechanisms and safeguards.¹²⁵ Indeed the Royal Commission into Institutional Responses to Child Sexual Abuse observed that some adults who experienced abuse within an institution may still be interacting with this institution, a scenario relevant to at least some adults with disability:

Complaints of historical abuse may involve circumstances where the complainant is still receiving services from the institution where they were sexually abused as a child. The risk of the complainant facing repercussions for this type of complaint is higher than for other historical abuse complaints. Additional safeguards are needed to protect the complainant when responding to this type of complaint. For example, an adult with disability may still be within, or receiving services from, the same institution and may require an independent support person throughout the complaint handling process.¹²⁶

To an extent, these realities highlight why redress schemes (discussed above) are important features in a complaint landscape. This is because redress schemes create the opportunity

for justice without necessarily identifying the complainant. The emphasis on anonymity also reinforces the importance for complaint mechanisms in enabling anonymous complaints.¹²⁷

Due to the largescale nature of disability institutionalisation in the past, and the pervasiveness of violence within these settings, it is highly likely that there are numerous potential complainants who could come forward to report historical violence. In the 19th and 20th centuries it was common for children with disability to be removed from their families and placed in large institutions. People with disability in these settings were subject to inadequate nutrition, healthcare, education and sexual and physical violence.¹²⁸ The isolated nature of these institutions meant that there was little opportunity for reprieve from violence, and that these incidences were rarely reported within the broader community at the time they occurred.

1.5.6 Unsubstantiated Complaints

The Royal Commission into Institutional Responses to Child Sexual Abuse discussed the problems around substantiation of allegations of child abuse, and their implication for the design of complaint mechanisms.¹²⁹ The Royal Commission into Institutional Responses to Child Sexual Abuse noted that there were genuine reasons why complaints could not be substantiated, including that ‘child sexual abuse is generally committed by the perpetrator when they are alone with the victim.’¹³⁰ However, for the complaint mechanism, the ability to substantiate a claim of violence should not be connected to whether or not the claim is granted legitimacy: that ‘a complaint remains unsubstantiated does not mean that the alleged abuse did not occur.’¹³¹ Recognition that the victim-survivor may have experienced violence means that complaint mechanisms continue to have a duty to support complainants, even if complaints have not been substantiated:

a significant proportion of child sexual abuse complaints remain unsubstantiated because evidence is absent, the complaint cannot be proved, or the complainant withdraws the complaint. A complaint being unsubstantiated for these reasons does not mean that the abuse did not occur. Accordingly, good practice is that institutions should offer complainants and other affected parties advocacy, support and therapeutic treatment even where the complaint cannot be substantiated.¹³²

To an extent, these complexities reveal the different considerations that should be taken into account in the design of complaint mechanisms that respond to institutional and historic violence, where non substantiation may be a realistic outcome.

1.5.7 Recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission into Institutional Responses to Child Sexual Abuse made a number of recommendations that are useful for the design of a complaint mechanism that is intended as a reporting pathway for violence, abuse, neglect and exploitation. One of the key

recommendations related to accessibility, and ensuring transparency of complaint mechanisms from the service upwards:

Mechanisms to make a complaint can be internal and/or external to the institution. Institutions are to provide information about a range of complaint options, and ensure that all mechanisms are independent and accountable. An institution's complaint handling policy should specify how a complaint can be made within the institution. All employees should know, or be provided with, the name and contact details of the institution's complaints officer, and should understand that they must refer a complaint as a matter of urgency. Staff should also know where they can confidently and confidentially lodge a complaint or note a concern about a fellow staff member. Children, parents and guardians should also know how to contact the complaints officer. There should be avenues for making a complaint within an organisation that are secure and anonymous. For example, during our consultations at youth detention facilities, we heard that children can place a written complaint of any type into secure boxes that are prominent in the residential areas. Children were aware of this mechanism and many told us they used it. A complaint handling policy should also explain all complaint pathways external to the institution, including to an independent body such as an ombudsman, which can be accessed when an institution responds inadequately. The policy should explain how any available technology, such as a helpline or website, will be used to meet any special needs that complainants might have.¹³³

The Royal Commission into Institutional Responses to Child Sexual Abuse also paid attention to providing support for people with disability to access complaint mechanisms. The Royal Commission into Institutional Responses to Child Sexual Abuse stressed the need to have supports available for people with disability, access to translating, and the capability to receive complaints in a variety of formats, including through non-verbal means.¹³⁴

As described above, while the Royal Commission into Institutional Responses to Child Sexual Abuse saw a place for service-level complaint mechanisms, it also stressed the need for an independent authority to have oversight and capacity to investigate complaints because of the risk of conflict of interest:

History has shown that there are problems in leaving internal investigations to the employing agency. They suffer from conflicting staff loyalties, they discourage internal informants, they run into problems of institutional bias and self-protection, and they are not perceived as open, transparent or impartial. For this reason, the Commission considers it desirable in any new system to make provision for independent investigation of this kind of allegation.¹³⁵

The Royal Commission into Institutional Responses to Child Sexual Abuse emphasised that it was not only independence that was important, but also the capacity to make binding decisions, including against agencies:

the capacity of oversight bodies to issue binding orders in some circumstances would enable them to enforce the scheme where an agency refuses to improve its complaint

handling practices or otherwise comply with recommendations. More broadly, the capacity for binding orders may also serve as a useful motivation for agency compliance, as well as being a deterrent to bad practice.¹³⁶

1.5.8 Implications for Complaints Mechanisms Responding to Violence against People with Disability

The investigation of complaint mechanisms by the Royal Commission into Institutional Responses to Child Sexual Abuse has a number of implications for the design of complaint mechanisms responding to violence, abuse, neglect and exploitation experienced by people with disability. This includes:

- A complaint mechanism is often intended to address breaches of an organisation's code of conduct. In many cases complaint mechanisms are not equipped to respond to violence, abuse, neglect and exploitation, indeed their design is potentially at odds with the requirements of a reporting pathway on violence.
- Institutional environments will actively work against and prevent complaint making due to the internal cultures of these organisations. In some respects, the high stakes nature of complaints relating to violence, abuse, neglect and exploitation will create additional incentives for these institutions to prevent and stifle complaint making. This certainly has implications for the use of internal organisational complaint mechanisms.
- Complaint mechanisms should be understood in tandem with other tools for responding to violence, including obligatory reporting and whistle-blower pathways, as well as redress schemes.

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- The nature of complaints relating to violence, abuse, neglect and exploitation, and their interaction with histories of institutionalisation, suggests that many complaints made by people with disability will be historical in nature. This, and the barriers faced by people with disability, and in particular children with disability, to disclosing violence, suggests that time limits relating to complaints regarding violence, abuse, neglect and exploitation are inappropriate.
 - Given the constraints on the ability of victim-survivors of violence, abuse, neglect and exploitation to substantiate their claims, there is strong reason to design complaint mechanisms in ways which recognise that those who make claims that cannot be substantiated are likely to still be victim-survivors of violence, and are owed just outcomes.
 - The observations above on the need for alternative complaint pathways, historical experiences of violence, and the likely prevalence of cases of violence that cannot be substantiated, suggests that a redress scheme is one potential important complaint pathway for people with disability who have experienced violence, abuse, neglect and exploitation.
 - Independent authorities are best placed to investigate violence, abuse, neglect and exploitation; service level compliant mechanisms lack perceived independence.
 - Independent complaint mechanisms must have binding powers to compel agencies to make change. This is an important pathway for systemic reform.

1.6 Summary

This Chapter began by introducing a technical definition of ‘complaint mechanism’ and provided some examples of international and Australian good practice in complaint mechanisms. The Chapter then turned to identify a series of tensions and complexities in using complaint mechanisms as a pathway to justice specifically in response to violence, abuse, neglect, and exploitation. We have observed the tension between an understanding of *complaint* as a communication of the experience of injustice on the one hand, and on the other hand the positioning of *complainants* as a problem and the act of *complaining* as trivial and annoying, which undermines the injuries and the voice of the person complaining. We have explored some of the complexities in how we understand violence, abuse, neglect and exploitation, and the overlap with institutional practice and authorisation by law. We also observed the risks of using complaint mechanisms in institutional contexts. We noted the difficulties and limitations of using complaint mechanisms, rather than civil and criminal justice systems. These observations suggest that irrespective of international and Australian guidance aspiring to fairness, accessibility, safety and equity in resolving complaints, there are deeper questions requiring exploration. For example, what is the capacity for complaint mechanisms to deliver just processes and just outcomes, and to ultimately disrupt the structural dynamics that sustain violence, abuse, neglect, and exploitation against people with disability? Who has the power to complain, and what do complaint processes do to complainants? How do complaint mechanisms work as a reporting pathway to violence? And, most importantly, how do people with disability experience complaint mechanisms? We now turn to explore these considerations.

Chapter 2: Human Rights and Violence Prevention

There are a number of principles and norms that might be utilised to shape the design of complaint mechanisms in relation to violence, abuse, neglect and exploitation. Concepts of procedural justice and justice in outcome are important, and will be examined in Chapter 3. In this Chapter, we focus on human rights norms and law, as well as on violence prevention. Both areas are interconnected, at least in so far that contemporary human rights principles which apply to people with disability have a strong emphasis on violence prevention. As shall be discussed in the Chapter, this means not only individual protection from interpersonal violence, but also the challenge of dealing with protection from institutional and legally authorised forms of violence.

2.1 Human rights

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) and other international human rights instruments have implications for the design of a complaint mechanism. These instruments help shape a complaint mechanism at two levels: the overarching framing of the goals, scope and approach of a complaint mechanism, and the process and outcomes of a complaint mechanism.

In this section we identify aspects of the CRPD and other relevant international human rights instruments that are particularly relevant to framing the goals, scope and approach of a complaint mechanism. Identification of these aspects helps to ensure a complaint mechanism is not designed in isolation from broader human rights aspirations, and is understood in the context of a wider range of interconnected strategies and systems for addressing violence, abuse, neglect and exploitation. Addressing this wider range of strategies and systems is particularly important considering the focus in the Terms of Reference of the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability on a broad spectrum of dimensions relevant to addressing violence, abuse, neglect, and exploitation (prevention, protection, reporting, investigation, and responses), and when considering the Disability Royal Commission's broader aim of 'promoting] a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation'.¹³⁷

2.1.1 Equality and non-discrimination

The right to equality and non-discrimination is threaded throughout the CRPD. It is a substantive right in Article 5. Article 5(1) of the CRPD, which provides that 'all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law'. Article 5(2) of the CRPD calls on States Parties to 'prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds'. 'Discrimination on the basis of disability' is defined as: 'any distinction, exclusion or restriction on the basis of disability which has the

purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’¹³⁸ ‘Discrimination on all grounds’ is explained as:

... all possible grounds of discrimination and their intersections must be taken into account. Possible grounds include but are not limited to: disability; health status; genetic or other predisposition towards illness; race; colour; descent; sex; pregnancy and maternity/paternity; civil; family or carer status; gender expression; sex; language; religion; political or other opinion; national, ethnic, indigenous or social origin; migrant, refugee or asylum status; belonging to a national minority; economic or property status; birth; and age, or a combination of any of those grounds or characteristics associated with any of those grounds.¹³⁹

The above grounds for discrimination overlap with the non-discrimination provisions in other core treaties, as well as the rights implied by Articles 1 and 2 of the Universal Declaration of Human Rights. Article 26 of the International Covenant on Civil and Political Rights provides that: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.’ The right to equality and non-discrimination is also recognised in other international human rights instruments in relation to other marginalised groups such as women,¹⁴⁰ children,¹⁴¹ and racial minorities.¹⁴²

Equality and non-discrimination are included in the CRPD’s general principles: ‘non-discrimination’, ‘full and effective participation and inclusion in society’, ‘equality of opportunity’, and ‘equality between men and women’. Article 6 of the CRPD relates to equality and non-discrimination for women and girls with disability: ‘States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.’ Article 8 of the CRPD concerns awareness raising, in part towards achieving equality of people with disability. Article 8.1 provides that ‘States Parties undertake to adopt immediate, effective and appropriate measures’ to ‘foster respect for the rights and dignity of persons with disabilities’, ‘combat stereotypes, prejudices and harmful practices relating to persons with disabilities’, and ‘promote awareness of the capabilities and contributions of persons with disabilities.’ Equality and non-discrimination are threaded through other substantive rights in the CRPD.¹⁴³ The United Nations Committee on the Rights of Persons with Disabilities refers to the CRPD’s approach to equality and non-discrimination as an ‘inclusive equality’ approach. This approach moves beyond formal legal equality to include fair redistributive, recognition, participative and accommodating dimensions.¹⁴⁴ The history of disability discrimination and inequality both in Australia and internationally has been outlined in the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation*.¹⁴⁵

It follows from the right to equality and non-discrimination that a complaint mechanism should be designed in a way that ensures people with disability are not disadvantaged in their access, outcomes and experiences within the complaint mechanism itself, as compared to people without disability. Note that Article 5(3) requires States Parties to 'take all appropriate steps to ensure that reasonable accommodation is provided'.

Mechanisms should be attentive to discrimination on the basis of disability, and discrimination which is on other grounds or is intersectional. Additionally, the complaint mechanism's processes and outcomes should be directed towards responding to violence, abuse, neglect, and exploitation in ways that will contribute to realising equality and non-discrimination for people with disability in the broader sense of equality as having redistributive, recognition, participative and accommodating dimensions. In part, this move towards realising equality and non-discrimination might be facilitated through designing a complaint mechanism with processes and outcomes that can recognise and address inequality experienced by people with disability on an individual level, where inequality is the driver for or consequence of an individual's specific experiences of violence, abuse, neglect and exploitation. Additionally, at a structural level, realising equality through a complaint mechanism could involve designing into such a mechanism ways to address material, legal and cultural dynamics of inequality and discrimination that drive or are a consequence of violence, abuse, neglect, and exploitation more broadly (e.g., the option of group complaints, a formal connection between individual complaints and structural reform, outcomes that are focused on addressing ableism).

Further, meeting obligations in relation to equality and non-discrimination also means that the availability of a complaint mechanism to respond to violence, abuse, neglect, and exploitation should not itself give rise to inequality in how governments, service providers and the community respond to violence, abuse, neglect, and exploitation specifically in relation to people with disability. An example of such potential inequality includes if the complaint mechanism becomes a basis by which other pathways to justice for people without disability are effectively blocked for people with disability. Indeed, General Comment No. 6 on equality and non-discrimination states that 'State Parties must eliminate barriers to gaining access to equal protections of the law and the benefits of equal access to the law and justice to assert rights.'¹⁴⁶

The significance of awareness raising (Article 8 CRPD) to the realisation of disability rights is also relevant to the design of complaint mechanisms insofar as a complaint mechanism should be supported by training, education and resources directed towards people with disability about disability rights, what constitutes violence, abuse, neglect, and exploitation, and pathways to justice (including in relation to a complaint mechanism). This training, education and resources should be made freely and widely available in closed and institutional settings and in society more broadly. Those working in and managing services and systems in which violence, abuse, neglect, and exploitation commonly occurs should also receive education on disability rights, what constitutes violence, abuse, neglect, and exploitation, and pathways to justice (including in relation to a complaint mechanism). Where developed by specific services or systems, such training, education and resources should be victim-survivor-centred and not be situated in a risk management or profit/reputation centred paradigm that is focused on the interests of services and systems.

The general principles of the CRPD found in Article 3 refer to ‘respect for inherent dignity’ and ‘respect for difference and acceptance of persons with disabilities as part of human diversity and humanity’. These principles support the framing of a complaint mechanism that will treat people with disability with respect and not result in their dehumanisation or degradation.

2.1.2 Equal recognition before the law and access to justice

Article 13 of the CRPD provides for equal access to justice for people with disability. Article 13.1 provides that States Parties ‘shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages’. In emphasising equality specifically *within* ‘legal proceedings’ (a term which typically refers to judicial process) and noting that a complaint mechanism is an *administrative and legislative* mechanism, these CRPD articles signal that a complaint mechanism should be but one pathway to addressing violence, abuse, neglect, and exploitation for people with disability, and should not be intended as replacing or shoring up deficiencies in the justice system.

The International Principles and Guidelines on Access to Justice for Persons with Disabilities provide guidance on Article 13. The principles are:

- Principle 1: All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.
- Principle 2: Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
- Principle 3: Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
- Principle 4: Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.
- Principle 5: Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
- Principle 6: Persons with disabilities have the right to free or affordable legal assistance.
- Principle 7: Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.
- Principle 8: Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.
- Principle 9: Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

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- Principle 10: All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.¹⁴⁷

Principle 8 on complaints is particularly relevant for present purposes. The guidelines on Principle 8 provide in part:

8.1 States must have accessible, easy-to-use, transparent and effective mechanisms for individuals to report complaints about human rights violations and crimes. Complaint adjudicators and tribunals must provide remedies that are individually tailored and may include redress and reparation.

8.2 Accordingly, States shall:

Complaint mechanisms

- (a) Establish complaint mechanisms – for instance, national human rights institutions, tribunals and administrative bodies – with the power to hear complaints, including complaints about disability-based discrimination, from persons with disabilities and others and to order remedies;
- (b) Ensure that persons with disabilities may file criminal complaints on an equal basis with others;
- (c) Ensure that civil and criminal complaint mechanisms are accessible, using, for example, hotlines and e-service complaint methods;
- (d) Provide voluntary alternative dispute resolution mechanisms, such as conciliation, mediation, arbitration and restorative justice;
- (e) Ensure that complaint mechanisms and investigations are gender sensitive to guarantee that victims of gender-based violence are able and willing to come forward safely;
- (f) Ensure that special protection units (e.g. those dealing with gender-based violence, hate crime, children and trafficking in persons) are accessible to persons with disabilities and responsive to their needs;
- (g) Ensure that mechanisms, when appropriate and desired, provide for anonymity and confidentiality;

Responding to grave, systematic, group or large-scale violations

- (h) Ensure that complaint systems and the justice system are capable of detecting and responding to grave, systematic, group and large-scale violations

of human rights through, for instance, class actions, *acciones populares*, public inquiries and prosecutions, following a complaint or on the initiative of the system itself;

Investigations

- (i) Ensure that all investigators, including law enforcement officials, are knowledgeable about the rights of persons with disabilities and are alert, throughout the course of investigations, to the potential need for procedural accommodations when investigations involve persons with disabilities;
- (j) Ensure that, when appropriate, an intermediary or facilitator or other appropriate third party is enlisted to assist in the investigation process;
- (k) Ensure that, when working with victims with disabilities, law enforcement officials assess the risk of the former being subjected to further offences, and whether any voluntary protective measures (such as a safe haven) are needed¹⁴⁸

In his research report to the Disability Royal Commission, Ron McCallum outlines Australia's obligations under Article 13 of the CRPD.¹⁴⁹ These include assisting people with disability to exercise their full legal capacity, access to court rooms and information, access to court room procedure, including reasonable adjustments, jury composition and training for police, prison officers, lawyers and court staff.¹⁵⁰ Training for those involved in the administration of justice was also supported by Special Rapporteur, Catalina Devandas-Aguilar and by the CRPD General Comment on Equality and Non-Discrimination.¹⁵¹

2.1.3 Multi-faceted approach to violence, abuse, neglect, and exploitation

As we shall discuss below in Section 2.3, violence prevention is an important principle in the design goals of a complaint mechanism intended to respond to violence, abuse, neglect and exploitation. The CRPD contains strong provisions around violence, which reflect the importance of this issue within the schema of contemporary disability rights.

The CRPD approaches violence in a holistic way, encompassing a wide range of interventions and a broad range of actions including response, as well as prevention and protection. Article 16 of the CRPD concerns freedom from exploitation, violence, and abuse. Article 16 of the CRPD requires States Parties to 'take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects', 'prevent all forms of exploitation, violence and abuse', 'promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse', and 'put in place effective legislation and

policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.’

Violence is broadly understood in the context of the CRPD. The United Nations Committee on the Rights of Persons with Disabilities, writing in the context of women and girls with disability, has defined violence as being ‘interpersonal’ and ‘institutional and/or structural violence.’ The latter is defined as ‘any form of structural inequality or institutional discrimination that keeps a woman in a subordinate position, whether physically or ideologically, compared with other people in her family, household or community’.¹⁵² Note this broad understanding of violence is in line with the consideration of violence we outlined for this report in Chapter 1.

This broader approach to violence is supported by other articles of the CRPD which provide for rights to protection from non-consensual and coercive interventions on an equal basis to people without disability. Article 17 provides for ‘a right to respect for his or her physical and mental integrity on an equal basis with others’. Article 14 of the CRPD provides for the right to liberty and security of the person (and similarly Article 9 of the International Covenant on Civil and Political Rights (ICCPR) provides that ‘Everyone has the right to liberty and security of person’). Article 17 of the CRPD requires that States Parties ensure that people with disabilities, on an equal basis with others ‘[e]njoy the right to liberty and security of person’ and ‘[a]re not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty’. Deprivation of liberty occurs when individuals ‘are confined to a restricted space or placed in an institution or setting, not free to leave, and without free and informed consent’.¹⁵³ Deprivation of liberty is unlawful where there is no legal order in place permitting an individual’s confinement and it is arbitrary if confinement occurs on the basis of disability (even if pursuant to law).¹⁵⁴

The Special Rapporteur on the Rights of Persons with Disabilities has stated that ‘detention of persons with disabilities based on ‘danger to self or others’, ‘need of care’ or ‘medical necessity’ is unlawful and arbitrary’.¹⁵⁵ The impact of these articles is that illegality under domestic law is not the defining feature of violence against people with disability and that violence also extends to non-consensual and coercive interventions that can be lawfully authorised on the basis of disability. This definition of violence supports the design of a complaint mechanism that not only responds to violence in its conventional sense of interpersonal unlawful violence, but can also respond to violence that is structural and/or is legal. Note that in her report, the Special Rapporteur found that people with psychosocial disability were more likely to be victim-survivors of violence.¹⁵⁶

In a similar vein, Article 27 of the CRPD provides for rights related to employment including being protected from exploitation in the course of employment and work. Article 27.1 provides that: ‘States parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities’. In specific relation to exploitation, violence, and abuse, States

parties are required to ensure the right to safe working conditions including ‘protection from harassment’ (Article 27.1(b)) and to ‘ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour’ (Article 27(2)). Article 8 of the ICCPR also provides that no one shall be held in slavery or servitude, nor required to perform forced or compulsory labour. Article 27 indicates that a complaint mechanism should take a broad approach to ‘exploitation’ as including that which occurs in the context of disability employment where people with disability experience legally authorised discrimination in terms of their work conditions and rate of pay, irrespective of the current legality of this employment. The fact that Australia permits segregated workplaces in the form of ADEs for less than the minimum wage is at odds with Article 27. Further, in open employment, the Wage Subsidy Scheme, where wages are calculated based on the employee’s productivity, as a percentage of the minimum wage, also contravenes Article 27.¹⁵⁷

Obligations to freedom from neglect are also inherent to the CRPD, with strong obligations for governments and societies to support environments that allow full flourishing and health for people with disability. Article 10 provides for the right to life: ‘States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others’. Article 25 provides for the right to health: ‘States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.’ These articles indicate that a complaint mechanism should have within its scope forms of neglect that are associated with the discriminatory failure to provide the means for health or life. Note that in 2019 the United Nations Committee on the Rights of Persons with Disabilities were concerned about Australia’s performance in relation to Article 25 in the following aspect, noting ‘significantly poorer health and access to information, and to adequate, affordable, and accessible health services and equipment for persons with disabilities...’¹⁵⁸

The CRPD imposes strong obligations to protect people with disability from violence. Article 16.1 refers to ‘protecting’ people with disability from exploitation, violence, and abuse. Protection from violence is also included in other international instruments. For example, Article 19 of the Convention of the Rights of the Child (CRC) obliges States Parties to:

take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹⁵⁹

This obligation corresponds with Article 22 of UN Declaration on the Rights of Indigenous Peoples which states that ‘States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.’¹⁶⁰

Importantly, the ‘protection’ against violence contained within CRPD and other instruments must operate in ways that maintain the rights of the complainant, and, in certainly, in the case

of CRPD, do not invite paternalism. The UN Special Rapporteur on the Rights of Persons with Disabilities has noted in the context of armed conflict, “protection” in the [CRPD] is part of a broader agenda of personhood, inclusion and participation: a vision of active human agency’.¹⁶¹ That is, protection must not slip into paternalism, as he noted:

Protection, as such, has not gone away. It is embraced by the Convention (see art. 16, on freedom from exploitation, violence and abuse). However, it is now shorn of its paternalistic roots. In a way, it is acknowledged in the Convention that there is no such thing as an inherently vulnerable person, but only persons with disabilities placed in vulnerable situations. The need to deal with this imposed vulnerability is therefore highlighted. ... An end to impunity is also demanded in article 16. Accordingly, the historic invisibility of persons with disabilities in law enforcement is acknowledged and its reversal sought.

The Convention therefore does not eliminate the need for protection, but places it on fundamentally different predicates. This has clear implications for laws and policies along the peace continuum that seem to overemphasize the medical condition of disability and downplay the moral agency of persons with disabilities, as well as the broader skein of rights into which protection should be understood.¹⁶²

The UN Special Rapporteur’s observations suggest that the role of a complaint mechanism in protecting people with disability from violence, abuse, neglect, and exploitation must be directed towards supporting their inclusion, personhood, participation and agency, and not involve actions which are themselves dehumanising, segregating, exclusionary, non-consensual, coercive, discriminatory, or which otherwise undermine the autonomy and humanity of people with disability.

Article 16.2 CRPD relates to ‘prevention’ of exploitation, violence, and abuse, and supporting victim-survivors of exploitation, violence, and abuse ‘including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse’. Also in support of prevention of exploitation, violence, and abuse, Article 16.3 provides that ‘States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities’. Thus, a complaint mechanism should not only be reactive and retrospective in contributing to responding to violence once it is perpetrated (we discuss this aspect of Article 16 in Section 2.3 below), but also be designed in a way that is preventive and prospective in contributing to stopping perpetration of further violence. This future-orientation of a complaint mechanism confirms the point made earlier in section 2.1.1 in relation to equality and non-discrimination about the importance of a complaint mechanism being designed to include structural outcomes that are directed towards changing laws and systems. Note that in 2019 the United Nations Committee on the Rights of Persons with Disabilities in its concluding observations recommended Australia ‘establish a national oversight, complaints and redress mechanism for all people with disability who have experienced violence, abuse, neglect and exploitation in all settings.’¹⁶³ It also recommended ensuring ‘gender and age sensitive services to address gender based violence.’¹⁶⁴

The CRPD also provides for freedom from torture. Article 15.1 provides that: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Pursuant to Article 15.2, 'States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment'. Torture is prohibited under international law, and as articulated in the ICCPR, no State can derogate from this absolute prohibition. The right to freedom from torture is recognised in a number of international human rights treaties. For example, Article 17 of the ICCPR provides in part that: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Pursuant to Article 37 of the United Nations Convention on the Rights of the Child (CRC), States Parties must ensure that: 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. The United Nations Committee on the Rights of Persons with Disabilities have previously found that there were violations against Articles 14 and 15 of the CRPD.¹⁶⁵ McCallum cites the decisions of the United Nations Committee on the Rights of Persons with Disabilities in *Noble v Australia*, *Leo v Australia*, and *Doolan v Australia* as instances where Australia has been found to have breached Article 15.¹⁶⁶

Torture prevention is most comprehensively addressed in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 2.1 of CAT requires States Parties to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. Importantly, pursuant to Article 2 of CAT, torture cannot be justified on the basis of a 'public emergency' or 'an order from a superior officer or a public authority'. 'Torture' is defined in Article 1 of CAT as an:

act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁶⁷

States Parties are required pursuant to Article 4 of CAT to criminalise torture and pursuant to Article 6 to take into custody perpetrators of torture. Article 10 of CAT provides that States Parties should educate and inform 'persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment' about the prohibition against torture and acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture 'when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

These articles suggest that torture should be within the scope of violence that a complaint mechanism is directed towards preventing. Further, the authorised nature of torture which is inherent to its definition underscores the importance of structural outcomes as part of the preventive function of a complaint mechanism. Note that CAT creates an obligation to ensure individuals can access reporting and justice pathways; Article 13 stipulates that States Parties

must 'ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.'

The Optional Protocol on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) provides for a 'system of regular visits ... to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment' (Article 1). In part, Article 1 involves each State Party setting up a national preventive mechanism (NPM) to visit places of detention. 'Place of detention' is defined in Article 4.1 of OPCAT as 'any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'. 'Deprivation of liberty' is defined in Article 2.1 of OPCAT as 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting in which that person is not permitted to leave at will by order of any judicial, administrative or other authority'. The NPM and its staff will be independent, as per Article 18. The NPM will at a minimum have the power, pursuant to Article 19, to 'regularly examine the treatment of the persons deprived of their liberty in places of detention ... with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment', 'make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment', and 'submit proposals and observations concerning existing or draft legislation'. To support their role, Article 20 provides that NPMs must be granted access to facilities and information and the opportunity to have private interviews with persons who are detained and witnesses.

OPCAT's approach to prevention of torture highlights the importance of independence in a complaint mechanism, and the possibility of an investigative and onsite role of a complaint mechanism in order to counter the concealed and authorised nature of violence perpetrated in institutional and closed settings. We shall discuss OPCAT and the role of the NPM in the complaints landscape in Chapter 4.

2.1.4 Independent living and community inclusion

Article 19 of the CRPD provides the right to live independently and fully participate in the community. 'Independent living' means that 'individuals with disabilities are provided with all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives'.¹⁶⁸ The United Nations Committee on the Rights of Persons with Disabilities has explained:

Neither large-scale institutions with more than a hundred residents nor smaller group homes with five to eight individuals, nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalisation. Although institutionalised settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants

with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment. Institutional settings may offer persons with disabilities a certain degree of choice and control; however, these choices are limited to specific areas of life and do not change the segregating character of institutions.¹⁶⁹

Being ‘included in the community’ has been explained as having access to support in order to ‘be fully included and participate in all spheres of social life’.¹⁷⁰ Note that Article 19 reworks the fundamental civil right to freedom from arbitrary detention, including within its articulation strong positive obligations for governments and societies to create the social and economic conditions where people with disability can enjoy independence on an equal basis with others.

The United Nations Committee on the Rights of Persons with Disabilities identifies a clear link between institutional settings *per se* and violence:

The cost of social exclusion is high as it perpetuates dependency and thus interference with individual freedoms. Social exclusion also engenders stigma, segregation and discrimination, which can lead to violence, exploitation and abuse in addition to negative stereotypes that feed into a cycle of marginalization of persons with disabilities.¹⁷¹

In its Thematic Study on the right of persons with disabilities to live independently and be included in the community, the United Nations High Commissioner of Human Rights similarly explains how institutionalisation *per se* creates the conditions for violence to flourish:

Cutting a person off from family, friends, education and employment through institutionalization results in social exclusion, creates barriers to inclusion in the community and reduces or denies the capacity of persons with disabilities to choose and plan their lives. That inhibits their autonomy by fostering dependency, preventing persons with disabilities from reaching their full potential in terms of independence and social participation. In addition, it has been widely documented that institutionalization may render persons vulnerable to violence and abuse, with women with disabilities particularly exposed to such risk. The risk of abuse is further exacerbated by the absence of public scrutiny, a lack of access to remedies, a fear of reporting violations, and disability-related communication barriers. Instances of abuse are in direct contradiction to the State’s obligation to protect persons with disabilities from all forms of exploitation, violence and abuse, including their gender-based aspects (art. 16).¹⁷²

Notably, McCallum observes Article 19 encompasses both civil and political rights and economic and cultural rights.¹⁷³ Therefore, this would encompass access to the justice system. Indeed, the

United Nations Committee on the Rights of Persons with Disabilities's General Comment on Article 19 notes of the relationship between Articles 19 and 13:

Access to justice as enshrined in article 13 is fundamental to ensure full enjoyment of the right to live independently in the community. States parties must ensure that all persons with disabilities have legal capacity and standing in courts. States parties must furthermore ensure that all decisions concerning living independently in the community can be appealed. Support to enable living independently in the community shall be enforceable as a right and an entitlement. To ensure equal and effective access to justice, substantial rights to legal aid, support and procedural and age-appropriate accommodations are essential.¹⁷⁴

The United Nations Human Rights Council, focusing on the circumstances of women and girls with disability, has recently noted that 'forced institutionalization is a form of violence that deprives women and girls of liberty on the basis of disability and that in such situations they face an increased risk of further violations and abuses, including physical, psychological and sexual and gender-based violence'.¹⁷⁵ It also recognised that deinstitutionalisation is central to violence prevention:

a proactive multisectoral approach, working with all relevant stakeholders, including organizations of and led by persons with disabilities, is required to prevent, respond to and eliminate violence against women and girls with disabilities, including lifelong education, training and media campaigns that promote respect, dignity, accountability, equality, non-discrimination, inclusion and accessibility, as well as full and effective participation in political and public life and economic empowerment, social protection measures aimed at reducing poverty and financial dependence on other persons and measures aimed at deinstitutionalization and promotion of independent living.¹⁷⁶

In recognising the discriminatory nature of institutionalisation, the United Nations Committee on the Rights of Persons with Disabilities has emphasised: 'Institutionalization is discriminatory as it demonstrates a failure to create support and services in the community for persons with disabilities, who are forced to relinquish their participation in community life to receive treatment'.¹⁷⁷

The United Nations Committee on the Rights of Persons with Disabilities has stated that States Parties to the CRPD 'must adopt a strategy and a concrete plan of action for deinstitutionalization. It should include the duty to implement structural reforms, to improve accessibility for persons with disabilities within the community and to raise awareness among all persons in society about inclusion of persons with disabilities within the community.' Moreover, deinstitutionalisation 'requires a systemic transformation, which includes the closure of institutions and the elimination of institutionalizing regulations as part of a comprehensive strategy, along with the establishment of a range of individualized support services'.¹⁷⁸

Article 19 has three key implications. First, institutionalisation should itself come within the scope of what a complaint mechanism should be able to respond to. Second, a complaint

mechanism should be able to take structural/collective complaints in order to respond to the structural nature of institutionalisation and segregation. Third, a complaint mechanism must be capable of supporting deinstitutionalisation and desegregation, and must form part of a broader policy agenda for violence prevention through deinstitutionalisation and desegregation.

2.2 Human rights and complaints process

In this section we discuss the CRPD and other relevant international human rights instruments as they pertain to the design of complaints process and outcomes.

2.2.1 Access to a victim-survivor focused complaint mechanism

Human rights to equal justice inform the design of complaint mechanisms, and are of high importance in relation to violence, abuse, neglect and exploitation.

CRPD provides substantial guidance in this regard. Article 13 of the CRPD provides for equal access to justice for people with disability. Article 16.5 of the CRPD concerns justice responses, providing that 'States Parties shall put in place effective legislation and policies ... to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted'. Article 16.4 of the CRPD focuses on victim support and provides that States Parties shall 'take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse'.

Of relevance, CAT also provides for access to processes in relation to torture and acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture 'when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'. Article 12 of CAT provides that: 'Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.' Article 13 of CAT provides a right to complain in response to torture:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

These articles support the availability of a complaint mechanism for people with disability that is focused on responding to violence, abuse, neglect, and exploitation from the perspective of those who have experienced it. These articles make clear that the primary concern in a complaint mechanism should be the victim-survivor, both in terms of their safety within the

justice process itself, and in prioritising their psychosocial and physical needs stemming from their experiences. This is in contrast to a complaint mechanism that is focused on the interests of services or systems in which violence, abuse, neglect, and exploitation is perpetrated.

2.2.2 Accessible and inclusive complaint mechanisms

Accessibility and inclusion are of importance for ensuring equality before the law.

Article 12 of the CRPD provides for the right to equal recognition before the law. It provides that States Parties: ‘reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law’; ‘shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life’; ‘shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity’; and ‘shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.’ Note that these provisions echo and reinforce the rights outlined in Article 16 of the ICCPR provides that: ‘Everyone shall have the right to recognition everywhere as a person before the law’.

Underpinning Article 12 is the notion of ‘universal legal capacity’, whereby all persons (regardless of disability or decision-making skills) inherently possess legal capacity.¹⁷⁹ As explained by the United Nations Committee on the Rights of Persons with Disabilities, ‘Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.’¹⁸⁰ Any support that is provided ‘in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making’.¹⁸¹ The right to equality before the law is a ‘threshold right’ because having one’s decisions legally recognised is necessary for the enjoyment of other rights, such as the right to equality and non-discrimination.¹⁸²

Legal capacity and equality before the law are essential in order to exercise all other human rights.¹⁸³ This is an important area for continuing reform, including in Australia. In this context, we can note that Australia entered an ‘interpretive declaration’ when it acceded to the Treaty in 2008, to the effect that it declared ‘its understanding that the Convention allows for fully supported or substituted decision-making arrangements.’ However, in 2013, the United Nations Committee on the Rights of Persons with Disabilities recommended that Australia take immediate steps to replace substitute decision making with supported decision making.¹⁸⁴ The United Nations Committee on the Rights of Persons with Disabilities reaffirmed this in its Concluding observations on the combined second and third periodic reports of Australia in 2019, expressing concern over ‘the lack of progress made to abolish the guardianship system and substituted decision-making regime’.¹⁸⁵ The strong language of the Committee reflects the centrality of Article 12 to achieving justice for people with disability in a number of areas of social, political, economic and cultural life.

Relevant to this report, Article 12 suggests that a complaint mechanism must apply to all people with disability and that perceived ‘mental incapacity’ should not be a basis on which to deny

access to the mechanism. Indeed, Article 12 suggests that the mechanism itself should provide support for individuals to access and participate in the complaint process. There is a general recognition that legal capacity is linked to access to justice, among other rights. Therefore, without equal recognition before the law, access to justice will be significantly compromised.¹⁸⁶

Article 9 of the CRPD relates to accessibility. Article 9.1 provides that 'States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public'.¹⁸⁷ Accessibility relates to the built environment ('buildings, roads, transportation and other indoor and outdoor facilities') and to services ('information, communications and other services, including electronic services and emergency services'). Therefore, the information about making complaints, and the process through which a complaint is lodged and the process for its resolution (including any online or physical space in which complaint resolution takes place) must be accessible to people with disability. This is supported by General Comment No. 9 on Accessibility, which states effective access to justice cannot be achieved 'if the buildings where law-enforcement agencies and the judiciary are located are not physically accessible, or if the services, information and communication they provide are not accessible to persons with disabilities'.¹⁸⁸

Obligations around accessibility extend to recognising overlapping and intersectional forms of discrimination. As mentioned earlier, Article 6.1 of the CRPD provides that: 'States Parties recognize that women and girls with disability are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.' The United Nations Committee on the Rights of Persons with Disabilities explains that women with disability face barriers in accessing justice in relation to violence:

due to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. Procedures or enforcement attitudes may intimidate victims or discourage them from pursuing justice. These can include: complicated or degrading reporting procedures; referral of victims to social services rather than legal remedies; dismissive attitudes by police or other enforcement agencies. This can lead to impunity and invisibility of the issue, resulting in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned they may lose their support requirements from caregivers.¹⁸⁹

Thus, a complaint mechanism must not only be available, but also be accessible and inclusive in relation to experiences of disability and experiences of intersectional disadvantage. These accessibility provisions have broad implications for the design of a complaint mechanism and modify how procedural justice is understood. We discuss justice in process and the implications it holds for the design of a complaint mechanism in Chapter 3.

Complaint mechanisms enable forms of communication and expression that allow for participation in social and political institutions. Article 21 of the CRPD relates to freedom of expression. Article 21 provides that 'States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice'. These measures can include 'providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost' and 'accepting and facilitating the use of ... accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions' (Article 21(a), (b)). In 2019, the United Nations Committee on the Rights of Persons with Disabilities suggested Australia investigate adopting communication and information accessibility standards.¹⁹⁰ Article 22 provides for the right to privacy. Article 22.1 provides that: 'No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation'. These articles indicate that a complaint process must ensure the safety of those who access it – their information should not be shared and they should be supported to articulate their complaints and not be subject to reprisal or disadvantage. Article 8 of the CRPD on awareness raising is also relevant to ensure people with disability are educated on their rights to complain and their rights *within* complaint processes. Article 8 is also relevant to countering widely held views about the futility and risk of complaining in order to develop rights-centric confidence in complaint and justice systems.

In this context, it is worth noting that other human instruments create obligations to ensure reporting pathways, including through complaint mechanisms, which enable the perspectives of individuals, including people with disability, to be heard. For example, relevant to children with disability, Article 12 CRC provides that 'the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'.¹⁹¹ This provision overlaps with a similar obligation in CRPD that 'States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right'.¹⁹²

2.2.3 Just outcomes, including redress

In Chapter 3 we will explore just outcomes, and different ideas around recognition, rectification and distribution that might shape justice claims. Human rights approaches also stress the importance of forms of just outcome as a result of a complaint, including access to redress. Drawing on the earlier discussion of Article 5 on non-discrimination and equality, Article 16 on prevention of violence, and Article 19 on independent living and community inclusion, a

complaint mechanism should provide the opportunity for outcomes that address individual drivers and consequences of violence related to inequality and discrimination, institutionalisation and segregation, and also address structural goals of equality, violence prevention, and independent living and community inclusion. A complaint mechanism that is primarily directed towards (in its policy or operation) improvement of services and systems that are themselves unequal and discriminatory, institutionalising, or segregating will undermine such structural goals, and will perversely sustain the very structural conditions in which violence, abuse, neglect, and exploitation flourishes.

Redress is relevant to the human rights framework for complaints. Numerous international human rights instruments provide a right to a remedy from the government for victims of violations of domestic or international human rights law. Article 8 of the Universal Declaration of Human Rights provides: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.' However, this access to remedies is articulated elsewhere as not contingent on breaches of domestic criminal or civil law and instead on violations of human rights. Article 2.3 of the ICCPR provides for a right to remedy:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 14.1 of CAT provides for a right to a remedy for torture:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

The Committee Against Torture has explained that conduct that amounts to torture or ill-treatment gives rise to a duty to provide remedy and reparation.¹⁹³ The right to redress includes restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition and the right to truth.¹⁹⁴

Guidance on Principle 8 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities, states on remedies:

(l) Ensure, in the criminal context, that those who abuse or otherwise mistreat persons with disabilities are prosecuted and, when appropriate, convicted or subject to other effective sanctions;

(m) Ensure that effective remedies are in place for human rights violations, including the right to be free from disability-based discrimination and the rights to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Such remedies should, among other things:

- (i) Be enforceable, individualized and tailored to meet the needs of claimants;
- (ii) Ensure that victims are protected from repeat violations of their human rights;
- (iii) Be proportional to the gravity of the violations and the circumstances of each case;
- (iv) Be provided on the basis that an individual's free and informed consent is required for any rehabilitative measures;
- (v) Address the systemic nature of human rights violations.¹⁹⁵

While the CRPD does not provide for a specific, standalone right to redress, its emphasis in articles 15 and 16 on prevention of violence and torture prevention arguably extends to redressing violence and torture, particularly where this redress is directed towards addressing individual or structural drivers. Further, it is noted that:

States must guarantee that all persons with disabilities who have experienced any form of arbitrary deprivation of liberty and/or exploitation, violence or abuse in the context of such practices have access to adequate redress and reparations, including restitution, compensation, satisfaction and guarantees of non-repetition, as appropriate. When detention is found to be arbitrary, restitution necessarily implies the restoration of liberty.¹⁹⁶

Further, the United Nations Committee on the Rights of Persons with Disabilities provides that, in implementing Article 5, States Parties are required to: '[e]stablish accessible and effective redress mechanisms and ensure access to justice, on an equal basis with others, for victims of discrimination based on disability'.¹⁹⁷ Moreover, the United Nations Committee on the Rights of Persons with Disabilities in their general comments on the CRPD has identified access to remedies as central to the realisation of right to independent living and community inclusion in Article 19, stating that: 'Disability-, gender-and age-sensitive monitoring, legal remedies and relief must be available for all persons with disabilities who use services prescribed in article 19 and who may face abuse, violence and exploitation'.¹⁹⁸ Further, in the context of violations of the right to liberty, the United Nations Committee on the Rights of Persons with Disabilities has provided: 'Persons with disabilities arbitrarily or unlawfully deprived of their liberty are entitled

to have access to justice to review the lawfulness of their detention, and to obtain appropriate redress and reparation.¹⁹⁹ Article 27.1(b) of the CRPD provides for redress in the context of employment, requiring States Parties to take steps to ‘protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances’.²⁰⁰

In relation to the technical details of the method and form of redress, international human rights documents provide guidance on the breadth of these beyond court-based remedies. For example, the Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity by the UN Commission on Human Rights specifically provide that ‘reparation should not only be secured through litigation and adjudication but first and foremost through the design and implementation of reparation programmes’.²⁰¹ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (also known as the ‘van Boven Principles’) elaborate on the processes through which to realise human rights norms on redress. The van Boven Principles apply specifically to ‘gross violation of human rights’. While this term is not defined in the Principles, Theo van Boven et al have explained elsewhere that this term will ‘include the types of violations that affect in qualitative and quantitative terms the core rights of human beings, notably the right to life and the right to physical and moral integrity of the human person’ and specifically extend to ‘torture or cruel, inhuman or degrading treatment or punishment; ... arbitrary and prolonged detention; ... and systematic discrimination’.²⁰² Moreover, the concept of ‘victim’ is broadly defined in the van Boven Principles so as to account for individuals and communities:

- a person is a victim if he/she suffered physical or mental harm or economic loss as well as impairment of fundamental rights, regardless of whether a perpetrator is identified or whether he/she has a particular relationship with the perpetrator;
- there are different types of harm or loss which can be inflicted through acts or omissions;
- there can be both direct victims as well as indirect victims such as immediate family members or dependents of the direct victim;
- persons can suffer harm individually or collectively.²⁰³

Pursuant to the van Boven Principles, reparations can take a variety of forms: restitution to restore the victim-survivor to the original situation before the violation (including restoration of liberty and return to one’s place of residence), compensation (including for physical and emotional injury, and moral damage), rehabilitation, satisfaction (which ‘includes a broad range of measures, from those aiming at cessation of violations to truth seeking, the search for the disappeared, the recovery and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, human rights training’) and guarantees of non-repetition (which ‘comprise broad structural measures of a policy nature’).²⁰⁴ Note that many of these forms of reparations will be discussed in Chapter 3 when we examine principles of justice in outcome.

The van Boven Principles are significant in numerous respects: the broad approach to who constitutes a ‘victim’, that access to remedies is not dependent on violations of domestic law, a broad range of remedies, and remedies that operate at the individual and structural level. In relation to the notion of a complaint mechanism directed towards violence prevention, reparations in the form of ‘guarantees of non-repetition’ are particularly significant.

2.3 Violence Prevention

Philosophies and approaches to violence prevention are of relevance to complaint mechanism design. A complaint relating to violence should ideally trigger inquiry into the causes of violence. In the case of violence against people with disability, most circumstances of violence represent failures to prevent that violence, and warrant investigation into the underlying causes. As such, violence prevention must broadly be a design object of a complaint mechanism established to respond to violence, abuse, neglect and exploitation against people with disability. As discussed above, a focus on violence prevention in complaint mechanisms is in keeping with obligations under international human rights law.

Violence prevention strategies are often informed by public health approaches to prevention which assume as a system logic that prevention of harm is always preferred to having to respond to harm after it has occurred.²⁰⁵ Indeed, in so far as violence and its harms are a public health issue, violence prevention itself broadly interconnects with society-wide approaches to health and preventative health programs.²⁰⁶

There is a growing body of research in criminology, public policy and social work that looks at violence and crime prevention strategies. In many cases this work examines the way social structure interacts with incidences of violence; for example the relationship between socio-economic, gender and location factors and violence, arguing that violence prevention strategies must attend to inequality and social stratification in order to address incidents of violence.²⁰⁷ There is also now a growing body of scholarly work that looks at violence prevention approaches relating to violence against people with disability, though it is notable that there are only limited studies, and few with strong evaluation of results.²⁰⁸

Notably, violence prevention approaches typically emphasise the environmental or structural elements that lead to violence. This emphasis is of course highly relevant for violence prevention approaches relating to the experiences of people with disability; as indicated in Chapter 1 and above, much violence experienced by people with disability is interconnected with forms of institutionalisation and segregation. In this context, violence prevention literature typically refers to ‘ecological approaches’ modelled on the work of Urie Bronfenbrenner.²⁰⁹ Bronfenbrenner’s conceptualisation, which was initially applied to problems of human development, has been adapted by violence prevention scholars as a way to describe the interaction of the individual with a wider environment, which involves interpersonal families and relationships, institutions and social structures, often depicted as a ‘Russian doll’ or onion model of concentric circles enveloping and extending out from the individual. Such ecological models

have been adapted to violence prevention models relating to people with disability; an example is included at Figure 1, which has been sourced from Araten-Bergman & Bigby.²¹⁰ It is important to note that such models of ecologies may not be comprehensive: for example, factors such as age and gender also impact on violence against people with disability, but may be difficult to thoroughly conceptualise in these approaches. However, the importance of these ecological approaches is that they have shifted the focus of violence prevention away from the immediate site of intersubjective violence (perpetrator / victim) towards a broader understanding of the environmental conditions which generate violence.

However, despite the promise of the above models, violence prevention approaches relating to people with disability face a number of conceptual issues. Firstly, criminological violence prevention strategies typically examine how to pursue interventions to reduce or eliminate inter-subjective forms of violence that are considered illegal.²¹¹ Such strategies are of relevance to some forms of intersubjective violence experienced by people with disability.²¹² However, they do not account for the many forms of violence experienced by people with disability in institutional and other settings that are *authorised* by law and normalised as routine conduct. Araten-Bergman and Bigby note that this is an issue with current research on violence prevention against people with intellectual disability.²¹³ For example under the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* some forms of violence and coercion – mechanical restraint, chemical restraint and seclusion – are regulated and granted legitimacy by Australian law and policy. The extent of the use of these practices is significant; recent reporting by the NDIS Quality and Safeguards Commission suggests that over a million uses of ‘unauthorised’ restrictive practices were reported in 2020-2021, while reporting of use of ‘authorised’ restraint is absent.²¹⁴ These forms of violence are provided institutional support and are not subject to routine sanction from the criminal justice system. As such, violence prevention efforts must work against law and institutions which validate these violent practices. Thus, in so far as these practices of violence experienced by people with disability are authorised by law, they do not neatly conform to criminological classification as non-State versus State violence; indeed as discussed below, they are probably more effectively understood as examples of illegitimate State-sanctioned violence.

Secondly, and related to the above, where violence prevention strategies relating to people without disability can often work in unity with the State (human service departments, police and regulatory bodies) towards shared objectives (e.g. reducing violent crimes), violence against people with disability demands, in some circumstances, prevention strategies that erode and challenge regimes of State or institutionally enforced power. Of course, there are many forms of violence prevention that can work in relative affinity with law enforcement agencies; for example, attempts to reduce some forms of interpersonal violence against people with disability.²¹⁵ However, violence prevention strategies must deal in a straightforward way with the reality that much violence experienced by people with disability is either directly endorsed by the State or carried out by the State.

Thirdly, the contexts within which violence against people with disability occurs are differentiated from many circumstances that apply to people without disability; for example, the experiences

of violence of people with disability within disability care settings or women and girls with disability's experiences of non-consensual sterilisation and menstrual suppression. This means that while some violence prevention strategies that apply in broader contexts might be usefully applied to disability contexts, in many circumstances a tailored approach is required that recognises the unique situation faced by many people with disability. For example, violence prevention strategies will need to work in tandem with moves to desegregate and end institutionalisation of people with disability and to reform or repeal laws that apply only to people with disability.²¹⁶ As discussed in Chapter 1, recognition of the relationship between institutionalisation, violence and cultures which work against complaint making was a focus of the Royal Commission into Institutional Responses to Child Sexual Abuse.²¹⁷ Further, as indicated above, the United Nations Committee on the Rights of Persons with Disabilities have noted a strong correlation between institutionalisation and violence experienced by people with disability.²¹⁸ This has deep implications for the design of complaint mechanisms relating to violence against people with disability, as the effectiveness of any complaint mechanism will be significantly limited if it has no capacity to address institutionally legitimated forms of violence against people with disability.

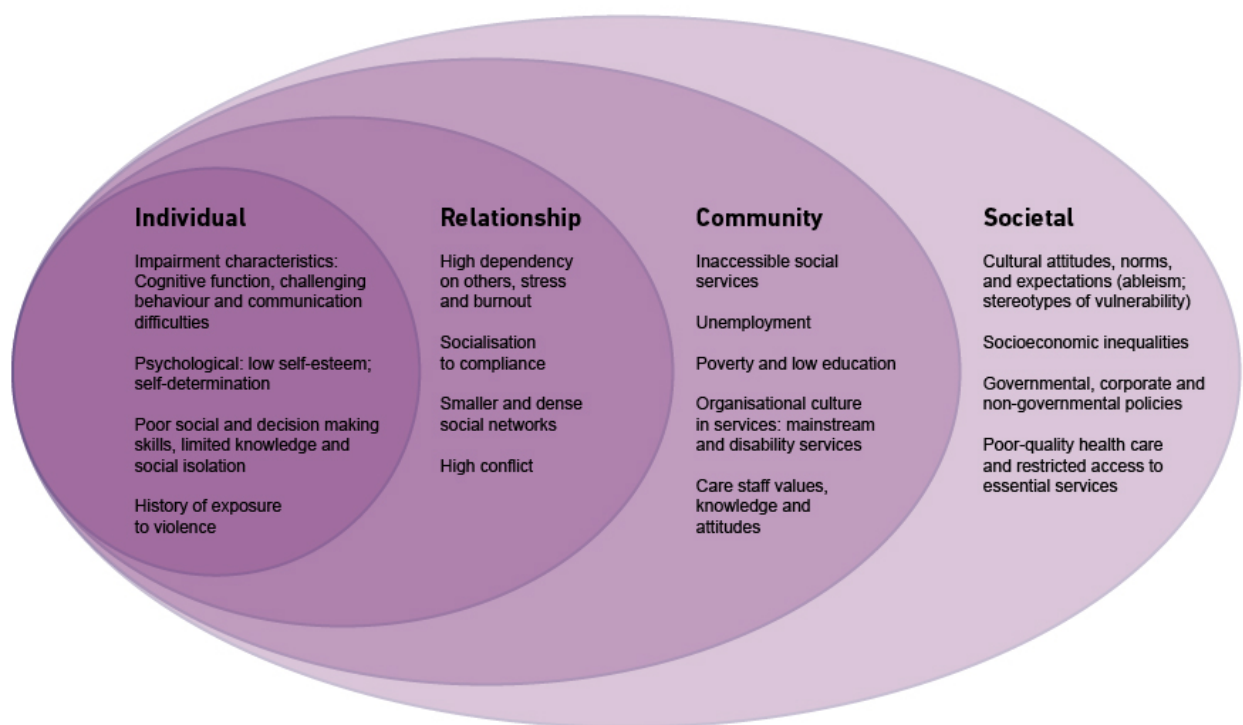


Figure 1: Ecological model relating to violence against people with disability. Source Araten-Bergman & Bigby 2020.

The above concerns about the applicability of violence prevention models to violence against people with disability suggest a need to use alternative framings. One such framing might involve models of violence prevention that are specific to legitimated institutions: namely, torture prevention. The advantage of torture prevention approaches is that they deal with practices that achieve local or even national legitimation, including through law, even though they are at odds

with international human rights obligations. They also typically involve practices, personnel and institutions that have no necessary correspondence with worlds outside of the site of torture; a function of the typically closed institutions and secrecy that accompanies these practices.²¹⁹ This culture of secrecy will go hand in hand with a 'constructed reality' within these institutions where routine violence is normalised.²²⁰ Framing some forms of violence against people with disability as torture is certainly not without precedent and reflects emerging international human rights norms.²²¹ There is also now a growing body of scholarship related to the implementation of the OPCAT which understands many institutions as places where people with disability are not at liberty to leave and may be subject to torture and/or cruel, inhuman and degrading treatment and punishment.²²²

Danielle Celermajer's study of torture prevention applies the 'ecological approach' to violence prevention described above to develop a framework for understanding causality and agency within the context of torture, and provides useful guidance for how a reporting mechanism might work.²²³ Celermajer notes that certain aspects of criminological approaches to violence prevention are important, such as noticing the way environmental factors, such as inadequate lighting and surveillance, create 'opportunities for crime.'²²⁴ Clearly such elements are important when examining violence against people with disability: for example, adequate training, monitoring and engagement with support staff may minimise opportunities for economic exploitation. However, as Celermajer notes, this sort of framing is less useful for circumstances of institutionally endorsed torture, where there are strong internal cultures, norms and languages which validate the continued use of these practices. It is also less useful where practices of torture are granted legal legitimacy, and where these practices cannot be isolated to a few aberrant individuals who have failed to follow rules, and must instead be assumed to be routine practice within an institutional setting. Celermajer summarises that there are three factors which frame torture as a practice:

First, a certain state of affairs exists or is posited that authorizes the practice. An example would be the contention that there is a threat to the security of the state of such gravity as to justify torture. Second, a group of people and set of procedures are developed that routinize the practice, such that the actions come to be seen as a normal part of one's job. Third, a class of people are dehumanized such that it becomes 'unnecessary for actors to view their relationship to the victim in moral terms' and their treatment no longer shows up under the same moral categories as might otherwise apply.²²⁵

The above factors usefully frame the different areas of focus relevant for tackling institutionally legitimated forms of violence against people with disability. Firstly, this violence cannot be prevented as long as it is legitimated by law or social practice. Secondly, in so far as practices associated with institutionally legitimated forms of violence against people with disability have been routinised within certain disability relevant contexts, such as disability care institutions, then a focus of violence prevention must entail altering the circumstances, practices, and training associated with these contexts. Finally, as Celermajer observes, torture is only possible in such contexts where the subject of violence has been dehumanized.²²⁶ Broadly, eliminating torture demands 'humanisation' of the victim-survivors of torture; in the context of disability,

this means engaging in the work of rights realisation which aims to change social attitudes that have systematically devalued people with disability. Note the strong intersections here with the problem of ‘testimonial injustice’ which will be discussed in Chapter 3; namely when ‘prejudice causes a hearer to give a deflated level of credibility to a speaker’s word.’²²⁷ Arguably ‘humanisation’ of people with disability is required to both eliminate torture and ensure that victim-survivors of violence are given credibility when they report their experiences.

2.4 Conclusion

In this Chapter we have reviewed relevant human rights principles and examined violence prevention approaches. These discussions highlight several implications for the design of complaint mechanisms in relation to the violence, abuse, neglect and exploitation of people with disability:

- Non-discrimination, equality before the law, and equal rights to justice all have strong implications for the design of complaint mechanisms. For example, a complaint mechanism will need to preserve rather than undermine the rights of people with disability to report violence, seek protection and receive justice. Further, people with disability have a right to be supported to exercise their legal capacity, including their ability to access reporting pathways for violence, abuse, neglect and exploitation.
- There are strong obligations within the CRPD and other relevant treaties including CAT which mandate protection of people with disability. These obligations have bearing on a complaint mechanism that is designed to respond to violence, abuse, neglect and exploitation.
- People with disability have rights to access a victim-survivor focused mechanism that can respond to claims about violence, abuse, neglect and exploitation; further, people with disability have rights to access redress on an equal basis with others.
- There are accessibility requirements imposed by international human rights obligations, which shape how a complaint mechanism would be designed. These obligations include design of the mechanism to ensure that access is available for a variety of people, including through provision of translations and interpreting services.
- A complaint mechanism should have violence prevention as one of its aims. While a complaint mechanism should have the capacity to address individual perpetrators of violence, it should also be able to respond to the broader environmental and systemic drivers of violence against disability.
- A complaint mechanism must be of adequate independence and power to challenge legally authorised forms of violent practice. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is perhaps one of the few examples of such a mechanism within Australian jurisdictions.

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- A complaint mechanism and its viability as a tool for preventing violence is interconnected with the broader requirement to address the social and cultural drivers of dehumanisation of people with disability. In this respect, elimination of violence against people with disability is interconnected with obligations under Article 8 CRPD ('Awareness Raising').

Chapter 3: Justice in Process and Justice in Outcome

In Chapter 2 we examined principles that emerge from human rights law and norms as well as literature on violence prevention to consider their implications for the design of complaint mechanisms that act as reporting pathways for violence, abuse, neglect and exploitation for people with disability. In this Chapter, we continue our examination of conceptual issues that inform complaint mechanism design, focusing here on justice in process and justice in outcome. As discussed below, an individual's experience of complaint procedure can shape their sense of whether justice has been achieved, regardless of the outcome of a justice process. Here, elements such as perceived neutrality, transparency, trustworthiness and voice are important in the design of complaints processes and have bearing on a process intended for reporting violence, abuse, neglect and exploitation. The outcomes produced by complaint mechanisms are also important, and in this Chapter we examine just outcomes, considering where justice seeks rectification, distribution and recognition. Finally, we examine legal redress, transitional justice and the task of system transformation.

3.1 Justice in Process

For the purposes of this report, we understand justice in process as the way in which positive experiences of *procedures* can contribute to a sense that justice has been achieved. Contemporary debate on procedural justice owes its origins to conceptual work from the 1970s, often attributed to Thibaut and Walker's pioneering research.²²⁸ Much debate has occurred since the 1970s on justice in relation to distributional outcomes, such as in John Rawls' influential account, which we will discuss in Section 3.2 below.²²⁹ Thibaut and Walker, on the other hand, were instead interested in the procedures that led to the outcome, and in the individual and social psychology associated with just processes. The overall finding of much of the research relating to procedural justice indicates, perhaps counter-intuitively, that individuals place great value on just processes, so much so that experiencing positive procedural justice can be more important than receiving a favorable outcome. These studies suggest a delineation between experiences of justice associated with navigating and prosecuting a complaint, and justice associated with the eventual outcome:

Generally speaking, people feel a process is more 'just' when their voice is heard before decisions are made (voice), decision makers treat everyone equally (consistency), outcomes are proportionate (ethical), and there is a process of appeal or challenge if they don't agree with an outcome (review). Distributive Justice, on the other hand, refers to the outcome itself. For example, it may refer to whether a person agrees with a guilty finding in court, a decision by the police to issue a ticket, or a warden to deny a request to transfer prisons.²³⁰

Procedural justice approaches highlight the subjective experience of those who seek justice, pointing out that being treated fairly in the process of seeking justice may be more meaningful than the substantive outcome:

procedural justice judgments play the major role in shaping people's reactions to their personal experiences ... In addition, people who were asked to talk about personal experiences of injustice were found to talk primarily about procedural issues, in particular about being treated with a lack of respect when dealing with others.²³¹

The importance of the process of seeking justice to individuals participating in justice procedures holds significant implications for the design of a complaint mechanism relating to violence, abuse, neglect and exploitation experienced by people with disability. While just outcomes are important – as shall be discussed in Chapter 7, some people with disability experience no outcome or adverse consequences when they complain – fair procedures are also important, and were raised as a concern by some people with disability who complain about violence (see Chapter 6). Thus, the design of complaint mechanisms must ensure both just outcomes and just processes.

Since Thibaut and Walker's original work, there has been an explosion of literature in psychology, law and criminology related to procedural justice, with a significant proportion of this work generated and influenced by US legal and psychology scholar Tom R. Tyler and his colleagues.²³² The literature has evolved in focus in a number of ways. Early procedural justice research treated procedures as simply the process by which a just outcome was agreed at. Thus, for example, enabling voice for a complainant was seen by earlier conceptions of procedural justice in instrumental terms as merely providing a way for the complainant to influence the outcome of the complaint in their favour. However, as Tyler and Blader point out, more recent research has highlighted that enabling a complainant to share their perspectives as part of the complaint process allows for a positive experience of value sharing and recognition, even if this has no bearing on the final outcome.²³³ A procedure that is perceived to be just and fair, and provides an opportunity for voice, enables humanisation and inclusion of the complainant, regardless of whether the complaint achieves a desired outcome.

Here the perceived justice of a process reveals the social or 'group dynamics' associated with a procedure, in allowing the person who complains to experience affiliation (or alienation) with a valued social group. As Lind and Tyler observe, attention to group dynamics of procedures provides a very different perspective on why individuals seek justice. Where we might assume that individuals complain as a result of self-interest, Lind and Tyler stress that this view needs to be moderated to take into account group dynamics, including that individuals may be willing to 'forego pure self-interest in the interest of long-term gain through social intercourse'.²³⁴ In other words, individuals place value on outcomes that relate to achieving justice for a collective or community. Further, it might be argued that in so far as just procedures are representative of shared values within a community – fairness, human rights, respectful treatment and so on – that the motivation for participation in a procedure is not necessarily about personal outcome, but is informed by a demand for social inclusion in those values:

The socialisation perspective raised by the group value model suggests that at least some procedural preferences can be viewed as socialized attitudes. Like other such attitudes, for example, liberalism, racism, or authoritarianism, procedural preferences might be acquired during the childhood socialization process and come to acquire their own affective base. To state the point differently, because they are learned early and are linked to well-respected groups, some procedures are not only preferred but are liked for their own sake. They become general predispositions toward or against particular ways of solving problems that are only loosely linked to particular instances of those procedures.²³⁵

To provide an example to illustrate Lind and Tyler's point, an early childhood experience in a school environment where a complaint taken by a parent or child that is successfully resolved, will likely create future expectations that complaints are a useful way to rectify injustice and cement trust in institutions that they can take on complaints in respectful and meaningful ways. As we shall see in Chapter 5, for some people with disability, early experiences of the failure of complaint mechanisms informs future willingness to make use of these to report violence, abuse, neglect and exploitation.

The implications of the social dynamics of procedural justice for thinking about complaint mechanisms relating to violence against people with disability are potentially significant. If complaint mechanisms devalue and dehumanise complainants, then it is clear that opportunities available for using the mechanism as a means to feel included in a community are limited. Those who do complain will only do so because they are willing to weather a difficult, and potentially re-traumatising, procedure in order to attain a favourable outcome. On the other hand, a well-designed mechanism can function as a means for inclusion and humanisation, and thus as an opportunity for complainants to receive social validation, perhaps even in ways that are at odds with prevailing social norms which otherwise stigmatise people with disability. In this respect these perspectives on procedural justice highlight the importance of *social recognition* as a form of justice that is differentiated from but interacts with justice in distribution.²³⁶

In this context, the ability of a just procedure to include individuals who use them within a community of shared values leads to some important implications for the design of procedures. One is that even if the justice procedure does not eventuate in an agreeable outcome, the procedure is still an opportunity for an institutional authority to validate the person who makes use of the procedure: 'if an authority listens to people's arguments, we might hypothesize that people think that the authority is conferring interpersonal respect on that person.'²³⁷ Further, there is an opportunity for 'identity security' in that for the person who complains, use of the procedure can be 'a source of self-affirmation-gaining confidence in their own identity through their association with the group.'²³⁸

To an extent these perspectives resonate with conceptions of 'therapeutic jurisprudence' which argue that law can shape individual wellbeing and that law's processes and outcomes can be shaped to enhance wellbeing, including where individuals receive a negative outcome.²³⁹ For example; Snedker examines Mental Health Courts, observing that their use of non-adversarial,

problem solving methods of inquiry produces different and perhaps preferable procedures; 'rehabilitative or restitutive ends shape exchanges and responses (especially to violations or issue of non-compliance) as opposed to purely punitive ones.'²⁴⁰ Recent scholarship has also highlighted a role for 'therapeutic jurisprudence' approaches in improving interactions between people with disability and the criminal justice system.²⁴¹ These perspectives highlight that procedures are potentially important in facilitating experiences of justice and wellbeing; though, it is important to note that there have been critiques of therapeutic jurisprudence approaches.²⁴²

These perspectives on the capacity for procedures to humanise, include and promote wellbeing highlight the risks and opportunities relevant to the design of a complaint mechanism. For groups that are socially stigmatized, the procedure can end up confirming negative stereotypes which alienate individuals from shared social values rather than provide a means for affiliation. For example, Dorfman studied experiences of people with disability in the United States who applied through a Disability Determination Process (DDP) to gain eligibility for entitlements. One study noted that in order to gain access to entitlements, rather than present themselves as empowered and capable, participants needed instead to 'prove the exact opposite—that [they are] unable, weak, and in need of major assistance. Because getting into this mind-set is so hard to do, the approach recommended by interviewees is to answer the questions presented in the DDP as if it were the claimant's worst day.'²⁴³ Clearly, any mechanism that requires a claimant to rehearse a deficit narrative (i.e. 'the claimant's worse day') or play into negative stereotypes, will be experienced as dehumanising by the complainant and undermine the security of their own identity. Campbell's observations on torts law and disability highlight that to an extent such negative stereotypes and deficit discourses are central to the way in which law and social policy can only imagine disability as 'intolerable and inherently negative.'²⁴⁴ However, it should be stressed that a complaint mechanism can be designed in the *opposite* way to reinforce and enhance a valorised identity for the claimant: 'to the degree that people feel that the group makes decisions via fair procedures, they are more likely to feel that their identity can be safely and securely merged with that of the group.'²⁴⁵

3.1.1 Features of Just Procedures

There are a number of features of just procedures that are routinely emphasised in the scholarly literature: namely 'Trustworthiness,' 'Respectful Treatment,' 'Neutrality,' and 'Voice.'²⁴⁶ Each of these elements have implications for the design of a complaint mechanism that is able to respond to violence, abuse, neglect and exploitation experienced by people with disability.

3.1.1.1 Trustworthiness

To an extent, trustworthiness might be measured by the perceived legitimacy or authority associated with a procedure; for example, the credentials of a complaint mechanism in relation to its legal or social legitimation as a means to resolve a complaint. In this context it is important to note that legitimacy of a procedure is interconnected with its perceived fairness;²⁴⁷ hence a complainant is likely to receive signals that a complaint mechanism lacks legitimacy where fair processes appear to be lacking.

The costs of loss of legitimacy associated with a procedure are potentially significant where the associated authority has a significant institutional role within a society. For example, research on procedural justice relating to police complaints highlights that failures to satisfy just procedures ultimately undermine the legitimacy of the police themselves, and thus undermine their ability to perform their function:

police legitimacy is diminished when complaints systems cannot be relied on. This is not simply a theoretical problem existing at the level of political philosophy; it has practical implications for the ability of police to do their job and carry out their sworn duties. When the legitimacy of police is questioned, members of the public are less willing to assist them (e.g. by 'reporting incidents, undertaking crime prevention activities, and generally being helpful in the community'), and less willing to cooperate with them, thereby making crimes more difficult to solve and increasing the likelihood that force will be needed to resolve situations.²⁴⁸

The centrality of perceived legitimacy to justice processes has implications for complaints relating to violence, abuse, neglect and exploitation of people with disability. If a process for addressing violence, including the process of seeking help from authorities such as police, 'cannot be relied upon', this in turn invalidates the legitimacy of these authorities to perform their role. Relevant to some living situations for people with disability – such as within congregate supported accommodation or within prisons – these failures of legitimisation may play out in different ways because of the reality of closely confined forms of living.²⁴⁹ One implication is that a failure in procedural justice will highlight to everyone in that accommodation facility that the complaint mechanism itself lacks legitimacy and is not trustworthy: 'this allows the process of losing legitimacy to play out with impressive fluidity, more so than might be seen in the general community where gestures by a regime are more likely to be private matters; to be kept from the opportunity to impact collective impressions.'²⁵⁰ As we shall explore in Chapter 5, belief that a complaint mechanism is untrustworthy and will lead to no outcome is one reason that some people with disability do not complain in relation to violence, abuse, neglect and exploitation.

Another aspect of trustworthiness relates to the faith that the authorities administering a procedural justice mechanism 'are motivated to be sincerely helpful and caring' and 'give priority to the best interests of the community, and are honest and open.'²⁵¹ This places a significant pressure on complaint mechanisms to build trust with a community in order for potential complainants to feel confident that they can trust the procedure. A complaint mechanism which is perceived to act against the interests of complainants will have minimal appeal as an avenue for justice. Here, the ability of a complaint mechanism to protect individuals from retribution as a result of making a complaint is paramount. In Ellem and Richard's study of 'young people with cognitive disability' (YPWCD) and police, they find that complaints to police are undermined by the reality that safety from retribution cannot be guaranteed:

Service providers also indicated that complaint processes against the police were usually not effective for YPWCD. Three participants from youth services and community legal services stated that YPWCD did not follow through with complaints even with support. This was seen as largely due to fear of consequences, such as further attention by the police, and YPWCD's inability to prove poor practice when there were no witnesses present. A youth lawyer spoke of potential retribution for making a complaint: 'You honestly have to say to a young person you can't guarantee that that won't happen'²⁵²

As we shall discuss in Chapter 5, fear of retribution is one reason some people with disability do not complain. Indeed, as indicated in Chapters 6 and 7, these fears are realistic at least in so far that some people with disability have experienced retribution after a complaint. The recent amendments to the *Royal Commissions Act 1902* which provide for additional protections for people with disability and those speaking on their behalf, highlight that even public procedures with high levels of transparency and apparent trustworthiness – i.e., Royal Commissions – are not immune from barriers which prevent individuals from reporting violence, abuse, neglect and exploitation due to fear of retribution.

This fear of retribution is connected with the problem of how stigmatised minorities and groups which have experienced structural discrimination might 'trust' a complaint mechanism. Certainly, literature on procedural justice relating to police complaints highlights that trust is a significant problem for some minorities who have experienced discriminatory forms of policing; one study highlighted that perceived ability to complain is 'influenced by one's social position more broadly (e.g. mental health, socioeconomic status, race or ethnicity). Community members repeatedly expressed a significant degree of frustration with what is depicted as a "rigid", "unfair", and "opaque" system where complainants are treated unequally.'²⁵³ These findings expose at least one issue with many procedural justice approaches: namely they assume the potential neutrality of procedures and tend to ignore deep seated, structural and historical forms of injustice. Long argues:

the procedural justice thesis fails to explicitly name racism or racialized processes of criminalization as mediating citizen/police encounters. There is an implicit acceptance that policing operates on the principle of consent and that it is both possible and desirable for all citizens to consent to being policed in order to secure legitimacy ... Within a racially predicated society, Black bodies are constructed as the undesirable Other in relation to crime prevention and control. Racialized police practices, which respond to criminalizing narratives of the Black suspect, serve to uphold the racially predicated system of White supremacy...²⁵⁴

The failure of procedural justice to provide a framework through which justice processes can acknowledge and address structural oppression certainly has implications for the design of a complaint mechanism intended to deal with violence, abuse, neglect and exploitation of people with disability. People with disability face entrenched discrimination within institutions and law which means that mechanisms cannot claim to be neutral in operation. Further, as indicated by the above quote, the experiences of some people with disability will be shaped by other

spheres of oppression such as racism and colonialism which may have implications for their interaction with procedures. Given these realities, there is every reason for complainants with disability to believe that authorities administering complaints cannot be trusted to do so in a non-discriminatory way.

Research on complaints has shown that there is a so called ‘Matthew Effect,’ where those who are already advantaged are likely to disproportionately use and benefit from complaints mechanisms, while these same complaint mechanisms are not available or be effective for those who most need them.²⁵⁵ Of relevance, at least in the United Kingdom, it has been shown that ‘people who tend not to complain about public services are more likely to be young, male, black and minority ethnic, have disabilities and be unemployed.’²⁵⁶

3.1.1.2 Respectful Treatment

A procedure is considered just where it offers an opportunity for respectful treatment. As discussed above, to the extent that procedural justice provides a pathway for social validation, respectful treatment – the protection of rights, recognition of dignity, inclusion of perspectives and so on – is a core aspect of a just procedure. In considering how this might relate to people with disability who make complaints in relation to violence, abuse, neglect and exploitation, there are numerous implications.

First, the way the complaint mechanism treats the complainant, including forms of politeness, courtesy and warmth extended to those who complain, and avoiding behaviours that indicate disrespect,²⁵⁷ will be of importance in building a sense of perceived respectful treatment. There are examples in the literature of disrespectful treatment of people with disability which highlight the way in which an authorised procedure may end up being experienced as dehumanising. For example, Ellem and Richards’ interviews with young people with cognitive disability on their experiences of policing highlight that while police can use their discretionary powers to reinforce experiences of respect, there were many examples which ‘included accounts of unnecessary physical force, use of threats and verbal put-downs’.²⁵⁸ Ellem and Richards also record instances where police were purported to be ‘trying to provoke young people into a reaction ... including [through] the use of racial slurs.’²⁵⁹

Second, the question of respectful treatment interacts with ways in which authorities might be granted legal sanction to treat people with disability in a fashion that undermines concepts of respectful treatment and inherent dignity, and are at odds with the requirement to recognise equality before the law. For example, use of forced restriction, treatment and seclusion, incarceration of people who have been determined unfit to plead, and/or systematic economic exploitation of people with disability within some employment services are all examples of disrespectful treatment where the equal right to dignity is undermined by legally authorised forms of exclusion, discrimination and violence.^{260 261 262} Importantly, denial of people with disability’s equal standing before the law through use of substitute decision making reinforces system failures to afford respectful treatment, as by definition adults with disability who are not recognised as legal persons are not provided levels of dignity that are equivalent to others.²⁶³

At least one important problem here is that denial of legal personhood immediately undermines the legal ‘credibility’ and capacity of the person making a complaint; for example, it has been observed that women with intellectual disability who report violence to the police are questioned in relation to their reliability.²⁶⁴ As shall be discussed in Chapter 6, this aligns with experiences of some people with disability who are not believed when they report violence, abuse, neglect or exploitation to police and other authorities. It is in the context of the relationship between respectful treatment and legal capacity that recognition of legal personhood, and support to realise equality under the law (including through supported decision making) is a starting point for conceptualising respectful treatment in relation to people with disability who use complaint mechanisms.

Third, discriminatory attitudes towards people with disability that shape society in general will in turn shape procedures that normalise non-respectful treatment. For example, the routine questioning that people with disability are subject to about self-disclosed disability status, often reinforced by a demand for independent expert verification, is a reminder of a generalised pattern of stigma that assumes, at least within administrative systems, that people with disability are untrustworthy and unreliable in understanding their own experience.²⁶⁵ Reversing these assumed cultural norms through the design of the complaint mechanism will go some way towards counteracting the systemic effect of these prevailing discriminatory attitudes on the outcomes of complaints.

3.1.1.3 Neutrality

Within the context of procedural justice, neutrality is evidenced by ‘absence of bias by principled conduct and decisions, consistency, even-handedness, and transparency.’²⁶⁶ To an extent ‘neutrality’ interacts with the elements of trustworthiness and respectful treatment described above: absence of bias will help establish trust in those who manage the procedure; while respectful treatment will in part involve treating individuals in unbiased ways.

An issue of key relevance here is the question of whether a complaint mechanism is perceived by the complainant as having independence from the object of complaint. Scholarly discussion of a range of different contexts, including policing and prisons, highlights that this is a key barrier to perceptions of procedural fairness. For example, in the context of policing, Schulenberg et al argue that because police wield coercive power, it is appropriate there are higher levels of public scrutiny;²⁶⁷ however, they also point out that a failure of perceived independence compromises the legitimacy of police complaint systems:

The data suggest citizens perceive a fair complaints system to be independent from the police. Upon closer examination, the concept of independence is associated with a strong belief that the decision making and investigation process lacks transparency, is weighted in favour of the police and is unable to adequately hold officers and itself accountable to public scrutiny due to the prevalence of complaints being investigated by the police.²⁶⁸

Similarly, in the context of research of prisoner grievance systems, it has been observed that 'gestures by the regime, such as communicating indifference to inmate problems via denial of timely, transparent, appealable, ethical grievance system, had broad impact,' including in a relationship between prison violence and poor complaint systems.²⁶⁹ Relevant here too is the question of who is perceived to fund a complaint body: for example there is a risk of perceived non-neutrality if a prison inspector is funded by a Department that is responsible for corrections.²⁷⁰ This caution about perceived independence might extend to the names given to bodies that are empowered to receive complaints. For example, in the case of the Scottish Public Service Ombudsman (SPSO), 'the similarity of the office's acronym to that of the Scottish Prison Service (SPS) was considered unhelpful and has subsequently led to a name change.'²⁷¹

One view of a complaint mechanism (and the institution that administers it) is that its function is to be an unwavering impartial arbiter between the person who complains and the institution or individual that has caused a grievance. However, work on procedural justice approaches relating to Ombuds reveals a fascinating scholarship which points to a function for complaints mechanisms as operating in more positive ways to defend the rights of individuals. For example, Langen et al observe:

The ombudsman is clearly intended to be a countervailing power to the authorities. Opinions differ as to whether the ombudsman should be squarely on the side of the citizens, or a neutral third party, mediating between the authorities and citizens. In France for example, a recent name change of the ombudsman institute illustrates this: For many years the institute was called the 'Médiateur de la République', but in 2011 its name was changed to 'Défenseur des droits'. In the Netherlands, the mission statement of the ombudsman for many years was 'protecting the citizen against improper conduct of the authorities.'²⁷²

These perspectives coalesce with other studies which have indicated the possibilities for developing 'People's Ombudsmans': namely, ombuds that are strongly participatory, and also feature active outreach and activities 'to ensure that disadvantaged and marginalised individuals and communities are encouraged to see themselves as part of the ombud's natural constituency and not as outsiders.'²⁷³

The example of People's Ombudsmans offers a variation on the question of neutrality in pointing out there is the possibility of structuring a just procedure as defender and protector of rights, potentially in a way to overtly correct a situation of structural injustice. Here literature on ombuds highlights that while a complaint mechanism is clearly a substitute for a more costly court mechanism, it also has potential to offer forms of justice, including in procedure, that are not available through the criminal justice system:

Ombudsman institutions can have advantages over courts and administrative tribunals, including being free. Ombudsmen often deal with economic, social/cultural and third-generation human rights that are often not legally binding in domestic law. They operate according to a broader concept of 'justice' that is not limited to legality.²⁷⁴

These features of ombuds highlight there is potential in imagining a complaint system that is overtly structured to address injustice in society, including through the procedures utilised which validate and empower individuals in ways that are otherwise not available or accessible in that society. Here the complaint mechanism is structured to correct an imbalance and appears, more overtly, on the side of achieving justice for the complainant. As we shall argue in Chapter 8, there is scope to imagine a complaint mechanism that enables reporting of violence, abuse, neglect and exploitation towards people with disability as a ‘defender of rights’. This would assist to create a strong sense of trustworthiness in the mechanism, and to recognise longstanding historical injustice as the context for the mechanism’s existence.

3.1.1.4 Voice

Perhaps the most discussed elements of procedural justice are those that allow for voice and participation. As Tyler summarises, ‘people feel more fairly treated if they are allowed to participate in the resolution of their problems or conflicts by presenting their suggestions about what should be done.’²⁷⁵ In this respect, voice and participation strongly correlates with some of the elements above, including respectful treatment, since having an opportunity to be heard as part of a procedure ‘conveys that one has some social standing in the community and shows that the authorities value community members and their opinion.’²⁷⁶ As is typical in much of the literature on procedural justice, there is evidence to suggest that people value the opportunity to express their voice, even if in the end the procedure does not lead to an outcome that is favourable. For example, in the context of complaints against police, De Angelis observes:

Individuals who were able to explain their complaint to the officer’s supervisor were much more likely to be satisfied than individuals who had their complaints either dismissed or fully investigated. More strikingly, levels of satisfaction were no different between individuals who had their complaint dismissed after a brief investigation and complainants who had their complaint fully investigated.²⁷⁷

Here, as Tyler observes, having voice does not necessarily mean that individuals expect to control the outcome: ‘people are primarily interested in sharing the discussion over the issues involved in their problem or conflict, not in controlling decisions about how to handle it.’²⁷⁸ At least one reason for this is that allowing individuals voice is, in the context of a group model of procedural justice, a pathway towards social inclusion of the complainant:

Procedures that allow voice are seen as fair because they provide opportunities for participation in group process and because the opportunity to exercise voice constitutes a visible marker of group membership... the voice effect does not require that voice be effective in producing favorable outcomes but does require that the decision maker appear to be giving due consideration to the expressed values and arguments. If it is group participation and status affirmation that are important, these are obtained as soon as it is obvious that one’s views are expressed and considered; there is no need for a positive outcome to confirm these values.²⁷⁹

In this respect, as discussed above, there are substantial opportunities within the design of a complaint mechanism to offer complainants forms of social inclusion and respect, simply by supporting individuals to express themselves and be recognised.

While the above discussion is useful, it should be acknowledged that voice is a multifaceted issue for people with disability. For many people with disability the ability to be heard is interconnected with the means of support available to allow this voice to be heard. As discussed above, legal and social norms which remove legal capacity from people with disability, and forms of substituted decision making, prevent people with disability from expressing voice. In a practical sense, accessibility of procedures in the broadest way, including ability to engage with the complaint procedure in a multitude of forms, and availability of support to allow people to realise legal capacity, will be vital to the success of enabling expression of voice.

The ability of people with disability to be heard is also potentially compromised by society wide discrimination which invalidates voices of people with disability. The philosopher Miranda Fricker explores the forms of 'epistemic injustice' that shape what we know and how we see the world.²⁸⁰ In this context Fricker described 'testimonial injustice' as when 'prejudice causes a hearer to give a deflated level of credibility to a speaker's word.'²⁸¹ Testimonial injustice is a useful way to describe routine forms of treatment of people with disability as lacking credibility and perhaps even viewed as being deceptive when they complain. Scully provides the following everyday example of testimonial injustice and its relation to people with disability:

people with hearing impairment who use a hearing aid can, in principle, make use of induction loops in public buildings such as theatres or cinemas. This technology couples sound from a microphone directly to the aid, cutting out background noise and improving the clarity of what the deaf person hears. Even when installed, however, induction loops are often poorly maintained and so stop working properly. Deaf people often have the experience of complaining about a nonfunctioning induction loop, only to be told that the loop is definitely installed, is definitely switched on, is definitely working (so the fault must lie in the person's own hearing aid: have you checked that it's switched on?), etc. There is overt skepticism that someone who may have been using induction loops for decades knows what they are talking about; there may even be suspicion that the complaint is being made for other reasons, perhaps with the aim of getting compensatory tickets from a cinema.²⁸²

Obviously, implications of testimonial injustice are significant for people with disability who complain about experiences of violence, abuse, neglect and exclusion, and contribute to a perception that complaints around violence will not be heard. One example of this, which we will see in Chapters 5 and 6, is that some people with disability report that they have experiences of not being believed, or have a fear of disbelief, in relation to complaints about violence, abuse, neglect and / or exploitation.

Fricker also describes an additional form of epistemic injustice, namely 'hermeneutical injustice' which occurs 'when a gap in collective interpretive resources puts someone at an unfair

disadvantage when it comes to making sense of their social experiences.²⁸³ A facet of the widespread discrimination people with disability face is the reality that the social world is constructed in ways that reflect a prevailing 'ableism' and a set of world views that are at odds with the experiences of people with disability. One aspect of this, which is relevant to just procedures, is the way in which procedures are constructed to validate and reinforce ableist perspectives of people with disability; for example, forcing individuals to conform to medicalised or deficit narratives in order to attain support or air a grievance, or by excluding legally or socially authorised forms of violence from the remit of a complaint mechanism.²⁸⁴

3.1.2 Procedural Justice without Just Outcome?

The above discussion of trustworthiness, respectful treatment, neutrality and voice suggests that these procedural justice principles are highly important for design of a complaint mechanism that is relevant to people with disability who experience violence, abuse, neglect and exploitation. However, one caveat is required. While the tendency of at least some of the procedural justice literature would suggest that outcomes are of less importance to complainants than whether just procedures have been utilised to arrive at a decision, it is not clear that this finding is necessarily generalisable to all people, including people with disability. Despite expansive literature on procedural justice in a variety of settings, there are only a small handful of studies which have surveyed experiences of people with disability themselves with respect to procedural justice.

To an extent, it is reasonable to assume that complaint mechanisms relating to violence, abuse, neglect and exploitation experienced by people with disability have been deficient with respect to *both* the justice of procedure and their ability to achieve just outcomes. Indeed, as indicated by Chapters 6 and 7 of this report, some people with disability experience a combined failure of justice in process and justice in outcome. Given this, there is no reason to assume that it is possible to reform procedures without dealing with outcomes. Perhaps relevant to this, is a recent study of prisoners which demonstrates, against the findings of much procedural justice literature, that 'not only are actual grievance outcomes more important to these prisoners' satisfaction than their perceptions of a fair process are, but in many cases the former drives the latter.'²⁸⁵ The authors of that study observe that this may in part be due to the 'high stakes' nature of prisoner complaints – for example an outcome which might lead to potential early release – which places increased emphasis on outcomes rather than procedure.²⁸⁶ Arguably this is of relevance to some circumstances that face people with disability who make a complaint in relation to violence, abuse, neglect or exploitation; for the complainant, this is not a small scale grievance, but a serious complaint which places increased emphasis on outcome.

3.2 Justice in Outcome

In the previous section we examined just procedures, and the way in which positive experiences of process can contribute to a sense that justice has been achieved. However, as discussed, outcomes for complaint processes remain important; indeed, as we shall discuss in Chapter 7

of this report, there is evidence to suggest that some people with disability who report violence, abuse, neglect and exploitation experience a combined failure of both fair processes and just outcomes. In this respect, understanding what a just outcome is following a complaint about violence, abuse, neglect and exploitation is important. This section examines some principles for understanding the sort of outcomes that a complaint mechanism might produce to create individual and system wide justice.

3.2.1 Distributive, Rectificatory and Recognition Justice

‘Justice’ is a broad and contentious term, linked to a variety of different theories that might contribute to an understanding of justice in outcome, whether this applies to an individual or to a society in general (i.e. ‘social justice’). The ancient philosopher Aristotle offered at least two prominent understandings of justice: namely a form of justice that is ‘distributive’ in nature, and an alternative form of justice that is ‘mathematical’ or arithmetic in nature.²⁸⁷ The former distributive conception of justice is interested in how goods, resources and status is distributed in a society, and the role of equality in creating fairness.²⁸⁸ On the other hand, rectificatory justice is concerned with how to reconcile a harm after an unjust injury has been caused; as Aristotle argues, a judge is often called upon in these cases to assess a harm and find a way to provide equality after a party has been aggrieved.²⁸⁹

These two ideas of justice – distributive and rectificatory – remain relevant today, and are interconnected. To an extent just rectification is the most straightforward to apply to the design of complaint mechanisms because of its focus on responding fairly to demonstrated harm. In this view, where unfair harm is demonstrated, the complaint mechanism should seek to rectify harm caused, for example by providing financial compensation for the ‘detriment sustained directly or indirectly as a result of the original problem.’²⁹⁰ As shall be discussed below, there are several ways to imagine redress that might rectify individual injustices. However, rectification of harms is also related to questions of distributive justice. Discrimination, stigma and oppression can shape who is seen as being owed justice and can also shape what forms rectification can take. As discussed above, people with disability arguably experience forms of ‘testimonial injustice’ where ‘prejudice causes a hearer to give a deflated level of credibility to a speaker’s word.’²⁹¹ As shall be discussed in Chapters 5, 6 and 7, the experiences of people with disability reflect this testimonial injustice: some people with disability do not complain about violence because they fear they will not be believed, and certainly, there are accounts of people with disability who complain who are not believed. Testimonial injustice is in part a ‘distributional’ problem, relating to the way status is distributed in societies. From this standpoint, unless we address the political, legal and economic inequalities which devalue and dehumanise people with disability, then it is difficult to tackle hurdles faced by people with disability when they complain about violence. Similarly, as discussed in Chapter 1, much violence experienced by people with disability is directly related to institutionalisation and segregated living environments; dealing with the causes of violence in this case has to engage with questions of distributive justice, and the allocation of resources to ensure that people with disability do not have to live in these environments.

Distributive justice might be shaped by different principles, and justice theory reflects longstanding debates about these principles. The principles which shape distributive theories of justice could include:

- *Equality in status and treatment.* This is something which, to an extent, underpins international human rights norms, such as Article 1 of the Universal Declaration of Human Rights ('All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood').²⁹² As discussed in Chapter 2, the Convention on the Rights of Persons with Disabilities stipulates that people with disability must be treated with equality and not discriminated against, and enjoy equality before the law (Articles 5, 12 and 13). Conceptions of equal status or dignity are important in the design of complaint mechanisms in recognising equal legal rights to complain, and the need for respectful treatment.
- *Utility and Common Interest.* Utilitarian principles emphasise the 'good' associated with maximising utility or benefit for individuals, and suggest that maximising benefit in the collective interest is a way to decide on a just distribution of resources.²⁹³ While decisions on what is in the common or collective interest are notoriously difficult to assess, individual and collective utility are potentially important considerations in the design of complaint processes. On an individual basis, a decision whether to complain might be shaped by the potential individual costs to complainants; here the 'benefits' have to outweigh the 'costs' in order for people to feel it is in their interests to complain.²⁹⁴ On a society wide basis, one way to assess effectiveness of a complaint process is whether it works in the common interest; that is, beyond resolving individual grievances, does the mechanism also achieve broader goals, such as reform of faulty systems, or humanisation of individuals who have been marginalised.
- *The Difference Principle.* John Rawls' influential account of justice described an alternative approach to achieving fair distribution in the form of the 'difference principle'.²⁹⁵ This view suggests that while equality in relation to rights should be a foundation for a just society, inequality in wealth and status may be acceptable if these inequalities are based on accepted principles. For example, positions of authority may be agreed to if they are awarded on the basis of merit or expertise; or inequalities in income and wealth may be considered fair where these inequalities prove advantageous to the least advantaged. Accounts such as that of Rawls provide a rationale for unequal outcomes: for example a complaint mechanism might provide different levels of monetary payment as compensation on the basis of need, which work to the benefit of the least advantaged.
- *Flourishing and Capabilities.* Capabilities theorists such as Amartya Sen and Martha Nussbaum are interested less in the distribution of goods and resources, and more interested in how these goods and resources impact individuals.²⁹⁶ Here, a just outcome is referenced against how goods and resources assist individuals to live a 'good life'; Nussbaum insists that people with disability 'deserve all the prerequisites of a good human life'.²⁹⁷ For the design of a complaint mechanism, a capabilities approach would be interested in both preferences of the complainant in terms of outcome, but also about creating outcomes which maximise the flourishing of individuals: for example by not merely

providing monetary compensation but also resources and support that might enable an individual to participate, and by introducing changes to material conditions that would otherwise reproduce violence and deprivation.

- *Non 'Ideal' and Critical Approaches.* Many of the above theories of just distribution are 'ideal' in nature: they rely upon the construction of abstract principles and application of these principles to non-ideal situations. There is a long tradition of justice thinking which is less interested in ideal theory and more focused on how unfair distribution of resources is a product of the way in which structures of society produce these inequalities; this is perhaps most clearly evident in Marxist approaches to justice.²⁹⁸ To an extent these perspectives have had a shaping effect on early social model disability theorists such as Mike Oliver, who saw the social production of disability as interlinked with the social and economic structures of our society.²⁹⁹ Critical perspectives have also been important in shaping feminist and critical race studies approaches: for example Charles Mills' rejection of the ideal justice theory in favour of an approach that treats the facts of history, including colonialism and racism, as the starting point for justice claims.³⁰⁰ For a complaint mechanism, critical approaches to justice would have implications for design of outcomes which focus on changing conditions which generate the complaint: for example ending segregation and institutionalisation as a solution to continual complaints about violence, abuse, neglect and exploitation. It can also mean taking into account the bigger picture; for example, the way in which settler colonialism shapes our institutions and the violence experienced by First Nations people with disability.³⁰¹

The above approaches might be considered as 'distributive' in so far as they are not directly shaped by the demand to rectify a harm, and are more interested in the just distribution of resources, opportunities and status in a society.

However, rectification of harms remains an important aspect of just outcomes, and as shall be explored below, certainly shapes many legal remedies. Just rectification also interacts with many of the structural issues described above, and can itself provide a powerful way to frame and focus justice claims. For example, feminist philosopher Iris Marion Young argues that we need to move beyond distributive theories of justice and focus instead on rectifying *injustice*; the latter understood as the experience of oppression and domination.³⁰² Young's definitions of oppression and domination are highly applicable to the circumstances that people with disability find themselves within. Oppression for Young is defined as 'systematic institutional processes which prevent some people from learning and using satisfying and expansive skills in socially recognized settings, or institutionalized social processes which inhibit people's ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen.'³⁰³ Young understands domination as comprising 'institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions.'³⁰⁴ In this context, rectification of harm after a complaint relating to violence, abuse, neglect and exploitation would not simply respond to a demonstrated 'loss' or 'damage' but would require rectification of the systemic injustice that produces this harm; for many people with disability, this would necessitate radical changes to living contexts and support systems which at present contribute to and reproduce violence.

Rectification is also an important factor in dealing with historical claims of injustice. For example, if current inequality and disadvantage can be traced to unfair historical conditions and processes, then there is a case for present day rectification to deal with an historical injustice.³⁰⁵ For example, in an Australian context, the systematic withholding of the wages of First Nations workers in the twentieth century has led to calls for reparations schemes to return wages to workers and their descendants.³⁰⁶ As shall be discussed in this report, many people with disability have experiences of violence, abuse, neglect and exploitation over their lives which have never been brought to justice; rectification of historical injustice through a variety of forms – truth telling, apologies and monetary compensation – would be appropriate to consider in these circumstances.

A final element to consider in relation to justice in outcome relates to ‘recognition’. Distributive models of justice often focus on the allocation of resources – wealth, income, compensation, property – as a way to achieve justice. However, as discussed above in relation to procedural justice, many individuals demand forms of respectful treatment which suggest that justice in process is tied to the experience of being socially included and validated. Recognition approaches to justice highlight ways in which justice claims are tied to ‘social patterns of representation, interpretation, and communication.’³⁰⁷ Recognition as a justice goal is important to consider given the dehumanisation and stigma many people with disability experience. Some forms of justice in outcome after a complaint relating to violence – such as a formal apology – conform to the demand for recognition: both in recognising that the violence which occurred was wrong, and in recognising the survivor as having had their inherent dignity violated.

3.2.2 Redress Options

Criminal law, civil law, and administrative authorities all provide forms of redress in relation to harm experienced. In many ways these forms of justice are shaped by some of the narratives described above, either seeking to rectify a harm by providing compensatory benefit, or seeking forms of distributive justice which modify institutions and practices, or by providing forms of recognition of harm which enable symbolic justice. The discussion below describes a range of forms of redress that might be applied to a complaint about violence, abuse, neglect and exploitation.

3.2.2.5 Criminal Sanctions

Where individuals are found culpable for a criminal act, a variety of sanctions might be applied including a fine, a good behaviour bond, home detention and imprisonment.³⁰⁸ Broadly speaking, these criminal sanctions serve multiple purposes, including: as a form of retribution for the criminal act and the harm caused; as a form of incapacitation to prevent the offender potentially harming the victim survivor again or harming others; as a deterrent to prevent the convicted person from committing the criminal act again; as a form of denunciation to signal to the offender and others that the law should not be broken; and as a form of rehabilitation which aims to work on the offender to prevent re-offending.³⁰⁹ Criminal sanctions can work with other forms of victim protection such as sentencing and parole conditions which stipulate that an offender must not be allowed near a victim-survivor, or that the offender must avoid certain areas the victim-survivor frequents.³¹⁰

Application of criminal sanctions upon perpetrators is a common outcome of a court response to a substantiated allegation of violence, abuse, neglect and exploitation. To the extent that people with disability are guaranteed equality before the law, then criminal sanctions should be equally applied to perpetrators of violence against people with disability, and must be considered as one example of a 'just outcome.' However, as discussed in Chapter 1, courts may not be equipped to provide this justice to many people with disability, including because of poor accessibility and lack of supports. Indeed, an observation of the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings was that 'the currently available supports for vulnerable witnesses are under-utilised and that people with disability are discouraged from reporting crimes, or subjected to discriminatory tests to prove their legal capacity.'³¹¹ Courts also can fail to provide justice for some people with disability, where stereotypes around disability intersect with race, gender or sexuality.³¹² Further, the prison and criminal justice system more broadly can be critiqued for sustaining the structural oppression of many marginalised groups, including people with disability who are overrepresented within prisons, and who, along with the majority of the prison population, have also experienced victimisation.³¹³

3.2.2.6 Civil Remedies

Complainants may also pursue civil remedies to address their grievances. Civil procedures may be more appealing to victim-survivors than going through the criminal justice system, as the civil system requires a lower burden of proof, is often a less traumatising experience for victim-survivors, and can deliver outcomes that protect victim-survivors from further violence.³¹⁴

Protection Orders, also known as apprehended violence orders, intervention orders or restraining orders are the most used form of civil legal redress in response to domestic violence in Australia.³¹⁵ This may be because protection orders are often the most accessible and immediate form of relief and protection from violence.³¹⁶ Protection orders impose certain conditions on perpetrators which typically restrict their movement and access to the victim-survivor.³¹⁷ These may include orders to maintain a certain distance from a victim-survivor's home, to avoid shopping, recreation or religious centres the victim-survivor might attend, and may include restricted access to children and other family members.³¹⁸ Protection orders are issued under civil proceedings, however they are enforced by police, and if a perpetrator breaches the conditions of a protection order, criminal sanctions can be applied.³¹⁹

However, apprehended violence orders may have certain limitations when applied to people with disability. Certain relationships may not be covered by protection orders, for example relationships with paid carers or staff within disability institutions, and certain settings might be excluded, such as prisons. Further, certain forms of violence, such as neglect, financial abuse, or forms of disability-specific violence such as withholding medication or restricting access to aids such as wheelchairs might not be covered by these orders.³²⁰ For people with disability who rely on a carer for their everyday needs, a protection order against this carer may cause other forms of harm unless other supports are provided at the same time. Evidence surrounding the efficacy of protection orders also shows that while orders may result in a de-escalation of

physical harm, other forms of violence, such as stalking, verbal abuse, harassment, threats and intimidation may continue or increase after protective orders are put in place.³²¹ However, victim-survivors generally feel safer after a protection order is enacted, even if this does not result in a complete halting of the abuse they experience.³²²

Damages are another outcome potentially afforded to complainants after experiencing violence, and reflect the principles of rectificatory justice outlined above. Damages typically amount to financial compensation, and in the context of discrimination, are 'designed to place applicants in the position in which they would have been if there had not been an act of unlawful discrimination committed against them'.³²³ Damages may be paid to compensate for loss of income or earning capacity, for services that need to be accessed in the aftermath of harm (such as medical and psychology fees) and for emotional damage and distress.³²⁴ Damages compensate for both present and anticipated losses.³²⁵ Most types of damage respond to an injury the victim-survivor has incurred, however some forms aim to punish the respondent of the complaint, called exemplary or punitive damages.³²⁶

Damages can be the outcome of 'tort' claims. Torts are civil 'wrongs' which, while sometimes constituting criminal acts, are dealt with by civil law. The aims of torts are 'to provide remedies for the damages incurred and deter others from committing similar 'harms''.³²⁷ Torts can include battery, assault, trespass, intimidation, negligence, intentional or reckless infliction of emotional distress, false imprisonment, and wrongful death, and can be committed by individuals, corporations and government departments and agencies.³²⁸ Torts cases can also be brought against third parties 'for playing a causative or collusive role in the abuse either through their acts or their omissions'.³²⁹

Awards of damages have limitations in the context of disability. Damages claims must demonstrate that individuals have been wronged, which may require complainants to play into negative 'deficit' stereotypes in order to prove harm.³³⁰ Further, damages typically restore people to their previous position; low income people can only claim damages to restore them to their previous situation, which does not address the structural injustices that initially led to their poverty.³³¹ Damages claims also potentially rely on medicalised and normalising judgements about loss associated with disability: for example there are many torts cases seeking compensatory damages in relation to injury that leads to impairment, or 'wrongful life claims' for people who are born with impairment that is perceived to have been due to the actions of 'a doctor or another party who owes or owed a duty of care to that person'.³³² Adjustments made for life expectancy also impact the damages people with disability can receive,³³³ and there can be arbitrary differences applied in damages received between 'mental' and 'physical' injury.³³⁴

3.2.2.7 Other Remedies

There are a range of other forms of redress complainants may seek as an outcome. It is notable for example that, at least in the context of administrative health care complaints, there is evidence that many complainants seek non-monetary remedies.³³⁵ Some of these forms of redress include:

- *An order to not repeat the unlawful act.* In some cases an administrative authority or organisation can be compelled to not repeat or continue an act. This course of action can be effective for changing conduct that ‘without any specific mechanism to make it stop, will continue.’³³⁶
- *A communication.* In some cases an order can be made to provide an apology or explanation. This outcome might be an admission of wrong by a perpetrator or institution, and is sometimes the main source of remedy that complainants desire; in one study on healthcare complaints, ‘over half (57%) of complainants sought communication in the form of information about what had happened in the care breakdown, an expression of responsibility, or an apology’.³³⁷ A communication can also take the form of a learning, where an organisation takes steps to change policies and publicly states how it will do better in future.³³⁸
- *Promotions or transfers.* In cases of employment discrimination, an organisation can be compelled to ensure ‘that the person be employed, transferred or promoted to the position which they were denied due to the unlawful discrimination.’³³⁹

3.2.3 Transitional and Transformative Justice

Relevant to justice in outcome, and inter-related with the discussion above around distributive justice and structural change, is the concept of ‘transitional justice’. The term is often deployed to think about forms of intermediary justice which follow historical periods when societies liberalise, or when rule of law prevails after a period of conflict or civil breakdown; for example the ‘Valech Report’ which followed the atrocities of the Augusto Pinochet regime in Chile, the South African Truth and Reconciliation Commission which marked the end of the apartheid era, or the International Criminal Tribunal for Rwanda which was established after the Rwandan genocide in 1994.³⁴⁰ However, transitional justice can also be understood to follow ‘paradigm shifts in conceptions of justice’ or as changing normative orders.³⁴¹ Thus, a process of transitional justice could be applied to a situation where changing norms of justice frame routine practices of the past as historical wrongs; for example the landmark 1997 *Bringing Them Home Report* is often understood as a historical moment which marked a public acknowledgement of past wrongs.³⁴²

In 2010 the United Nations Secretary General released a guidance note on transitional justice, which articulated five main elements.³⁴³ Each has implications for how justice in outcome might be conceptualised:

- *Prosecution initiatives* – This aims to ensure accountability that those involved in crimes ‘are tried in accordance with international standards of fair trial and, where appropriate, punished.’³⁴⁴ Criminal sanction offers one way to hold perpetrators accountable, and counter perceived impunity for violence.
- *Facilitating initiatives in respect of the right to truth* – Truth seeking and truth telling initiatives allow tribunals to ‘map patterns of past violence, and unearth the causes and consequences of these destructive events.’³⁴⁵ These should be tied to an archiving facility to preserve

knowledge and testimony. Truth telling allows victim-survivors and their families 'voice' in making public experiences of violence; it also undermines the ideologies that normalise and explain away institutional violence.

- *Delivering reparations* – Redress for victim-survivors 'can include monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for loss thereof, but also official public apologies, building museums and memorials, and establishing days of commemoration.'³⁴⁶ Redress attempts to provide forms of rectificatory justice for individuals, and create the circumstances where victim-survivors and their families can heal.
- *Institutional reforms* – This involves transforming institutions to reorient them away from the orchestration of violence and repression towards peace and respect for human rights. It also can involve transforming the workforce of institutions, and 'the disbandment of military, police or other security units that may have been systematically responsible for human rights violations.'³⁴⁷ Structural reform is essential in altering the institutions and practices that bear responsibility for the conduct of violence.
- *National consultations* – This element, an addition to traditional models of transitional justice, recognises that change will require consultation and partnership with institutions and the public, assisting 'victims and other members of civil society to develop local ownership of the resulting programme.'³⁴⁸

Different elements of transitional justice are highly relevant to considering responses to violence, abuse, neglect and exploitation of people with disability. Public inquiry processes, such as the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings or the Royal Commission into Institutional Responses to Child Sexual Abuse often serve a truth telling function, allowing for public acknowledgement and reframing of mass violence.³⁴⁹ Truth telling can also take the form of availability of administrative data: for example, a bill is currently under consideration in Massachusetts that would open the records of individuals in institutions after 90 years, allowing for the stories of those incarcerated in residential facilities to become publicly available.³⁵⁰ Transitional justice initiatives can also take the form of community campaigns which create the context for truth telling and create a demand for redress, such as the Chicago Torture Justice Memorials project, which led a campaign for reparations for victim-survivors of torture at the hands of Chicago Police Commander Jon Burge and his subordinates from 1972 to 1991.³⁵¹

In many cases, transitional justice initiatives seek 'transformative' change, at least in so far as it 'is concerned with the question of how to effect a social and political transformation from a political community whose past has been characterized by various forms of systemic violence, injustice and (in the human realm) violations of human rights, to one whose future is premised on and capable of sustaining just relations and social peace.'³⁵² This important focus on transformation with transitional justice, and the critiques of the limits of 'transitional justice' itself, have in turn led to 'transformative justice' becoming a growing field of inquiry.³⁵³ At least part of the move towards transformative justice is a reaction to the institutionalisation

of transitional justice within the law and State centric institutions, and the demand to locate control of transformation to communities that are impacted by change; as Paul Gready and Simon Robbins state, ‘transformative justice entails a shift in focus from the legal to the social and political, and from the state and institutions to communities and everyday concerns.’³⁵⁴ There is also a demand for transformation that genuinely leads to structural change. Wendy Lambourne proposes four elements of transformational justice, which both borrow from the elements of transitional justice describe above, but also orient this form of justice towards substantive structural change; Lambourne argues that transformative justice would imply accountability (or legal justice), truth and healing, socio-economic justice and political justice.³⁵⁵

3.3 Conclusion

There are a number of implications of the above discussion of procedural justice and justice in outcome for the design of complaint mechanisms that respond to violence, abuse, neglect and exploitation experienced by people with disability:

- Application of procedural justice principles to the design of complaint mechanisms relating to violence, abuse, neglect and exploitation experienced by people with disability will go some way in addressing perceived injustice.
- An opportunity available in the design of a mechanism is the capacity to recognise people with disability as participants within a society on an equal basis with others. As such the mechanism is a strategy of social, cultural, legal and economic inclusion.
- A complaint mechanism will need to be perceived as trustworthy through use of fair processes by a legitimate authority that has the power to address the complaint and will need to safeguard against negative outcomes and retribution.
- A complaint mechanism will need to work against generalised forms of discrimination experienced by people with disability in order to ensure respectful treatment; the starting point for this is accessibility of the mechanism and support within the mechanism to enable people with disability to exercise their legal capacity.
- A complaint mechanism will have to appear neutral and independent in order to be effective; however, there is scope to imagine a complaint mechanism as being positioned as ‘defender of the rights of people disability’ in ways which build trust and community with people disability and their organisations.
- There is much scope to ensure that complaint procedures provide avenues for the voices of people with disability to be heard; a challenge here is counteracting the prevailing forms of discrimination that systematically discredit the testimony of people with disability.
- While just procedures are important, they do not negate importance of just outcomes; arguable system failures relating to providing justice, and the high stakes nature of complaints relating to violence, abuse, neglect and exploitation experienced by people with disability suggest that the experience of a just procedure will be interconnected with the experience of just outcomes.

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- In order to achieve justice in outcome, a complaint mechanism must seek to rectify harm experienced by individuals. There are a rich array of legal remedies available that would be appropriate to apply in circumstances where individuals experience violence, abuse, neglect and exploitation.
 - Rectificatory justice must in some respects reflect the subjective preferences of those who are harmed. In this respect, enabling 'voice' for complainants is important in understanding what expectations are for just outcome.
 - In order to ensure equality before the law and non-discrimination, the remedies applied in situations where people with disability experience violence must be substantively equivalent to those that would apply to people without disability in the same circumstances (for example if perpetrators of violence against people without disability are routinely subject to criminal sanctions, then it would be discriminatory for these sanctions to not be routinely applied to perpetrators of violence against people with disability).
 - In so far as much violence experienced by people with disability is structural and institutional in nature, complaints in relation to violence, abuse, neglect and exploitation are an opportunity to transform institutions and practices by addressing root causes. To the extent that these root causes are interconnected with deep forms of inequality, including in relation to disability, gender, race and sexuality, complaints relating to violence must also respond to these broader structural issues.
 - Given the likely substantial number of historical instances of violence experienced by people with disability that have not been provided recognition, there is strong demand to develop processes to rectify historical injustice. Transitional and transformative justice processes provide a framework for responding to these complaints and providing just outcomes by addressing accountability, truth, redress and institutional change.

Chapter 4: Australian Complaint Mechanisms – A Survey

In this Chapter we consider the current landscape of complaint mechanisms that might be accessed by people with disability in Australia to report violence, abuse, neglect and exploitation. Findings presented in this Chapter are drawn from the comprehensive *Australian Complaint Mechanism Landscape Table* we developed as part of our project. That *Table* can be found in Appendix A.

In the *Australian Complaint Mechanism Landscape Table*, we identified a range of key state, territory and national complaint bodies, based on the information provided on their websites, including where appropriate and available, policies and legislation. We included complaint bodies that are disability-specific in their focus – that is, bodies that focus on complaints relating to disability-specific settings, services or supports. We also included complaint bodies that are non-disability-specific in their focus – that is, complaint bodies that focus on the domains of education, health, social services, and justice – but in relation to which, people with disability may still seek to lodge complaints. Some complaint mechanisms are managed by bodies such as Ombuds, who have statutory independence; however, most complaint mechanisms discussed below are embedded within government agencies or within service organisations. Many organisations which manage complaint processes balance potentially conflicting tasks, such as regulating, funding and managing services; as we discuss, this is potentially a concern in relation to resolution of complaints of violence, abuse, neglect and exploitation. While the selection of complaint bodies in the *Table* is not exhaustive, our *Table* provides insight into a number of key issues relating to complaint, including what complaint bodies are available in different domains, the kinds of processes they apply to complaints, the consistency and differences between complaint bodies, and the processes that apply when responding to violence, abuse, neglect and exploitation.

In total we looked at eleven disability-specific complaint bodies operating in Australia. This includes three national bodies for receiving and resolving disability-specific complaints – the NDIS Quality and Safeguards Commission, the Complaints Resolution and Referral Service and the National Disability Abuse and Neglect Hotline – as well as at least one disability-specific complaint body located in each state or territory of Australia. Our *Table* also includes seventy-two non-disability-specific complaint bodies, with at least one national body for complaints available in each of the domains we considered, as well as two to three complaint bodies per domain in each state or territory in Australia. In compiling the *Table*, we have attempted to consistently approach similar complaint mechanisms in each jurisdiction. Occasionally, in order to indicate the diversity of different approaches, we have included complaint mechanisms relevant to people with disability – such as the Children’s Commissioner in the NT – but have not repeated this for every jurisdiction. Note as discussed in the Introduction to this report, our analysis does not offer an analysis of the performance of Australian complaint mechanisms in complaint resolution. Further, while some complaint bodies manage mandatory reportable conduct schemes, and these are interconnected with the functions of some complaint mechanisms, these schemes have not been examined as part of this report. This means that in practice complaint mechanisms may utilise a range of reporting pathways and procedures

additional to those available in a mechanism itself, or provide outcomes that have engaged such additional pathways and procedures that are differentiated and improve on publicly stated complaint processes. As described in the Introduction, further empirical study of the experiences of people with disability reporting violence, abuse, neglect and exploitation would reveal much needed information on the performance of this wider range of existing mechanisms in relation to procedure and outcome.

For each complaint body we identified, we examined the information provided on their website, including where appropriate and available, policies, procedures and legislation. We wanted to better understand what information, advice and instructions are provided to potential complainants on these websites, although we acknowledge that not all complainants would know to look at an organisation's website to find policies and procedures relating to complaints processes. From the information we collected, we then captured several key factors of relevance to the complaints process in our *Table*, including:

- The opportunity to make a complaint – e.g., who can complain; what types of violence, abuse, neglect and/or exploitation the complaint applies to or excludes; and any limitation periods or evidentiary requirements.
- The process of making a complaint – e.g., what is the process to complain set out by a given complaint body, and what forms of complaint can be lodged with said body.
- The resolution of the complaints process – e.g., what is the nature of the complaint resolution process; what is the role of the victim-survivor and the perpetrator in complaint resolution; and is there a pathway to reporting the violence, abuse, neglect or exploitation to police or other authorities.
- The outcome(s) of the complaints process – e.g., what are the range of possible outcomes provided by a complaint body; are those outcomes enforced or monitored in any way; and is there an appeals or review process following an outcome.

Several themes and tensions emerged when we considered how each of the above factors play out across the various complaint bodies we identified in the *Table*. In this Chapter, we present an analysis of these themes and tensions, grouped around two core issues of relevance to this report. First, we consider the accessibility and inclusiveness of current complaint mechanisms for people with disability in Australia, based on the information provided on their websites, including where appropriate and available, legislation, policies and procedures. Second, we consider the range of responses publicly stated by complaint mechanisms to reports of people with disability experiencing violence, abuse, neglect and/or exploitation. Throughout the Chapter we include case examples of national and international complaint bodies or practices that are of interest. We also provide a summary of population and administrative data sources that might be useful for understanding complaint making, processing and resolution. We conclude with a section which explores complaint pathways to international human rights treaty bodies; as we discuss, these are of relevance for violence, abuse, neglect and exploitation that violates international human rights.

4.1 The accessibility and inclusiveness of current complaint mechanisms for people with disability

One of the primary questions to be considered when designing a complaint mechanism is: will the mechanism be accessible for all people who may need to make use of it? In relation to people with disability, answers to this question depend on how the term 'accessibility', and the broader term, 'access', have been conceptualised or interpreted. Below we outline three key interpretations of these terms, and consider what these interpretations may imply about the accessibility and inclusiveness of Australia's current complaint mechanisms landscape for people with disability.

4.1.1 Accessibility as accommodations

In the context of people with disability, the term 'accessibility' most commonly refers to the provision of specifically designed accommodations and processes that enable the fair access of people with disability. As discussed in Chapter 3, the provision of accessible processes and accommodations will go some way towards ensuring expectations of procedural justice for people with disability are met.

Perhaps unsurprisingly, there appears to be greater recognition of, and provision for conventional, disability-specific accessibility accommodations among disability-specific complaint mechanisms in Australia. For example, based on the information provided on their websites, including where appropriate and available, legislation, policies and procedures, most, though not all, disability-specific complaint bodies specify options for complaints to be made via the National Relay Service, a translation service for people who are Deaf or hard of hearing. In contrast, this option is only specified by some non-disability-specific complaint bodies, typically by state or territory Ombuds. We note, however, that most, though again, not all, non-disability-specific complaint bodies make provisions for translation and interpreting services as part of their accessibility considerations. Translation and interpreting services are typically viewed as key provisions for enabling the fair access of people from culturally and linguistically diverse backgrounds and people for whom Auslan is a primary language. This accessibility provision is carried over to disability-specific complaints mechanisms as well.

However, what is also apparent when looking across Australia's complaints landscape, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, is that there is no *consistency* when it comes to the provision of any other conventional accessibility considerations. The Disability and Community Services Commissioner of the ACT as well as the broader ACT Human Rights Commission, for example, emphasises the use of an online form, but accept complaints via other pathways, such as over the phone.³⁵⁶ The Commonwealth Aged Care Quality and Safety Commission additionally provides information to complainants to assist them to access advocacy support during the complaints process,³⁵⁷ and the NSW Ageing and Disability Commission appear to encourage

people to contact the NSW Ageing and Disability Abuse Helpline in the first instance.³⁵⁸ In contrast, the Disability and Community Services in Tasmania specify that advocates can help people make complaints, though do not offer to assist complainants to access them.³⁵⁹

There is also no consistent method or medium by which complaints will be accepted among and between disability-specific and non-disability-specific complaints mechanisms. Some bodies, such as the ACT Health Services Commissioner, for example, require an online form to be completed, but enable complainants to contact the Commission by phone for assistance in completing the form.³⁶⁰ This is the same process employed by the ACT Human Rights Commission as well as the Ombudsman NSW.³⁶¹ While the ACT Department of Community Services does not provide a form to guide complainants, they do advise complainants that there are advocacy organisations which can offer advice and support.³⁶²

Case Example 1: Canadian Human Rights Commission

The Canadian Human Rights Commission is a federal body which was established in 1977 as a mechanism by which the equality rights of Canadian citizens, permanent residents and visa holders could be protected and promoted.³⁶³ It was established with the passing of the Canadian Human Rights Act, which gives power to the Commission to order remedies to complainants to compensate for any discrimination suffered.³⁶⁴ The Canadian Human Rights Act protects against discrimination on the grounds of 'race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, disability, genetic characteristics, or a conviction for which a pardon has been granted or a record suspended'.³⁶⁵

The Canadian Human Rights Commission has what appears as a clear, streamlined, and largely accessible online complaint process. It uses comparatively straightforward, non-technical language, and does not take for granted that potential complainants will have a strong understanding of human rights, discrimination, or complaint processes. The Commission website includes a page clearly entitled 'I want to complain'.³⁶⁶ This page leads potential complainants through a guided process where one question 'pops up' after the next to assess their eligibility to make a complaint. If they are deemed ineligible, this process points the potential complainant towards an alternative complaint body, for example, a provincial human rights commission. If they are deemed eligible, it points them towards filing a complaint. This can either be filed online or via a PDF form which can be downloaded and filled in, and then emailed or posted to the Commission. Both the online eligibility and complaint process feature drop down boxes where potential complainants can choose a pre-filled answer to certain questions, alongside free response boxes. This makes these processes easier to navigate. The website was designed with input from people with disability,³⁶⁷ and provides key information including how to make a complaint in American Sign Language (ASL).³⁶⁸

Note, while the website showcases good practice when it comes to complaint mechanisms in terms of accessibility and clarity, it does not foreground violence as a reason for which a potential complainant could make a complaint. The complaint process does include harassment, but does not list other forms of violence, abuse, neglect or exploitation.

As discussed in Chapter 3, experiences of justice associated with process will typically depend upon perceived transparency in relation to how a complaint process works. Arguably inconsistent information, and opaque processes will undermine trust in complaint mechanisms. This will be particularly acute where a complainant is reporting violence, abuse, neglect and exploitation. The case example of the Canadian Human Rights Commission (Case example 1 above), provides an example of better practice in clear, streamlined and largely accessible online complaint processes for people with disability, while Case Example 2: SA Health's Consumer, Carer and Community Feedback and Complaints Management Guide and Resources 2021-2024 (below), provides an example of how broader accessibility considerations for diverse people with disability can be built into the core values of a complaints handling process.

Case Example 2: SA Health's Consumer, Carer and Community Feedback and Complaints Management Guide and Resources 2021-2024

SA Health's *Consumer, Carer and Community Feedback and Complaints Management Guide and Resources 2021-2024* is underpinned by a *Consumer, Carer and Community Feedback and Complaints Management Strategic Framework*. Together, these documents provide a comprehensive outline of how complaints are to be managed by SA Health, in order to ensure customer-centred responses to individual complaints and systemic improvement of SA Health services. Whilst the *Strategic Framework* provides aspirational goals and commitments, the *Guide and Resources* provides clear procedural instructions and explanations of how such goals will be achieved.

The complaints management process outlined by SA Health is particularly attuned to the needs of various groups, including people with disability. For example, its *Strategic Framework* acknowledges the needs of consumers who may experience reduced autonomy and identifies particular barriers that such people may face when making complaints about health services.³⁶⁹ It also recognises that many people with disability experience poorer health outcomes, higher rates of disadvantage and/or significant burden of undiagnosed illness, which may further impede their ability to access and/or benefit from traditional complaints mechanisms. Awareness of how this broader context impacts the lives of people with disability is then built into the core values and principles of SA Health's *Strategic Framework* on complaints handling.

The complaint management process outlined in the *Guide and Resources* includes significant detail, including how complaints are to be received, recorded, acknowledged, classified, assessed, investigated, responded to and resolved. Clear expected outcomes of complaint resolution are provided, as are options for internal and external review of decisions. Specific instructions are provided to staff at each step with limited allowance for discretion, yet with ample consideration of the needs of particular groups who may experience greater levels of vulnerability, or who may require higher levels of support. For example, staff are required to prioritise cultural safety in their management of the complaints process:

'Cultural safety identifies that health consumers are safest when health professionals have considered power relations, cultural differences and patients' rights. Part of this process requires health professionals to examine their own realities, beliefs and attitudes.'

*Cultural safety is not defined by the health professional, but is defined by the consumer's experience – the individual's experience of care they are given, ability to access services and to raise concerns.'*³⁷⁰

Assumptions about equitable access to complaint bodies

A second way by which to consider issues of 'accessibility' and inclusiveness is by returning to the broader concept of 'access'. Put differently, instead of narrowing attention to focus on which

accommodations are provided once a person with disability has already made initial contact with a complaint body, it is also important to step back and consider: can all people with disability reach this point? Is there equitable access to complaint bodies for all people with disability?

In relation to this broader question of equitable access to complaint bodies, our analysis of the *Australian Complaint Mechanism Landscape Table* indicates that based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, there are little to no clear and specific provisions made for people with disability who live in disability-specific closed environments within the community - such as group homes - to make complaints to independent bodies. This is an important consideration, since people living in closed environments have limited opportunities to confidentially lodge complaints and / or receive independent support to complain. Certainly, it may be true that some complaint mechanisms do in practice provide dedicated avenues for people in closed environments to complain; however based on the information provided on websites, including where appropriate and available, policies and procedures, we found minimal evidence of specific procedures for people in these environments. Indeed, our mapping of the complaints landscape suggests that one of the only mechanisms made available for people with disability living in such environments are the 'Community Visitor' programs and schemes that operate in New South Wales, Queensland and Victoria. Perhaps the most well-established version of the 'Community Visitors' program in Australia is the one run through the Office of the Public Advocate in the state of Victoria.

In Victoria, Community Visitors are trained volunteers who visit Victorian accommodation facilities for people with disability or mental illness.³⁷¹ Community Visitors are empowered to check on the quality of services and care provided in Victorian accommodation facilities; they are expected to evaluate if residents of these accommodation facilities are being treated with dignity and respect. While most visits by Community Visitors are unannounced, many are said to occur in direct response to complaints that have been raised through the Office of the Public Advocate's Advice Service.³⁷² In the context of complaints, Community Visitors are empowered to speak to staff and management on the behalf of a person with disability if that person instructs them to. Community Visitors can also report any serious problems they identify to the Public Advocate in Victoria, who has investigative powers, and reports to Parliament. In their 2020-2021 Annual Report, Community Visitors highlighted that physical wellbeing, the appropriateness of the residential environment, the upholding of the rights of people with disability and quality of staff support were the main issues noted in the reporting period.³⁷³ Instances of violence, abuse, neglect, and the use of restrictive practices are also monitored by community visitors. In the same reporting period, 159 issues relating to abuse and violence were noted: 51 referrals were made to the Disability Services Commissioner, and 36 to the NDIS Commission.³⁷⁴ Only 'serious' incidences of abuse are referred. Regarding restrictive practices, 20 issues were documented in the reporting period.³⁷⁵

Community Visitors have the capacity to provide an outreach complaint pathway for people with disability living in closed environments. This is an important role; however, we note that there are complexities and limitations here that need to be addressed. Many people with disability

living in closed environments may be subject to a guardianship order, with a Public Guardian from the Office of the Public Advocate appointed as their guardian. This complexity may mean that some people with disability may be reluctant to speak with Community Visitors from the Office of the Public Advocate about any experiences of violence, abuse, neglect or exploitation they have due to concerns that their complaints will negatively impact their relationship with their guardian. This reluctance might be particularly likely to arise where the guardian is the perpetrator of or complicit in the violence, abuse, neglect or exploitation, or where the violence, abuse, neglect and exploitation has been enabled by the guardian's substitute decisions (e.g., a decision to authorise restrictive practices, or a decision that the individual reside at a particular residence). As indicated in Chapter 3, transparency and neutrality are important considerations for establishing perceived trustworthiness of complaint mechanisms. Where a complaint mechanism does not have perceived independence, then there will be a disincentive to complain because of a perception that the mechanism will be ineffective or that there will be an adverse consequence. Certainly, as indicated in Chapter 5, these factors explain why some people with disability do not complain about violence.

4.1.2 Access as availability

A final way by which the concepts of 'access' and 'accessibility' might be considered productively is in relation to the concept of availability. Our analysis of the *Australian Complaint Mechanism Landscape Table* indicates that, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, there has been a narrowing of available disability-specific complaint options for people with disability in recent years.

Since the establishment of the NDIS Quality and Safeguards Commission, state and territory disability-specific complaints mechanisms appear to have gradually shifted away from accepting complaints about NDIS funded disability services. For example, in Victoria, a person with disability who may have previously been able to lodge a complaint with the Disability Services Commissioner about their service provider, will now be redirected to the NDIS Quality and Safeguards Commission if that provider has registered with the NDIS.³⁷⁶ This same redirection occurs in relation to the Victorian Mental Health Complaints Commissioner, the NSW Ombudsman, as well as others.³⁷⁷ What this shift means in practice is that most state and territory-based disability-specific complaints mechanisms have become narrower in their focus since the establishment of the NDIS Quality and Safeguards Commission. This shift also means that people with disability who may have previously sought access to their state or territory's complaint mechanism in order to resolve or seek further action in relation to issues they were facing may now find that they no longer have access to those local mechanisms. Instead, they may be redirected to the NDIS Quality and Safeguards Commission where they must start the process again.

In some respects, the move towards a central national mechanism could be positive. However, there are limitations. First, the NDIS Quality and Safeguards Commission will only respond in relation to NDIS funded services, and this thus leaves in question the availability of complaint

pathways for people with disability experiencing violence, abuse, neglect and exploitation in the context of non-NDIS services, and further, more broadly, people with disability experiencing violence, abuse, neglect and exploitation where there is no clear interaction with a service. Second, if the effect of the centralisation of complaint mechanisms has been to reduce pathways to reporting violence, then this may impact complaints making, particularly if there has not been strong awareness raising about the new arrangements. An interesting exception to this trend is the recently established Victorian Disability Worker Commission, which specifies that its complaints service will accept complaints about any disability worker in Victoria, regardless of how a worker is employed or how the service they deliver is funded. We examine the Victorian Disability Worker Commission in further detail in Case Example 3 below, before further exploring the provisions within Australia's current complaints landscape for accepting and responding to complaints about violence, abuse, neglect and exploitation.

We note that the Joint Standing Committee on the National Disability Insurance Scheme has conducted an inquiry into NDIS Quality and Safeguard Commission in 2021, with a focus of the review on complaint handling.³⁷⁸ The Committee noted that there were substantial problems relating to access and unclear processes; the Committee also noted that there was a lack of information on timeframe and processes, and issues with perceived non-neutrality:

the process is frustrating for parties, including due to a lack of information provided by the Commission regarding to timeframes for resolution or progress of a complaint, confusion about the Commission's referral process, and perceptions from participants that the Commission's processes favour providers.³⁷⁹

The concerns raised by the Joint Standing Committee echo general concerns raised in this Chapter on information available to complainants to understand how complaint processes work and the kind of outcomes that might be available as a result of making a complaint.

Case Example 3: Victorian Disability Worker Commission

The Victorian Disability Worker Commission includes the Victorian Disability Worker Commissioner and the Disability Worker Registration Board of Victoria. The Victorian Disability Worker Commissioner regulates the conduct of unregistered workers in Victoria, while the Disability Worker Registration Board of Victoria regulating registered workers. Students training to be disability workers are also regulated by the Victorian Disability Worker Commission.

Together, the Victorian Disability Worker Commissioner and the Registration Board joint administer the Disability Worker Regulation Scheme. The Disability Worker Regulation Scheme is the first scheme of its kind in Australia. It was established under the *Disability Service Safeguards Act 2018*, and emerged in response to the recommendations of the Victorian Parliament's 2016 *Inquiry into abuse in disability services*. The Scheme is said to form part of the Victorian Government's 'zero tolerance approach to the abuse of people with disability'.³⁸⁰ The Scheme began in Victorian on 1 July 2020, and includes three main components:

1. A **Code of Conduct** for all disability workers in Victoria, both registered and unregistered. The Disability Service Safeguards Code of Conduct follows the requirements articulated in the NDIS Code of Conduct. Among other things, these Codes of Conduct require all disability workers in Victoria to both respect the rights and privacy of people with disability, as well as to take reasonable steps 'to prevent and respond to all forms of violence, against, and exploitation, neglect and abuse of, people with disability'.³⁸¹
2. An **independent complaints service** where anyone in the community who has a concern about the conduct of a worker can make a complaint, and complaints about any disability worker in Victoria can be received, regardless of how a worker is employed or how the service they deliver is funded. Notably, in the case of workers employed or engaged by a registered NDIS provider, the Commission or Board must refer the matter to the NDIS Quality and Safeguards Commission, however, the Victorian Commission or Board may also continue to deal with the matter themselves.
3. **Voluntary registration** for disability workers in Victoria, which opened on 1 July 2021.³⁸² Like registration of nurses, lawyers, doctors and other professions, the registration of disability workers in Victoria acts as a mechanism to ensure Victorian disability workers meet consistent standards for safety, skills and professionalism. The Disability Worker Registration Board of Victoria is responsible for setting the standards for registration, and for assessing workers who volunteer for registration against these standards. These standards include criminal history, continuing professional development and competency in English.³⁸³ The Disability Worker Registration Board are also responsible for keeping a public register of registered disability workers and students for use by people with disability and others.

In relation to complaints, it is important to note that under the *Disability Service Safeguards Act 2018 (Vic)*, the Victorian Disability Worker Commissioner is empowered to ‘make a prohibition order if the Commissioner believes that an unregistered disability worker has breached the Code, and if it’s necessary to make the order to avoid a serious risk to life, health or safety. A prohibition order bans a person from providing disability services (either some or all disability services) in Victoria for a fixed period or permanently.’³⁸⁴ In 2020-2021 the Commission issued one interim prohibition order.³⁸⁵

4.2 Reporting and responding to violence, abuse, neglect and exploitation

Complaint bodies receive complaints in relation to a broad range of actions, behaviours, activities and experiences. Complaints may, for example, relate to human errors, procedural deficiencies, flawed administrative processes, access to services and resources, a failure to apply policy and procedure, unethical or unprofessional behaviour and/or attitudes, discrimination, harassment, bullying, quality of services, and decisions that have been made, among other things. Relevant to this report, complaint mechanisms, for better or worse, are also reporting pathways for violence, abuse, neglect and exploitation. Given this role, it would be important for complaint mechanisms to have clear and distinct processes for handling complaints related to violence, with transparent messaging for potential complainants, services and authorities.

In the Australian complaint mechanism landscape, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, there are only a few complaint bodies that *explicitly indicate* they will accept complaints relating to violence, abuse, neglect and exploitation. There is also a lack of clarity around which complaints relating to violence, abuse, neglect and exploitation will be accepted and acted upon by a complaint body. And there are a number of tensions relating to how complaint bodies are currently designed to respond to complaints of this nature. We consider each of these issues in further detail below.

4.2.1 Unclear provisions for accepting complaints about violence, abuse, neglect and exploitation

There appears to be both limited and unclear avenues for people with disability to report violence, abuse, neglect and exploitation to a complaint mechanism in Australia. By this we mean three things.

First, our mapping of Australia’s complaint mechanism landscape, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, appears to suggest that almost universally the *only* complaint bodies that explicitly

indicate they will accept complaints relating to abuse, neglect and exploitation are disability-specific in focus. Thus, the NDIS Quality and Safeguards Commission, the Complaints Resolution and Referral Service (which relates to Disability Employment Services; Australian Disability Enterprises; and/or Disability Advocacy services), the Disability and Community Services Commissioner of the ACT Human Rights Commission, the NSW Ageing and Disability Commission and the Victorian Disability Services Commissioner, all specify that they will accept complaints relating to abuse, neglect and exploitation (note, they do not mention 'violence').³⁸⁶

Few non-disability-specific complaint bodies explicitly indicate that they would accept complaints relating to abuse, neglect and exploitation, though on occasion there are potential pathways, such as the abuse reporting facility provided by the Victorian Government Department of Education and Training (explored in Case Example 4 on the following page).³⁸⁷ This is potentially problematic given the numerous spheres in which people with disability may experience abuse, neglect and exploitation. For example, as indicated in Chapters 5, 6 and 7, many young people with disability experience violence, abuse, neglect and exploitation in the context of education. A failure to specify a complaint process relating to abuse, neglect and exploitation could act as a deterrent to complaint making; indeed, as indicated in Chapter 5, at least some people with disability do not complain because the process for reporting is not transparent.

Second, and related to the first point above, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, there do not appear to be any complaint bodies that explicitly state they will accept a complaint relating to 'violence'. There are, however, some complaint bodies which indicate a willingness to accept and/or redirect complaints relating to 'criminal conduct', 'criminal behaviour', or 'criminal matters'. While we appreciate that for some parties the terms 'violence' and 'criminal' may appear interchangeable, we note that this difference in terminology could lead to several points of confusion for complainants. Complainants who have experienced violence may be unsure, for example, if the complaint body is one of the avenues for them to report their experience, because they do not know if their experience would meet a conventional understanding of 'criminal conduct', 'criminal behaviour', or 'criminal matters'. There is also a troubling assumption here that the experiences of abuse, neglect and exploitation that disability-specific complaint mechanisms are explicitly willing to resolve are distinct from 'criminal conduct', 'criminal behaviour', or 'criminal matters'. As discussed in Chapter 1, how we define violence, abuse, neglect and exploitation as concepts is inherently political and subject to contestation; these terms are also complicated by the legal authorisation of some forms of violence, abuse, neglect and exploitation.

Finally, even if a complainant is confident that what they have experienced would constitute a conventional understanding of criminal behaviour, based on the information provided on websites, including where appropriate and available, policies and procedures, there remains a lack of consistency and clarity in relation to how different complaint mechanisms would accept and/or redirect such a complaint. For example, some complaint bodies, such as the NSW Education Standards Authority, simply indicate that they will *not* investigate matters regarding allegations of criminal conduct or matters where common law remedies may be available to

the complainant.³⁸⁸ In contrast, others, such as the ACT Department of Community Services indicate that their Reportable Conduct Scheme does not interfere with reporting obligations to ACT Policing or Child, Youth and Families, or any other relevant professional bodies. Indeed, the ACT Department of Community Services specifies that 'if employees suspect criminal conduct has occurred, they should report to ACT Policing in the first instance'.³⁸⁹ Other bodies, such as the NDIS Quality and Safeguards Commission and the Victorian Disability Services Commissioner indicate that such allegations will be referred to the appropriate police authorities to handle the criminal elements of the complaint,³⁹⁰ while the NSW Ageing & Disability Commission indicates that they can share information with NSW police, particularly criminal allegations.³⁹¹ And yet other complaint bodies, such as the Ombudsman NSW indicate that if they choose to conduct an investigation, they may recommend that an agency initiate criminal proceedings if appropriate,³⁹² while the NSW Health Care Complaints Commission indicates that where there is evidence of possible criminal conduct, 'the complaint can be referred to the Director of Public Prosecutions to consider possible criminal charge(s)'.³⁹³

The above suggests that, based on publicly stated processes, if a complainant wishes to report violence, abuse, neglect and exploitation, they potentially face very different experiences depending on which mechanism they choose. In some cases, publicly stated processes suggest a complaint can be made, and the complaint mechanism will themselves deal with it or refer it to an appropriate authority. In other cases, the complaint mechanism places the responsibility on the complainant to determine if their complaint comprises a criminal offence, and take their complaint to the appropriate authority. Because of the lack of clarity for complainants over whether the violence, abuse, neglect and exploitation they have experienced involved a criminal act or acts, and the potential confusion over the relationship between violence and crime, it is conceivable that some potential complainants may be deterred. We note in this context that placing the onus on complainants to determine if a crime has been committed is at odds with the processes used ordinarily by police; conventionally police will determine through their investigation of a complaint whether a crime has been committed.

Again, as discussed above in the introduction to this Chapter, our analysis is based on the information provided on websites, including where appropriate and available, policies and procedures. It may be that the actual in-practice procedures used by complaint mechanisms differ from what is stated (or not stated) on websites or in policy documentation. Our analysis simply shows that at the level of publicly stated process, there is variance between complaint mechanisms in relation to how complaints related to violence, abuse, neglect and exploitation are represented as being handled. As we will discuss in Chapter 8, developing consistent processes across different complaint mechanisms is one solution to this problem.

Case Example 4: Victorian Government Department of Education and Training

Based on our survey of the information provided on websites, including where appropriate and available, legislation, policies and procedures, the Victorian Government Department of Education and Training is one of the few non-disability-specific complaint bodies that explicitly indicates they will accept complaints relating to violence, abuse, neglect and exploitation. To this end, the Victorian Government Department of Education and Training provides a dedicated website for current and former students of Victorian government schools who are seeking to report experiences of abuse; this website is separate from the website the Department provides for students seeking to provide feedback or make a complaint to the Department.

On the 'Report abuse' website, the Victorian Government Department of Education and Training encourages current and former students to make contact with the school or relevant regional office where the abuse took place, at the same time as making clear that allegations of abuse should also be reported to Victoria Police. Indeed, the Victorian Government Department of Education and Training specify that 'if you are concerned that you or another person is at risk of abuse or otherwise in danger you should contact one or more of:

- Victoria Police on Triple Zero (000) if the risk is immediate
- Your local police station or Victoria Police Sexual Assault and Child Abuse Investigation Team [with a link to assist victims find their local Team provided]
- SANO Task Force – SANO was established by Victoria Police to investigate historic and new allegations of child sexual abuse [with a link to assist victims make contact with SANO Task Force provided].³⁹⁴

The Victorian Government Department of Education and Training's website for reporting abuse further includes information about the counselling assistance program that the Department provides, with the Department offering financial assistance for counselling 'in certain circumstances' – primarily, where a former student has reported sexual abuse at a Victorian government school. Here, we note that the Department specifies that '[a]ccepting an offer of counselling assistance payments will not prevent you from seeking compensation or bringing a legal claim against the Department'.³⁹⁵ For students who have experienced physical or psychological injury at a Victorian government school, and believe that the Department is at fault, the Department specifies that these students are able to lodge a claim for compensation. It is suggested that students seek independent legal advice, and a link is provided for finding out more information about the negligence claims process.

4.2.2 An emphasis on local level responses to complaints

Many of the complaint mechanisms we identified in the *Australian Complaint Mechanism Landscape Table*, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, encourage complainants to seek to resolve their complaint in the first instance with the organisation whose conduct is in question. This emphasis on 'local level' complaint resolution processes appears to be common among many non-disability-specific complaint mechanisms, though there is some variation in the level of emphasis placed on complainants undertaking this step. For example, the NSW Department of Communities and Justice indicate that complainants are encouraged to submit their complaint to the relevant frontline staff member in the first instance, and to then follow that with a submission to the relevant business area within the Department.³⁹⁶ Similarly, the ACT Department of Community Services makes clear that service providers should be given the first opportunity to resolve the complaint.³⁹⁷

Notably, some non-disability-specific complaint bodies in the domain of education effectively mandate local level complaint resolution. Thus, for example, the NT Department of Education indicates that if a complainant contacts the Department before attempting to resolve it at the school level, the department will de-escalate the complaint to be handled by the school first.³⁹⁸ Similarly, the NSW Education Standards Authority outlines that in regards to overseas and non-government schools, complainants are expected to provide 'clear evidence that options for pursuing the complaint at the school have [first] been pursued without resolution' or 'a compelling reason' why this would be inappropriate.³⁹⁹ Similarly, the South Australian Department of Education Complaint management and reporting policy (2020) outlines a staged approach, with the first stage involving approaching the local teacher or staff member involved.⁴⁰⁰ When parents attempt to make contact directly with the Ombudsman (often because they believe the local mechanism will not be effective) they are pointed back to the school, creating a so-called 'washing machine effect'.⁴⁰¹ In the context of education based complaint mechanisms, it is also worth mentioning university processes, which have in recent years gained media attention in relation to their poor responsiveness to sexual violence and harassment. Case Example 5 below provides a snapshot of some of these complaint mechanisms.

The two primary disability-specific complaint mechanisms operating at a national level, the NDIS Quality and Safeguards Commission and the Complaints Resolution and Referral Service also emphasise local complaint resolution in the first instance. In the case of the NDIS Quality and Safeguards Commission, the Commission encourages complainants to resolve their complaint with their provider at first instance, with the Commission indicating it will speak to the complainant and the service provider to see if a quick resolution can be achieved.⁴⁰² In the case of the Complaints Resolution and Referral Service, steps are outlined for both Complaints Resolution and Referral Service-directed local resolution – where the Complaints Resolution and Referral Service assists the complainant to work with the service to resolve the complaint – as well as self-directed local resolution – where the Complaints Resolution and Referral Service assists the complainant by 'providing suggestions and confidence to contact the service directly to resolve the complaint'.⁴⁰³

To an extent, the emphasis that each of the above complaint bodies appear to place on local level responses may reflect 'best practice' in complaint mechanism design. As outlined in Chapter 1 of this report, the Standards Australia document provides three steps for a complaint mechanism:

- Step 1: frontline early resolution
- Step 2: official internal complaint resolution
- Step 3: external complaint resolution

Indeed, the QLD Department of Education states that they base their complaints handling approach on the 'Australian/New Zealand Standard on complaints management (AS/NZS 10002:2014)'.⁴⁰⁴ It is unclear, however, to what extent these standards were designed with consideration of a complaint mechanism being used as one of the primary pathways for some people with disability to report violence, abuse, neglect and exploitation.

To better understand what local resolution by a service of a complaint relating to violence, abuse, neglect and exploitation may look like, we performed a website analysis of the complaint processes of five major disability service providers in Australia. We identified three main features common to 'local level' disability service provider complaint resolution processes. First, while each of the major disability service providers we considered indicated they had procedures and/or policies for accepting complaints about abuse and neglect, only some additionally recognised and provided explicit instructions relating to complaints about assault and violence. This feature is in keeping with our earlier observation about the lack of explicit instructions in relation to complaints about violence by state, territory and national level complaint mechanisms.

Second, most of the major disability service providers we considered were unclear in the presented information about the steps that would occur following receipt of a complaint about abuse, neglect, exploitation or assault. Indeed, while most of the service providers indicated that they would report the incident to external authorities as required by law, it was unclear if criminal justice authorities are included in this mandatory reporting procedure. In fact, only one of the service providers we considered explicitly stated they would report complaints of this nature to law enforcement agencies. One provider indicated that if a person with disability receiving their services has experienced sexual assault, then they will have access to medical and counselling support and prevention of further harm. Concerningly, there was no mention of police involvement in such a scenario. Again, this lack of clarity around involvement of criminal justice authorities in relation to complaints about violence, abuse, neglect and exploitation is in keeping with our earlier observations about state, territory and national level complaint mechanisms, and raises key questions about the equality of people with disability under the law.

Case Example 5: University Complaints Mechanisms

Sexual assault and harassment on university campuses has become an issue of increasing public concern. A comprehensive survey of university students across Australia found that 21 percent have experienced sexual harassment in a university setting, with only six percent reporting this to a university complaint body.⁴⁰⁵ It also found that 1.6 percent of students have experienced sexual assault in a university setting, with only 13 percent reporting this to a university complaint mechanism.⁴⁰⁶ In response, many universities have reformed their complaint mechanisms to better address the unique dynamics of sexual violence and the issues that arise when reporting these forms of harm.

As part of this research, a website analysis of the complaints pages of a selection of some of the largest public universities in Australia revealed differing approaches to complaint. Some universities explicitly state that they take a victim-centred approach, with victim-survivors remaining central to decision making across the complaint process. Their websites highlight that staff trained in family violence and sexual assault help to guide the victim-survivor by explaining different complaint options, assisting the victim-survivor to make their own decisions. Other universities provide little information on how the victim-survivor would be involved in the process, or alternatively they detail a process that includes minimal communication with the victim-survivor and minimal victim-survivor involvement. Some universities stipulate a time limit on complaint, however this is rare. Some universities have an emphasis on conciliatory or mediatory processes, whereas others promote outcomes which centre perpetrator accountability.

University complaint bodies are typically open to staff and students, and many universities enable staff and students to report historical cases of violence, acknowledging that some people may only report violence after considerable time has passed. Other protective measures that universities provide include the possibility of complaining anonymously, however some universities stipulate limitations to this, for example if the complaint involves a minor. Only a few websites made it clear that reporting violence will not impact a student's enrolment or visa.

None of the web pages reviewed outlined complaint processes unique to people with disability. One directs students with disability to the university's disability service, however this service does not provide any information on what support they offer in response to violence and abuse.

Finally, a minority of disability service providers we considered specified that people with disability could also report their experiences to a higher authority such as the NDIS Quality and Safeguards Commission. That is to say, few of the websites of service providers we examined made clear that in addition to raising a complaint with them, people with disability are entitled to raise their complaint with a higher authority. Notably, one of these providers suggested that seeking this higher authority should only occur if the person with disability is not satisfied with

the local level resolution that has taken place. Such suggestions made at the local level by service providers, and then reinforced by state, territory or national complaints mechanisms, may leave some people with disability who experience violence, abuse, neglect or exploitation at the hands of their service provider feeling like there are no appropriate avenues for them to report their experience and seek resolution and redress.

Once again, as discussed above in the introduction to this Chapter, our analysis is based on the information provided on websites, including where appropriate and available, legislation, policies and procedures. It may be that the actual in-practice procedures used by local complaint mechanisms differ from what is stated (or not stated) on websites. Our analysis simply shows that at the level of publicly stated process, there is variance between local complaint mechanisms in relation to how complaints related to violence, abuse, neglect and exploitation are handled. Developing consistent processes across different complaint mechanisms is one solution to this problem.

These observations on local complaint processes match with other observations and findings in this report. In Chapter 3 we pointed out that a basic element of procedural justice is perceived neutrality and trustworthiness of mechanisms. Local complaint mechanisms may be effective for resolving minor service level grievances, however, they will arguably lack perceived neutrality and will not be trusted where a complainant has to take a serious complaint forward, such as that relating to violence, abuse, neglect or exploitation. Certainly, as described in Chapter 5, some people with disability do not complain because they do not trust the mechanism, and have reason to believe that a complaint will lead to an adverse outcome or retribution. The lived experiences described in Chapters 6 and 7 highlight that this is a realistic fear.

4.2.3 An emphasis on conciliation and mediation as the methods by which complaints are resolved

Linked to the above-described emphasis on finding local level solutions to complaints in the first instance, is a secondary emphasis on conciliation and mediation should a complaint not be resolved at the local level. Indeed, based on the information provided on websites, including where appropriate and available, legislation, policies and procedures, conciliation appears to be the *primary process* that complaint bodies employ when seeking to resolve a complaint, with the Australian Human Rights Commission noting that conciliation is considered to be ‘an informal, quick and cost-effective way’ to resolve complaints.⁴⁰⁷

As indicated in Chapter 1, a complaint about violence, abuse, neglect and exploitation which is taken to police and courts will have very different processes of investigation and resolution from the conciliatory approach of a complaint mechanism. Police will investigate potential crime using an independent process, with potential protections in place for victim-survivors and witnesses, the use of systematic and documented processes of investigation and evidence gathering, and powers to prevent potential perpetrators from engaging in further criminal activity. Courts will use a public and adversarial process, with high levels of public transparency around judicial

processes leading to a decision that can include criminal sanctions. In contrast, the conciliatory approach of a complaint mechanism will have potentially lower levels of public transparency, may deploy 'inquisitorial' rather than adversarial elements to investigation and decision making, and will not utilise the powers of police to manage the complaint process. There are, of course, potential benefits to these different, conciliatory processes too; for example, investigations by Ombuds can be generated through own motion inquiry, can interact with and change institutions, and offer outcomes that are not available through the criminal justice system. However, it is worth noting the tensions between these two different approaches to reporting and resolving complaints related to violence, abuse, neglect and exploitation, and the potential risks of failing to provide equality before the law and equal rights to justice.

One of the core tensions surrounding a conciliatory approach to complaints resolution is that it limits the potential outcomes of complaints. Put differently, when the emphasis is placed on coming to an agreement about how both parties can move forward from the experiences or circumstances that gave rise to the complaint, there is an associated assumption that the substance of a complaint can be resolved by the actions taken by one or more of the parties. Thus, for example, the Aged Care Quality and Safety Commission outlines the following possible outcomes for complainants and service providers:

'Agreement: The complainant and the service provider both agree that the concerns have been addressed and the issues resolved.

Addressed: [The Commission] is satisfied that the service provider has addressed the issue.

Direction issued: [The Commission] believe[s] the service provider is not meeting their responsibilities, [and] can direct them to make changes. A direction requires the service provider to demonstrate how they have met or will meet their responsibilities.

Referred for compliance action [The Commission] can refer a matter to the Department of Health to consider compliance action. This may be where [the Commission is] concerned the service provider has not complied with, or is not complying with, its responsibilities or has failed to comply with directions.

No further action: [The Commission] may not take further action if the matter is subject to legal proceedings or a coronial inquiry, or if the person receiving care does not want the complaint to be examined, or if circumstances do not warrant further action.¹⁴⁰⁸

Indeed, even the Commonwealth Ombudsman – which recognises that recommendations need to be aimed at addressing actions or inactions which are contrary to law, unjust, oppressive or improperly discriminatory – only provide the following list of potential recommendations:

-
- ‘that the agency should reconsider or change its action or decision’ that led to the complaint⁴⁰⁹
 - ‘that a law, rule or procedure should be changed’ and/or⁴¹⁰
 - that the agency should take action to remedy the situation, with potential remedies including: improved communication (explaining and giving reasons); reducing delay; suspending or postponing action; reconsidering or changing a decision; providing financial compensation; providing an apology.

As described in Chapter 3, a just outcome would seek to both rectify the individual injustice experienced and seek distributive justice outcomes which could extend to systematic reform. The above highlights why resolution by conciliation may prove unsatisfactory in relation to complaints made by people with disability about violence, abuse, neglect and discrimination. A range of individual remedies might be available; however, to the extent that they are not substantively equivalent to those offered by the criminal justice system – for example not leading to criminal sanctions for perpetrators – there is a risk of failure to guarantee equality before the law. Further, relatively ‘weak’ outcomes will be read in a negative light by complainants. Unless system change in relation to violence prevention is achieved in a substantial way, then the complainant may feel that the complaint did not achieve anything. Indeed, as we shall describe in Chapters 6 and 7, some people with disability report experiences with complaint mechanisms where it is perceived that after a complaint ‘nothing happened’ or no tangible outcome was achieved; as we point out in Chapter 5, previous experiences of complaints about violence that lead nowhere is one reason that potential complainants do not complain again. Case Example 6, on the Australian Health Practitioner Regulation Agency, provides a snapshot of an alternative complaint approach, which is less focused on conciliation, and instead uses an independent adjudicator process with capacity to take immediate action and also pursue systemic change.

Again, as discussed above in the introduction to this Chapter, our analysis is based on the information provided on websites, including where appropriate and available, policies and procedures. It may be that the actual in-practice procedures used by complaint mechanisms differ from what is stated (or not stated) on websites. For example, a complaint mechanism may *in practice* refer all complaints relating to violence, abuse, neglect and exploitation to law enforcement agencies, and thus will not use conciliation to resolve these complaints. However, based on the information provided on websites these potentially different processes for complaint resolution have not been made clear to potential complainants.

Case Example 6: Australian Health Practitioner Regulation Agency

The Australian Health Practitioner Regulation Agency (AHPRA) is the national organisation in Australia responsible for implementing the National Registration and Accreditation Scheme. AHPRA works in partnership with 15 National Boards across Australia, and is responsible for monitoring and auditing registered health practitioners to make sure they comply with Board registration standards, codes and guidelines. AHPRA further manages complaints and concerns that have been raised about the 'health, performance and conduct of individual health practitioners on behalf of the National Boards, except in New South Wales and in Queensland'; in the case of the latter two jurisdictions, AHPRA only manage those complaints and concerns that are referred to them.⁴¹¹ AHPRA can also decide to initiate own-motion investigation into practitioners.

Once a notification has been received by AHPRA, AHPRA then refers it to the relevant Board for preliminary assessment. That Board then has 60 days to assess the notification and decide if it should proceed to an investigation. During this 60-day period, the relevant Board can take immediate regulatory action, including:

- the suspension of, or imposition of a condition on, the health practitioner's registration
- accepting an undertaking from the health practitioner
- accepting the surrender of the health practitioner's registration
- if immediate action has previously been taken by suspending a health practitioner's registration, the revocation of the suspension and the imposition of a condition on the registration, and
- if immediate action has previously taken by imposing a condition on a health practitioner's registration, the suspension of the registration instead of the condition.⁴¹²

Such immediate actions may be taken when there has been allegation of serious criminal conduct, sexual misconduct, and substance abuse, as well as in circumstances where a practitioner has, or is perceived to have an impairment that could pose a serious risk to the public.

If the relevant Board determines that an investigation is warranted, then investigators who are appointed under the National Law are then provided with statutory power to obtain evidence and information relevant to an investigation. Such powers include the power to search places – including a practitioner's residence or place of practice – to seize evidence, as well as powers to require a person to provide information, answer questions or produce documents. Following the collection of relevant information, an independent tribunal will sit, and they are granted the power to reprimand, fine, suspend or cancel a practitioner's registration.

4.3 Complaints Data

It is difficult to attain a comprehensive picture on reports to complaint mechanisms of violence, abuse, neglect and exploitation made by people with disability, primarily due to a lack of appropriate data. While a statistical analysis of complaint making, complaint processes and complaint outcomes is beyond the scope of this project, this section provides a snapshot of the available population and administrative data that is relevant to reporting of violence, abuse, neglect and exploitation experienced by people with disability.

At a population level, limited data is available on the prevalence of violence, abuse, neglect and exploitation against people with disability. The Australian Bureau of Statistics (ABS) Personal Safety Survey (PSS) – described as ‘the only national survey in Australia that collects data on experiences of interpersonal violence’ – provides prevalence data on violence experienced by people with disability, but excludes people living in institutional settings and has limited data from individuals who require communication support.⁴¹³ It also excludes legally authorised violence such as restrictive practices and sterilisation. Further, while the PSS includes data on reporting to police, and a survey question on whether support or advice was ‘sought after the most recent incident of violence’, publicly available ABS data does not disaggregate results for these questions on the basis of disability status, and there is no specific question on access to complaint mechanisms in the way in which this report has defined them.

Some administrative data is available from commissions, ombuds and Government departments about performance of their own complaint mechanisms. These agencies provide reporting on complaint mechanism utilisation and performance, typically available in annual reports or periodic digests. However, there is great variability between agencies on publicly available data, with no consistency on the scope and depth of reporting, on performance, and outcomes for people with disability who experience violence, abuse, neglect and exploitation. Some complaint agencies, such as the Northern Territory Health and Community Services Complaints Commission, the Queensland Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and the South Australian Health and Community Services Commissioner, provide data on complaints in annual reports, however they do not disaggregate this data on the basis of disability status or highlight information relating to violence, abuse, neglect or exploitation or provide detail on processing or resolution.⁴¹⁴ The Commonwealth Ombudsman, who also receive complaints about the National Disability Insurance Agency, provide minimal information on disability specific complaints in their Annual Report.⁴¹⁵ Taking into account the inconsistencies in data available across different jurisdictions on complaints made by people with disability in relation to violence, abuse, neglect and exploitation, it is very difficult to gain a comprehensive national picture from key complaint mechanisms’ administrative data items detailing the number of complaints made, the proportion of complaints considered out of scope or the nature of complaint outcomes pertaining to violence, abuse, neglect and exploitation experienced by people with disability. As such, it would be impossible at present to get a nationally accurate picture of the proportion of incidents of violence, abuse, neglect and exploitation reported to complaint mechanisms.

However, despite the above inconsistencies, some agencies do provide comprehensive data which offers a detailed snapshot of how complaints are processed and what outcomes arise from complaint making in relation to violence, abuse, neglect and exploitation. For example, the Victorian Disability Services Commissioner 2020-21 Annual Report offers a comprehensive breakdown of complaint handling and outcomes.⁴¹⁶ The report contains a clear outline of who complained in the reporting period (i.e. service users, family or staff), and the proportion of complaints considered out of scope.⁴¹⁷ Data is provided relevant to complaints on violence, abuse, neglect and exploitation: for example the 2020-21 Annual Report details that of the 402 new in-scope reviews, the top three categories related to injury (45%), physical abuse or assault (27%) and poor quality of care (24%).⁴¹⁸ The Victorian Disability Services Commissioner has power to generate own motion investigations, and reports on these investigations in the Annual Report.⁴¹⁹ In this report the Commissioner outlines that the aim of own motion investigations is to respond to 'either complaints of a serious nature that are not suitable for conciliation, matters identified during our review of critical incidents, or where there are allegations of persistent or recurring systemic abuse or neglect in the provision of disability services.'⁴²⁰ The Victorian Disability Services Commissioner was one of the few commissions, ombuds or Departments examined which reports the experience and satisfaction of complainants with outcomes: the Annual Report details that '62% of complainants indicated they accepted their complaint as resolved, 12% of complaints were partially resolved and 26% indicated they were not satisfied that their matter had been resolved'.⁴²¹

The NSW Ageing and Disability Commission also provides a reasonably detailed overview of complaints, complaint processing and complaint outcomes in quarterly and annual data snapshots.⁴²² Information is provided on who complains (staff, family or person with disability), and specific data is provided relevant to violence, abuse, neglect and exploitation.⁴²³ Different forms of 'abuse' are outlined, including psychological abuse, neglect and financial abuse.⁴²⁴ An outline of actions of the Commission is provided, including complaints that are not progressed, or if the complaint is referred; there is also reporting of the outcomes for subjects of allegations, including if the person is removed from the premises or if criminal charges have been laid.⁴²⁵

The NDIS Quality and Safeguards Commission provides periodic activity reports which provide detail on complaints in relation to violence, abuse, neglect and exploitation within NDIS services. For example, in the 2020 / 2021 report, of complaints received by the Commission, 43% of complaints were about provider practice, 15% provider policies and procedures, 23% worker conduct or capability, 19% alleged abuse and neglect.⁴²⁶ The Commission has a unique role in monitoring use of restraint and seclusion through an authorisation scheme and obligatory reporting from providers. In the 2020 / 2021 reporting period, Unauthorised use of Restrictive Practices (URP) represents 98.7% of all reportable incidents; these pertained to use of seclusion (798 incidents), physical restraint (4,794 incidents), mechanical restraint (63,795), environmental restriction (376,575) and chemical restraint (585,847 incidents).⁴²⁷ As noted above in this Chapter, the arrival of the NDIS Quality and Safeguards Commission has arguably reduced involvement in disability service related complaints by State and Territory bodies. This has also impacted how, where applicable, reportable conduct schemes operate in States and Territories; for example the NSW Ombudsman reports that 'the reduction in the number of

notifications received by the Ombudsman over the last three years is due to the commencement in July 2018 of the NDIS Quality and Safeguards Commission.⁴²⁸ Relevant to the themes explored in Chapter 1 and 2 of this report, providers indicated that police were informed in relation to only small proportion of incidents, equating to 2,891 of the 1,044,851 reportable incidents documented in the activity statement (i.e., less than 0.3% of reportable incidents).⁴²⁹

4.4 International Human Rights Treaty Bodies – Complaints and Monitoring

Above we have focused on the Australian complaint mechanism landscape, and the pathways available for reporting violence, abuse, neglect and exploitation. In mapping this terrain, we have not focused on the international complaint pathways that may be available, in particular to human rights treaty bodies. As indicated in Chapter 2, Australia is party to a number of human rights treaties that impose strong obligations to prevent violence against people with disability, including in ensuring freedom from torture and cruel, inhuman and degrading treatment or punishment. In this section, we provide an outline of complaint processes to international human rights treaty bodies, their opportunities and limitations. In addition, we examine human rights monitoring, with a focus on the National Preventative Mechanism, as required by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

4.4.1 Complaints to International Human Rights Treaty Bodies

In some cases, individuals or groups of individuals can pursue complaints through ‘communications’ with the committees which oversee implementation and monitoring of a treaty. Whether individuals in any given jurisdiction can make individual communications to treaty bodies will depend upon whether the jurisdiction in question has agreed to allow for these communications. Thus, the State Party will have to not only be party to the core treaty, but also have agreed to allow communications or opted into relevant optional protocols which allow for communications. For example, in order for individual communications to be made to the United Nations Committee on Torture, a State Party will have had to have made a declaration that it ‘recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals’ as outlined in Article 22 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Alternatively, a State Party may need to accede to an additional instrument, such as the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which enables communications from individuals or groups of individuals. In some cases, a treaty does not have a communications procedure, as was the case for the Convention on the Rights of the Child up until the recent adoption of the Third Optional Protocol. In addition to these mechanisms, the United Nations Human Rights Council has its own complaints procedure, which allows reporting of ‘consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms.’ The latter procedure is oriented towards addressing systematic human right violations, rather than individual complaint resolution.

Australia is party to 7 of the 9 core human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities 13 Dec 2006 (CRPD)

Of these treaties, Australia has agreed to receive individual communications or entered into relevant optional protocols which allow for these communications to all *except* ICESCR and CRC (Australia has not ratified the relevant optional protocols for these treaties).⁴³⁰ Australia is not party to International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) or the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and thus communications are not available under these treaties.

In theory, the above treaty obligations create pathways for complaints relating to violence, abuse, neglect and exploitation experienced by people with disability, particularly through treaties such as CRPD and CAT. However, there are important limitations to using such pathways. First, lodging an individual complaint through an international treaty body is far from straightforward, and will require a level of legal expertise or legal advocacy in order to build a case, make sense of which treaty body is appropriate to complain to, determine whether a relevant State Party allows for individual communications, and decide what criteria are required for a complaint. While legal assistance is recommended by the Office of the High Commissioner for Human Rights, no legal aid is provided by the United Nations.⁴³¹

Second, and related, a communication to a core human rights treaty will require individuals to make use of domestic procedures before elevating a claim to a treaty body:

Complainants must have first exhausted all relevant remedies that are available in the State party before bringing a claim to a Committee. This usually includes pursuing the claim through the national court system until the highest instance, unless complainants can justify that such remedies are unduly prolonged or otherwise ineffective, or that they are unavailable to the complainant. Detailed reasons must be provided as to why the complainant considers that the general rule should not apply. Mere doubts about the effectiveness of a remedy do not dispense with the obligation to exhaust it.⁴³²

This requirement in effect means that for many communications, complainants will have had to have taken their complaint to a number of different domestic mechanisms, potentially at their own cost.

Third, communications will typically take many years to move from being recognised as admissible to being considered in relation to its merits.⁴³³ While there are provisions for ‘interim measures’ to request that a State Party urgently intervene to prevent irreparable harm, these will depend on the willingness of the State Party in question to respond to these requests, and it further ‘takes several working days for a Committee to process a request for interim measures.’⁴³⁴ In other words, a communication to a human rights treaty body will have constrained capacity to provide an emergency response to protect individuals from violence.

Finally, even if a Committee finds that there is a violation of a treaty, this finding will merely consist of an ‘authoritative interpretation of the treaty concerned’ and ‘recommendations to the State party.’⁴³⁵ The treaty body does not have enforcement power, and it is thus up to the government in question to decide if it accepts the recommendations and is willing to act on them. While there are examples of Treaty body decisions leading to changes in domestic legal arrangements – the famous Human Rights Committee Communication No. 488/1992 (Toonen v Australia) is often cited – there are also many examples of States Parties ignoring recommendations of Treaty bodies.

Despite the problems articulated above, international human rights treaty body complaint mechanisms potentially serve an important function in bringing to attention human rights and justice issues within a jurisdiction where existing law and practice is out of step with international law. As discussed in Chapters 1 and 2, there are a number of areas relevant to violence, abuse, neglect and exploitation where Australia is not in compliance with international human rights law, such as in relation to guardianship and substituted decision making, forced medical interventions including reproductive controls and use of restrictive practices. Further, international and regional human rights mechanisms are gradually improving the sophistication of their responses to people with disability, and we will likely see better complaint pathways and stronger guidance from human rights bodies in coming years. We have included at Case Example 6 below a discussion of the European Court of Human Rights, its complaint process, and its evolving responsiveness to the rights of people with disability.

Case example 7: The European Court of Human Rights

The European Court of Human Rights (ECtHR) sits in Strasbourg, France, and was set up to rule on violations of the civil, political and human rights laid out in the European Convention on Human Rights by and within Member States of the Council of Europe.⁴³⁶ Rights and prohibitions within the Convention that pertain to violence include Article 3 which establishes a right to be free from torture, inhuman and degrading treatment or punishment, and Article 5 which sets out the right to liberty and security.⁴³⁷

In theory, the Court is open to applications from States and individuals, and thus can hear individual complaints.⁴³⁸ However, certain barriers may prevent individuals from accessing the ECtHR without the assistance of a lawyer. Strict admission requirements mean that applicants must have a thorough knowledge of available domestic remedies, as these must be exhausted prior to going to the Court.⁴³⁹ The complaint form also uses technical language that may not be accessible to everybody, and the Court website does not provide complaint information in easy read or other accessible formats, potentially making it difficult for some people with disability or low literacy to navigate this process. Further, the complaint form must be downloaded as a PDF, printed and posted to the Court alongside other necessary documents.⁴⁴⁰

The ECtHR has heard cases regarding violence against people with disability. These cases have pertained to involuntary detention of people with psychosocial disability in settings such as hospitals and psychiatric facilities,⁴⁴¹ forced detention of people with disability in institutions,⁴⁴² use of forced medical treatment against a person with disability's will,⁴⁴³ and conditions of neglect within closed settings.⁴⁴⁴ Notably, the ECtHR has heard few cases of physical or sexual violence, despite these forms of harm having high incidence rates in many disability settings.⁴⁴⁵ Critics have highlighted that the ECtHR tends to overly rely on medical professionals' assessments of people with disability and their capacities and potentials,⁴⁴⁶ leading to a trend in which the ECtHR has often sided with States in their use of detention or medical treatment.⁴⁴⁷ However, recent studies also show that decisions made by the ECtHR are increasingly being informed by more progressive and disability rights-focused documents such as the CRPD.⁴⁴⁸ It is hoped that the CRPD will continue to have a role in enhancing the ECtHR's understandings and decisions regarding violence and disability.

Complaints to international human rights bodies are one pathway to reporting violence, abuse, neglect and exploitation, and they apply pressure on decision makers to apply contemporary standards of human rights to the treatment of people with disability. With this in mind, we note that existing Australian complaint mechanisms do not integrate with international human rights complaint pathways, for example by letting individuals know their rights to report violence to different channels, including through international treaty bodies. Information on websites about pathways to complain to international treaty bodies may be appropriate in some cases, and would be consistent with realising rights to equal justice.

4.4.2 Human Rights Monitoring: The OPCAT National Preventative Mechanism

An important element of the international human rights system is an emphasis on monitoring. Monitoring and periodic review differ from complaints in so far as these processes are not necessarily triggered by an individual complaint, and monitoring processes are opportunities for a range of actors, including civil society organisations, to provide feedback on the performance of States Parties in relation to their human rights obligations. States Parties will need to participate in periodic reporting and review for the human rights treaties that they accede to. In addition, the United Nations Human Rights Council implements a Universal Periodic Review process of all UN member states, which monitors human rights performance regardless of the status of treaty ratification.

Relevant to violence, abuse, neglect and exploitation, an important new treaty is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT is not a complaint mechanism in a conventional sense; however, it creates a unique set of monitoring mechanisms aimed at preventing torture and ill-treatment. Article 2 of OPCAT creates a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT) which is granted rights to 'unrestricted access to all places of detention, their installations and facilities and to all relevant information relating to the treatment of persons and to conditions of detention.'⁴⁴⁹ In addition, States Parties are required to establish their own domestic National Preventative Mechanism (NPM) with oversight responsibilities for implementing OPCAT, and by extension, the Torture Convention. OPCAT and its oversight mechanisms – the SPT and NPMs – is a proactive rather than a reactive mechanism. Instead of responding in relation to complaints it aims to work with States Parties to prevent torture and ill-treatment before they occur or identify instances where the victim-survivor is not able to make a formal complaint. This makes the function of the NPM different to that of bodies who deal with complaints of ill treatment after this has occurred.

The Australian Government ratified OPCAT in December 2017, and opted to postpone its obligation to establish an NPM for three years (until January 2022).⁴⁵⁰ Development of an NPM raises a number of implementation issues for Australia. Responsibility for places of detention and other closed environments is spread across central and state governments, and will require negotiation between these different levels of government. Different jurisdictions are adopting different approaches to implementing their obligations, including about whether or not to enact specific legislation and about which monitoring bodies to designate. On 28th July 2021, Commonwealth Ombudsman's OPCAT Advisory Group (OAG) acknowledged resourcing is a focus for jurisdictions in considering appointment of their NPMs. The OAG discussed draft legislation prepared by Australian jurisdictions to support implementation of OPCAT, including provisions regarding the powers of NPMs (once nominated) in those jurisdictions.⁴⁵¹

Australian ratification of OPCAT and development of an NPM is an opportunity to address violence, abuse, neglect and exploitation against people with disability.⁴⁵² One aspect of this

is the focus of OPCAT upon places where ‘people are deprived of their liberty,’ defined in an expansive way in Article 4 as ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’ Many people with disability live in a variety of closed settings where they are effectively unable to leave at will, thus providing an opportunity for NPM monitoring to extend beyond prisons and police facilities to sites such as segregated mental health and disability settings. Other jurisdictions, such as the United Kingdom and New Zealand, have defined places of detention in an expansive way to capture these settings; indeed, the United Kingdom has taken a wide approach to the design of its NPM, incorporating 21 statutory bodies.⁴⁵³ Given this international experience, there is a strong expectation from Australian disabled people’s organisations for an Australian NPM to extend to the:

many types of disability specific and related institutions where people with disability are over-represented, and formally detained or compelled to remain, such as ... locked psychiatric wards and mental health facilities; compulsory care facilities; closed community-based accommodation and residences for people with disability; ‘time out’ and seclusion rooms and segregated areas in educational settings; rehabilitation facilities; aged care facilities, dementia units and nursing homes; emergency rooms and hospitals; child welfare institutions and out of home care arrangements; and boarding schools.⁴⁵⁴

4.5 Conclusion

This Chapter considered both the accessibility and inclusiveness of current complaint mechanisms for people with disability in Australia, as well as the responses of current complaint mechanisms to reports of people with disability experiencing violence, abuse, neglect and exploitation. To do this work, the Chapter drew on our analysis of the information provided on complaint mechanism websites, including where appropriate and available legislation, policies and procedures, to develop the *Australian Complaint Mechanism Landscape Table* and elaborated on core areas of common tension that became apparent through our analysis of that *Table*. What our analysis showed was that Australia’s complaints landscape is complex, with, in most cases, no clearly communicated pathway to report or address experiences of violence, abuse, neglect and exploitation against people with disability. Instead, our analysis of websites, including where appropriate and available, legislation, policies and procedures, showed that potential complainants with disability, along with parents of children and young people with disability, are frequently expected to navigate their way through sometimes convoluted and unclear processes. As we detail further in Chapters 6 and 7, those who navigate these processes can become exhausted, and can feel like the hurdles to complain are insurmountable. Concerningly, as section 4.2 of this Chapter also makes clear, a person with disability who has experienced violence, abuse, neglect and exploitation in the context of service provision is more likely to be directed on the website to engage in a process of local conciliation. Without clear guidance otherwise, this could potentially imply that the

victim-survivor must go back and attempt to 'resolve' their experience with the perpetrator who has harmed them. As we shall discuss in Chapter 8, an important reform would involve clarifying the pathways individuals should take in reporting violence, abuse, neglect and exploitation.

Complaints mechanisms have been, and will likely remain, one of the avenues via which people with disability continue to seek to report the violence, abuse, neglect and exploitation they experience. Accordingly, our next three chapters turn to examine the experiences of people with disability navigating complaint. Chapter 5 examines the experiences of people with disability who do not complain about violence, abuse, neglect and exploitation, or have a complaint prevented. Chapter 6 describes the experiences of some people with disability with complaint processes. And finally, in Chapter 7, we look at experiences of complaint outcomes.

Chapter 5: Experiences of Complaint: Non-Complaint and Prevented Complaints

The previous chapters have outlined ideal principles and practices that should inform the operation of complaints mechanisms, such as human rights considerations, violence prevention approaches and principles of procedural justice and justice in outcome. We then have considered how Australian complaint mechanisms represent their processes and policies online and work in practice. In this Chapter we continue examining complaint mechanisms in practice, by considering how people with disability themselves experience complaint mechanisms as they currently operate. A focus on experience helps to inform not only the limits in the design of complaint processes, but also the ability of complaint processes in practice to conform to their own policy guidelines. As Ahmed highlights, institutions often fail to follow their own complaint policies and procedures.⁴⁵⁵ As we shall see, some people with disability have reported a significant gap between how a complaints process should ideally function and their actual operation. Specifically, this Chapter examines the experiences of people with disability who do not complain or are prevented from complaining about violence, abuse, neglect and exploitation. While experiences of people navigating complaint mechanisms are important for understanding barriers to use (see Chapters 6 and 7 in the report), the accounts in this Chapter-highlight the obstacles that lead to complaints not being lodged when they should have. As shall be discussed in the conclusion below, failures to complain, and system blockages which prevent complaints, are indicative of not merely the inadequacies of complaint mechanisms in terms of their accessibility and inclusiveness, but also the attendant problems that must be taken into account in complaint mechanism design, including, for example, inadequate protections for complainants to avoid retribution.

This Chapter marks the first of three chapters which detail the findings from the scholarly literature, reports and submissions examined that provide insight into the barriers some people with disability may experience in relation to complaint processes and outcomes. It is important to note that these chapters are not intended to provide generalisable findings about what all people with disability might experience when seeking to utilise a complaint mechanism to report violence, abuse, neglect and exploitation. Our approach does not include a large sample survey, so the results cannot be generalised. Further, as discussed in Chapter 4, there is no population level or national dataset to comprehensively verify the performance of complaint mechanisms in relation violence, abuse, neglect and exploitation; even if such a dataset existed, it is likely to feature significant under-reporting because of the nature and circumstances of the violence, abuse, neglect and exploitation experienced by people with disability (something that will be made evident in this Chapter, and Chapters 6 and 7). However, these chapters provide insight into the kinds of barriers faced by some people with disability in relation to complaints relating to violence, abuse, neglect and exploitation, and thus are useful in increasing awareness of the design issues around complaint mechanisms that are intended to respond to violence, abuse, neglect and exploitation.

Finally, we note that the experiences described in this Chapter and Chapters 6 and 7 relate to reporting of violence, abuse, neglect and exploitation. Many of the reporting pathways described relate to complaint mechanisms as we have understood them in this report; namely as a

procedure within an organisation, institution or governing authority which allows individuals to report negative experiences and problematic conduct and policy; seek individual rectification; and, where appropriate, trigger system change. However, we have also included experiences that relate to reporting to the police, which unfortunately highlights some of the inadequacies of this pathway for some people with disability as a means to report violence, abuse, neglect and exploitation.⁴⁵⁶ When people with disability are unable to report violence, abuse, neglect and exploitation to either a complaint mechanism or police, then there is here a significant failure in justice: the victim-survivor has nowhere to turn. As we shall discuss in Chapter 8, the inadequacies of police responses to reporting of violence, abuse, neglect and exploitation demonstrate both the need to improve the responsiveness of the police and courts to people with disability, and the complementary need for robust complaint mechanism pathways.

5.1 Non-Complaint

One of the investigation questions that guided this report is ‘Why don’t people with disability complain about violence, abuse, neglect and exploitation?’ The survey of scholarly literature, reports and submissions we conducted revealed a number of different experiences which explain why people with disability may not complain. These include experiencing threats from perpetrators which prevent complaints; fears associated with the outcomes of complaints; negative past experiences of complaint making; poor accessibility of complaint mechanisms; and a lack of awareness of rights or what constitutes criminal violence. The below section explores some of these experiences.

5.1.1 Threats and Intimidation

In the scholarly literature, reports and submissions we analysed, a number of examples were encountered of people with disability not complaining as a result of threats or intimidation by a perpetrator. Threats can make potential complainants hesitant to complain, for fear of experiencing further violence or poor treatment. An account given to the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings highlights the way in which threats and intimidation can work within segregated institutionalised settings:

[A] frail old woman in her 90s who suffered from some mobility issues ... lived in a residential aged care facility. One day Katrina went to the kitchen area of the facility to make herself a cup of coffee. While she was there, a carer approached her, shoved her in a corner and touched her in the genital region. He mocked her and dared her to complain, saying that no one would believe her and that he would be back to give her more. Katrina was shocked and devastated by this. She was afraid to go anywhere in the facility and became depressed.⁴⁵⁷

As discussed below, intimidation in the form of the taunt ‘no one will believe you’ reflects a real concern shared by some people with disability who have reported not being believed when reporting violence.

In some cases, threats of loss of liberty and control are used as a punishment for complaint making. In a 2010 submission, the Ethnic Disability Advocacy Centre (EDAC) described an example where a woman was threatened with guardianship proceedings as a consequence for changing service providers:

A Muslim woman who had a mental illness, intellectual disability and hearing impairment had contacted EDAC to obtain help to be transferred to another service provider for her support with her daily living as she felt she was being mistreated with her then current service provider. Once her current service provider found out about her intention the service provider began threatening the woman to start proceedings for them to obtain guardianship over her. This caused the woman to be fearful of making any formal complaint.⁴⁵⁸

Here the threat of a guardianship order – that is loss of legal personhood – is used coercively to prevent decision making, choice and complaint. The example also highlights some of the potential barriers faced by people from culturally and linguistically diverse backgrounds with disability, particularly where information on rights is not available in a range of community contexts. EDAC's submission provides another example which helps highlight this:

A mother from a non-English speaking background who has a son with Autism went to get help from her Local Area Coordinator (LAC) to organise a social trainer for her son for two to three hours a week. As her English was limited the LAC had difficulty with communicating with her; the LAC didn't access an interpreter. The LAC told the mother she is too demanding and no help is available for her. After seeking help from EDAC, the advocacy officer got in touch with the LAC and referred the client back to the LAC. The LAC then organised a social trainer for the son. The LAC told the client that she shouldn't have complained to EDAC. The incident had caused the mother to be initially fearful of returning to EDAC and after advising EDAC of the incident she felt too intimidated to make a formal complaint.⁴⁵⁹

It is of course appropriate that recipients of services have the capacity to make complaints, and be encouraged to do so without fear. The above example highlights how negative responses by services to complaint making and lack of culturally and linguistically appropriate information about complaint mechanisms and the right to complain, can create an environment where individuals fear complaining.

In the scholarly literature, reports and submissions we analysed, there were a number of examples of historical experiences of violence, abuse, neglect and exploitation. These experiences are important to understand for at least three reasons. First, they are important because many past experiences of violence, abuse, neglect and exploitation remain unresolved, and thus represent a continuing injustice that should be responded to and rectified. Second, as discussed in Chapter 1, many people may take years to report violence; this delay in reporting violence was a factor reported by the Royal Commission into Institutional Responses to Child Sexual Abuse and certainly pertains to reporting of violence experienced by people

with disability when they were children.⁴⁶⁰ Third, poor past experiences of attempts to complain (and / or prevented complaints) arguably will shape future attitudes and expectations around complaining. Thorneycroft's study of life course histories provides many examples of historical experiences of violence.⁴⁶¹ This included a situation where a First Nations woman with disability recalled being forced into violence as a child, but was threatened to keep quiet about it:

'And, um, I can remember at the age of 13, like the [other ward], they used to go swimming a lot on the weekends, but, um, one particular staff member would not let us go. And the ... girls did want to go swimming, and I said to "em "do you dare me, if I go down the front office?" and they go "oh yeah, I dare ya". So I said "alright, I'll go down there". So I went down to the front office and I told the big boss, and I said "all the other wards are going swimming and the boss in our ward will not let us go swimming, so can you ring them up, ring her up and tell her?" He goes "first, do me a big favour, first. Get in the other office, pull your pants down, get yourself ready, and then I'll lock the front door". So he locked the front door and he came into the other office, "cause there were other offices there down in the front office, and he pulled his pants down and he got hanky ready, and he asked me to wank him until it came. And he played around with my fanny, my boobs, you know, touched them, and had a good play around. And then when that was finished he said to me "right, don't you ever [emphasis] tell anybody, because if you do, you're not gonna go swimming again on a Saturday when I'm in the office". So I didn't tell anybody. And we went swimming.'⁴⁶²

Such threats to those who might complain arguably shape expectations around complaint making, and help to create institutional cultures which normalise violence. As one of the participants in Ramcharan's 2009 study of people who experienced restrictive practices describes: 'We can't complain, not allowed to complain, everyone says you can't.'⁴⁶³ The above example of violence experienced in childhood highlights a theme that will be engaged with in Chapter 7 of this report: namely recognition that at least some of the violence experienced by people with disability is historical in nature, and some people with disability are adult survivors of violence experienced as children. Responding to such violence requires an appropriately designed mechanism that can provide justice in relation to historical complaints.

5.1.2 Fear of Retribution

The experiences of threats or intimidation by perpetrators described above comprise one of the reasons that people with disability may not complain. Another, related reason for non-complaint is a generalised perception that a complaint will lead to retribution. Fear of retribution is a slightly different experience from a direct threat from a perpetrator that prevents complaint making. Indeed, this section describes experiences of people with disability who avoid complaint making, not because a specific threat from an individual or organisation has been made, but because of a more generalised fear of retribution which works to prevent people from complaining. This scenario was highlighted in a UK study:

‘Something did happen that I didn’t tell the police about. I don’t know why I didn’t tell them. When I was at Auntie’s house, there were some neighbours who were trying to get inside the house. They were standing outside the windows flashing at me when Auntie had gone out ... I didn’t tell Auntie when she came home because I thought that she would be angry with her neighbours and would tell them off. That might have made them worse.’⁴⁶⁴

This example highlights that fear of retribution can take the form of potential danger or threat to the complainant. As we shall discuss in Chapter 6, this fear is arguably well founded due to experiences of some complainants who suffered retribution against themselves or their families.

A general fear of retribution reveals an expectation people with disability might have about the outcomes of complaints, and may be informed by historical experiences where retaliation for complaint making was routine. This set of dynamics was directly expressed by a parent advocate in Ramcharan’s 2009 study of people who experience restrictive practices: ‘what really gives me some comfort is that it’s illegal for them to retaliate having made a complaint. Because in the past that actually did stop us.’⁴⁶⁵ Some people with disability reside in circumstances – such as segregated congregate settings – where institutional cultures mean that retribution, including in reduced quality of service, appears likely after complaints are made:

Martina has an intellectual disability, and currently resides in a not-for-profit group home with four male co-residents. Martina has expressed a number of concerns with her living situation. Martina wanted support to make a complaint to management. She was unhappy with how she was being treated by the staff. She felt threatened by the staff, and was worried that if she spoke out against them, they would treat her even more poorly.⁴⁶⁶

In the above example, Martina is unhappy about her treatment by staff, however feels that she has no choice but to remain quiet about this, fearing further poor treatment. The example highlights the complexity of complaint making in closed settings and the challenge of seeking support, since residents may need to ask the very same staff who are mistreating them for help to make a complaint or access advocacy services. This arguably insurmountable challenge highlights the critical role of independent supports for complaint making and access to advocacy within segregated settings, something that will be discussed in Chapter 7.

Education settings often have similar institutional cultures that create barriers to complaint making and expectations of retribution. This was summarised in a 2018 study by Jenkins et al:

some parents expressed reservations that a formal complaint may adversely affect their relationship with school staff, and in turn their child’s school experience. There is little doubt that a power imbalance exists between parents – who are reluctant to alienate a school for fear that to do so may impact their child’s wellbeing – and the school. This imbalance is exacerbated where the student in question has disability, and parents may be especially concerned about finding a place in another school, or about disrupting their child’s routine and environment.⁴⁶⁷

Jenkins et al’s observations highlight a theme we shall see continues in Chapters 6 and 7: namely, that experiences of complaint making in education settings – such as schools – reveal

multiple concerns around complaint mechanisms, including that students and parents must weigh the right to complain against the potential for adverse outcomes following a complaint. This weighing reveals the difficult situation children and parents are placed in, where they may be compelled to either accept situations of violence and mistreatment or, alternatively, complain and face loss of educational opportunity and / or further violence.

The sense of being locked into an inescapable situation where complaint is not possible is mirrored in other closed institutional settings. For example, a 2020 submission by the Multicultural Disability Advocacy Association describes an example of the experience of a woman from a culturally and linguistically diverse background who experienced restrictive practices in a mental health setting:

‘On one occasion when my condition was escalating, I was afraid as I was bundled into a room where I was wrestled to the ground by several staff members and stripped naked to the waist. I was forcibly injected and left naked on the bed face up in a locked room, with a window to see in and I was passed out for how many hours, I have no ability to know. I have kept this horrible experience to myself except for my treating psychologist and one family member. As both an involuntary and voluntary patient in the public and private hospital system over many years I have met others who told of their own fear in those places too. The thing that I found most disturbing was a similar experience to mine, by a young women who has Bi-polar and said she was restrained by several hospital staff and stripped naked too. I fully believe her account as I have experienced this myself. It is a sad that staff do get away with their human rights abuses of mental health patients who are vulnerable and unwell – we are all afraid to speak out because one day we may need to return.’⁴⁶⁸

Here fear of retribution occurs because the person with disability is aware that they may have to return to the institutional setting where violence was experienced: ‘we are all afraid to speak out because one day we may need to return.’

Human Rights Watch’s 2018 investigation into the experiences of people with disability in the criminal justice system provides many accounts of institutional barriers to complaint making for prisoners, including fear of retribution. It was noted that:

Out of the 32 cases of sexual violence Human Rights Watch documented, 15 were against women and 17 against men with disabilities but only a handful were reported. Most said that they had not reported the sexual violence due to shame or the fear of retaliation. Human Rights Watch believes that it is very likely that the majority instances of sexual violence go unreported for the same or similar reasons.⁴⁶⁹

In the context of prisons, it is notable that fear of retribution can impact frequency of complaint making in a way that is at odds with availability of complaint mechanisms themselves. Thus, for example, even if complaint mechanisms are available, they may be poorly utilised:

there are a number of mechanisms to report abuse; for example prisoners can report a complaint to prison officers or the superintendent, an ombudsperson, an inspector of custodial services, official visitors, or even the attorney general. However, prisoners told Human Rights Watch that they often choose not to report for fear of reprisals or being labeled a traitor.⁴⁷⁰

Retribution in prison settings can arise in the form of violence from other prisoners, because of the above described perception that someone who complains about violence is a 'traitor': 'When you've got trouble, you don't go to officers [to] ask for help. That's the golden rule in jail. You get called a "dog" [traitor]. You could get bashed.'⁴⁷¹ This internalised culture of non-complaint means that those who complain about violence may face worse violence as a result of making a complaint; thus some prisoners with disability who experience violence will not complain in order to avoid a worse outcome:

One man with a cognitive disability described being attacked by three male prisoners in a shower, with two holding him down and forcing him to kiss the penis of the third. 'I tried to run away to try to get help and shout out to the prison guards, but they were too far,' he said. 'I could not do anything because I would be labeled a dog [traitor]'.⁴⁷²

In other contexts, institutional provisions for support of people with disability within prisons generate the circumstances where violence occurs, and where this violence is difficult to report. For example, some prisons have a 'prisoner-carer' system (such as the Queensland Prisoner Support Carer Program or the Victorian Prison Service Workers program), where another inmate, sometimes a cellmate, is asked to help the prisoner with disability with daily tasks such as cleaning and going to medical appointments. This system potentially creates the circumstances for violence. In 2018 Human Rights Watch drew attention to the fact that some carers convicted of violent crimes are put in the position of 'watching over' a person with disability.⁴⁷³

'We had a case here where a prisoner with a disability was recently raped in custody by his carer [who had been previously convicted of a sex offense]. During a random cell search, officers found blood and faeces on his bedsheets. Only then he [prisoner with a disability] disclosed he was raped on numerous occasions, before that he was too scared.'⁴⁷⁴

The above example reinforces the way in which closed environments can lock victim-survivors into relationships of violence with perpetrators. As one nurse interviewed by Human Rights Watch stated, 'At the end of the day at six o'clock... the prisoners are locked in here [all night] with their carers'.⁴⁷⁵ In this context, it is worth noting that Human Rights Watch was informed that six of the eight carers in one prison were convicted of sexual offences.⁴⁷⁶

Staff members may also be involved as perpetrators of violence within criminal justice settings. The stakes are extraordinarily high for people who experience violence from prison staff, as the following account demonstrates:

A man with a psychosocial disability told Human Rights Watch that five officers came into his cell, and put him in the shower. According to him: “They said ‘Beat your head up the wall, or we’ll do it for you.’ I became dazed, didn’t recognize or remember their faces. I thought I would die and become another death in custody. I’ve never reported it”.⁴⁷⁷

The fact that it was staff who perpetrated this harm provides a strong explanation for why this individual chose not to complain. A fear of retribution from these staff members, and a fear of not being believed, discussed below in Section 5.1.4, may have also played a part in his decision not to report this harm.

5.1.3 Fear of Adverse Outcomes

A generalised fear experienced by potential complainants is the worry that complaint making will lead to an adverse outcome. Again, this fear is related, but differentiated from the fear described in the previous section. Indeed, in this section we focus on fears relating to other negative outcomes that may eventuate from complaint making; for example, having opportunities for education removed, having children removed, and experiencing intrusion from police and prison authorities. In these circumstances, it is the desire to maintain relationships and opportunities that keep some people with disability from reporting violence, not a fear of retaliation.

This generalised fear of adverse outcomes associated with making a complaint is seen in educational settings where children and young people with disability often have arrangements for delivery of schooling that have taken years of negotiation, as well as plans for study or work. These arrangements and plans can be disrupted if a complaint leads to change. For example, in an experience reported to the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, a woman described the fear associated with a complaint preventing her from achieving her educational goals:

‘I fought so hard to go to a mainstream school that I feared that if I complained about my aide I would have been sent to a special school. The results of this would have been catastrophic for me. I would not have been able to go on to university and have a career.’⁴⁷⁸

This woman feared a form of indirect punishment – being sent to a special school – which would have had a significant impact on her ability to pursue further education and her chosen career. A similar fear of a complaint leading to a change in circumstances might occur in criminal justice and mental health settings. For example a 2020 Sisters Inside report highlighted that people with disability may be prevented from making complaints because of the fear that this would lead to a negative change in circumstances: ‘Quite a few women talk about being scared that if they reach out for help, they will be put into Detention Unit or Safety Unit.’⁴⁷⁹ As shown in Chapter 7, the experience of being sent to solitary confinement after reporting violence is real in the sense that there are accounts of people experiencing this adverse outcome after making a complaint. In a mental health context, a UK study highlights how a reluctance to complain might be due to worry about being ‘sectioned’ – that is, being involuntarily detained in a psychiatric facility – as an outcome of complaint making:

‘If I’m punched or kicked or knocked down to the floor I just get up and walk away because I don’t want trouble in my life, do you know what I’m saying. [Reporting to] ... the police can backfire on you and you can so easily get labelled as dangerous and, you know, a risk to yourself to the community and end up getting sectioned or something and that’s not what I want.’¹⁴⁸⁰

In seeking to report the violence of *someone else*, this quote shows how people with disability *themselves* can end up being perceived and responded to as violent and dangerous after making a complaint.

In some cases, a potential complainant may be deterred from complaining due to a fear of loss of personal relationships and networks. Harris and Woodlock outline how the fear of having children removed ‘is an issue commonly seen in research into violence against women with intellectual or cognitive disability.’¹⁴⁸¹ In an example discussed in their research, a frontline worker stated:

‘The word goes around a community that if you notify it’s likely that your children will be taken because there are so many examples within a community. We live in a regional area so that network is a word-of-mouth network. People know. If they go to people who are friends within that network, they’ll tell them: ‘That happened to so and so. The cops did this, FACS [Family and Community Services] did that. Don’t tell them that anything is happening’. So yeah, definitely a huge disincentive to getting help because you don’t know who you can trust.’¹⁴⁸²

In the above example, potential complainants are deterred from complaint making because they feel that they will be the target of investigation; instead of violence against women with disability being viewed as ‘the problem’ that must be addressed by police and social services, it is the complainant’s ability to parent that comes under question, leading to a potential outcome that their children are removed. As we shall observe in Chapter 6, some people who complain themselves become the targets of investigation or are treated as potential perpetrators. This indicates a failure of just process: complaint should lead to an investigation of the circumstances of the complaint and not the complainant themselves.

In some contexts, a fear of adverse outcomes can take the shape of a general sense that a complaint will get the complainant ‘into trouble.’ Here, institutionalised cultures which create a sense that ‘rocking the boat’ will lead to adverse outcomes can create expectations that standing up for one’s rights and reporting injustice can lead to negative repercussions for the complainant. Frohmader and Sands describe an example from a disability service setting:

Christine, a 39 year-old woman with intellectual disability, was repeatedly raped and bashed in one week by several different men. She lives in a ‘semi-supported residential facility’, and although she is classified as having ‘high support needs’, she receives only 2 hours of support each day. For the other 22 hours, she is left unsupervised and unsupported. In one of the attacks (in the local park in broad daylight), she was repeatedly anally and vaginally raped and beaten. When she made it back to the

residential facility, a staff member made her hand-wash her bloody underwear and garments. The worker wrongly ‘assumed’ that the woman was menstruating (despite her being on an injectable contraceptive) and she was reprimanded for getting blood on her clothes. Christine was too scared to tell the worker what had happened to her because she thought she would ‘get into trouble’.⁴⁸³

This example highlights the way in which an institutional culture can create an environment where complaint making about violence, abuse, exploitation and neglect becomes unthinkable. That the woman in the above example was reprimanded for getting blood on her clothes after being repeatedly raped, and that she was scared of ‘getting in trouble’ highlight a culture where complaints are not encouraged, and where violence against people with disability is considered burdensome and inconvenient for staff to deal with. As we shall see in Chapter 6, the framing of complainants as people who are ‘just being difficult’ is very real; as Ahmed argues, complaint making can result in the complainant being treated as an ‘inconvenience’.⁴⁸⁴

5.1.4 Fear of Disbelief

As discussed in Chapter 3, people with disability can experience forms of ‘testimonial injustice’ in the form of being treated as unreliable or untrustworthy witnesses to violence, abuse, neglect and exploitation. Given this, it is not surprising that in the scholarly literature, reports and submissions we surveyed there were accounts of people with disability who were hesitant to report violence as they feared being disbelieved by complaint bodies. This hesitation to report and fear of disbelief occurs in a context where negative stereotypes associated with disability shape perceptions of whether the testimony of a person complaining can be relied upon:

‘[I worried] that they [the police] would have the same attitude as a lot of people have, the minute you hear about oh, someone has a mental illness, they think that they’re a nutter and that their word can’t be believed.’⁴⁸⁵

Where violence, abuse, neglect and exploitation is historical in nature, this can exacerbate the fear that people with disability may have about not being believed, because of the difficulties associated with substantiation. One participant in a UK study said:

‘Passing the information on to the authorities was never a feasible option because it was so long ago, and also because I know I’d be greeted with a lot of scepticism from people. I’ve always felt that it’s pointless to go to the authorities with this, there’s probably nothing they can do now.’⁴⁸⁶

This quote, from an article about people with disability who were sexually assaulted as children, highlights a pervasive scepticism around child sexual abuse, in part due to the perception that children are ‘unreliable’. As discussed above in Section 5.1.1, the Royal Commission into Institutional Responses to Child Sexual Abuse highlighted that it can take decades for childhood sexual violence to be reported by survivors. There are additional barriers for people with disability when reporting violence experienced as children.⁴⁸⁷ Further, and relevant to the

consideration of historical reporting of violence, having trauma and experiences of violence validated is extremely important for victim-survivors of sexual assault.⁴⁸⁸ The possibility that victim-survivors would not be believed is sometimes enough to make them decide to not report violence, fearing that being disbelieved would traumatise them further.

5.1.5 Blamed for Violence

In the scholarly research, reports and submissions we examined, there were examples of people with disability being made responsible for violence they experienced. This responsibilisation in turn shapes the perceived ability of the complainant to report violence, abuse, neglect and exploitation. This experience of being made responsible for the violence experienced is a different variation on the testimonial injustice of being disbelieved that is described in Chapter 3. In this case, the testimony of the victim-survivor of violence is invalidated because it is assumed that they have brought this violence upon themselves due to their own behaviour or disposition. This ‘victim blaming’ makes people with disability and their families reluctant to engage in complaints, for fear that they would be blamed further, and that no positive outcome would result from reporting harm:

‘my son would come home with injuries... He would have cried or that looks like an adult sized hand print on his arm. I think someone must know what’s going on. But nobody ever did. He’d be put in to the time-out room – again... And it was like drawing blood from a stone. And that always the shutters would go up... when I read the incident report I just couldn’t believe what they had written – It really just put the blame squarely back on him and me as the parent. And that just made me – well very – in the end I reached the conclusion that it is a waste of time complaining. I just want to get my son out of here.’⁴⁸⁹

In the above example, a child is subject to repeated use of restraint and seclusion in an education setting. However, the person with disability and his mother are blamed, presumably for the perceived ‘challenging behaviours’ the child displayed which initially led to him being detained. As a result, his mother feels that there was no point in complaining as the school would clearly not accept responsibility for their use of violence. In the above case, the parent chooses not to report violence and instead seeks to make alternative arrangements (‘I just want to get my son out of here’). This response to violence is, as we shall see, a continuing theme: for some people with disability complaints around violence, abuse, neglect and exploitation are not actioned due to a lack of trust in complaint mechanisms; instead, people with disability and their advocates must make their own arrangements to escape violence and harm, even if this means the loss of crucial services.

Some people with disability might refrain from reporting violence as they fear that their own behaviour would be used to discredit their reliability. In Shah et al’s 2016 study, a woman expresses hesitation about reporting family violence due to her own sexual history and alcohol consumption:

'I felt I couldn't go to the police because I felt I'd be scrutinized and I felt that everything that I'd done ever since would be used as evidence against me and because I felt all is based on your character and instead of being believed and because of the way I behaved in the time since what has happened to me, I felt like people would say it's my fault or I brought it on myself or that I have to go to court and explain things . . . I thought it would be very easy for anyone to say well of course with how much you have drunk at the time.'⁴⁹⁰

Despite decades of feminist advocacy, it is not uncommon for victim-survivors of violence and sexual assault to be scrutinised in the criminal justice system regarding their behaviour, dress and appearance at the time of, prior to, and after their abuse.⁴⁹¹ Feminist scholars have called the intense interrogation of victim-survivors' personal lives the 'second rape', or 'judicial rape'.⁴⁹² In this process, details irrelevant to the crime, but useful for the defence in discrediting the victim-survivor, are publicly brought to light.⁴⁹³ This process is shameful, embarrassing and intrusive, and serves to retraumatise victim-survivors who come forward to seek help.⁴⁹⁴ This set of dynamics are again a different variation on the testimonial injustice described in Chapter 3. The process of reporting violence becomes a site of trauma, which displaces blame for violence onto the survivor themselves, who is asked to justify their own actions and past. In this context, it is not surprising that the woman in Shah et al's study preferred to keep silent about the violence she experienced.

5.1.6 'What's the point?': Fear of No Outcome

In Chapters 6 and 7, a number of experiences of complaint making by people with disability in relation to violence, abuse, neglect and exploitation will be described which either result in no evidence that the complaint has ever been processed ('nothing happened') or result in no tangible just outcome. Given this reality, it is perhaps not surprising that in the scholarly literature, reports and submissions we surveyed that some people with disability, their families and allies, decided not to complain as they felt there was 'no point'. They feared that there would be no satisfactory outcome to their complaint, that nothing would change, and that the process of complaining would be taxing and ultimately ineffective. For this reason, they either chose to transfer services where possible, or alternatively, 'put up' with violence. An example of this was provided to the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings:

A daughter was concerned that her mother had bruising on the top of her head. She was informed by a facility that this had occurred as a result of a fall; but, as the bruising was right on the top of the head, the daughter was not convinced that this was the way this injury had actually occurred. Later hearsay rather than absolute proof was that somebody had actually hit the woman over the head with the buzzer because she was a person that liked to buzz fairly frequently. The daughter chose not to complain but removed her mother to another aged-care facility because she felt that she was not getting any kind of hearing by the people who worked in the facility....⁴⁹⁵

In the above case, a lack of trust that a complaint would lead to justice forces the potential complainant to instead make their own arrangements to remove their loved one from a situation of violence. Note in the above that the complainant themselves has to engage in an informal investigative process to understand the cause of violence in order to take appropriate action; the organisation itself is not trusted to have the necessary transparent and neutral processes to carry out its own investigation. As discussed in Chapter 1, a defining aspect of police processes is that ideally, police are required to conduct impartial investigations after a report is made about violence; not the complainant. Here, in contrast, due to the failure of the complaint mechanism to act in an impartial way and resource investigation, the complainant themselves must do the work of collating evidence.

In some cases, fear of not being believed is experienced by some people with disability as interconnected with discrimination based on gender, race or sexuality. In a UK study of a health setting, a woman from the LGBTIQ+ community was denied treatment, however she did not complain because she felt that it would not result in any tangible outcome:

‘I’ve actually been turned down at the doctors, because I was a lesbian. They said they were full up but my friend went the day after, because we both moved into the same place and she’s actually a lesbian but she looks very, very, straight and they signed her up straightaway. I just didn’t have the energy [to complain] because, I mean, you get to a point where you just think, well what’s the point, because you know nothing’s going to change.’⁴⁹⁶

Another UK study highlighted a similar despondency by LGBTIQ+ people with disability about the prospects of a complaint to the police about physical and verbal abuse:

Half of the people we interviewed told us about being physically and verbally abused by strangers in their neighborhoods and on public transport. Robert and Paul had both been attacked on the street and neither felt confident that telling the police would make any difference, so neither of them had reported the incidents.⁴⁹⁷

As discussed above, while the focus of this report is on complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation, consideration of the role of the police is important. The absence of any pathway to report violence, abuse neglect and exploitation – either to the police or a complaint mechanism – means that rectification of injustice appears impossible. The above accounts highlight that where a complaint mechanism fails to process a complaint or lead to a tangible outcome, this will in turn reduce victim-survivors’ trust in the prospect that authorities are equipped to provide justice.

5.1.7 A History of Negative Complaint Experience

Connected to the fear that a complaint might lead to no outcome are situations where potential complainants do not complain due to previous negative experiences with complaint processes. In the scholarly literature, reports and submissions we examined, there were a

number of accounts where people with disability had a negative experience with a complaint process that subsequently deterred them from making future complaints. These negative experiences were traumatising and distressing, making people reluctant to go through such difficult experiences again, especially if the past complaint resulted in no outcome, or adverse outcomes for the complainant.

A direct example of a negative experience around a complaint leading to future reluctance to complain was described in detail by Frohmader and Sands in an account relating to violence in the context of a residential accommodation facility:

Martin has intellectual disability and was living in a not-for-profit group home. He was assaulted by a co-resident, and taken to the doctor. The assault was also reported to the police. The matter was raised with the senior management of the group home. However, nothing was done about the situation, and after visiting his mother, Martin expressed severe reluctance to return to the group home. Two months after the assault, Martin ran away from the group home. He was missing for a total of 12 hours. Martin's parents attended a meeting with the managers of the group home. Their concerns about the conflict in the house, and other issues relating to Martin's safety, were trivialised by the management staff. A month later, there was another incident in the group home, and Martin's parents took him home. Martin was living at home for two and a half months before a new group home was found for him. Martin was happy with the new services, and his new co-resident. At the conclusion of the ordeal, and upon Martin finding more appropriate accommodation, Martin's parents decided not to submit a formal complaint about the first service provider.⁴⁹⁸

The account above does not explicitly suggest why Martin's parents did not lodge a formal complaint. However, the previous experiences with complaint mechanisms, including presumably inaction by the police in relation to the assault, provide a context which suggests that the prior complaint processes would not have assured Martin's parents that complaint making was worth the effort. Note, this is another example of where individuals who experience violence, and those who support them, may choose to take action themselves to escape harm rather than complain and risk inaction (or further mistreatment) from the complaint mechanism. Once again, these actions highlight that low trustworthiness of complaint mechanisms will impact willingness to complain.

The example of Martin's experience above highlights how a poor experience of a complaint process and outcome can immediately shape a decision about whether to embark on subsequent complaints. However, as described above, many experiences of complaint mechanisms are historical in nature, and further, and unfortunately, some people with disability have experiences of multiple complaints that have gone nowhere. A First Nations woman who was institutionalised as a child, and who later experienced domestic violence as an adult, explained how these initial experiences of attempting to access help shaped her expectations as an adult:

‘When I was living ... with the ex, and happened about 3 years ago, or, yeah, and, um, my ex was violent to me ‘cause of, um, my epileptic fits. ‘Cause while I was having the fits I was too scared to go to people, I was. And, um, when, I used to always be scared of him ‘cause he had a violent, because of his father, ‘cause his father was violent as well. And I used to be scared, because of people wouldn’t help me, ‘cause of those days in the institution when people didn’t help you, and then that was while I was having the fits.’⁴⁹⁹

In this example, experiencing neglect in disability settings as a child, and having poor outcomes when attempting to report this neglect, can have long lasting effects on a person’s willingness to report violence in the future.

The poor performance of complaint procedures, as indicated above and in Chapter 3, can undermine faith in institutions to operate in a fair and consistent manner. An account in a 2018 study by Maher et al highlights this loss of trust in basic civil institutions: ‘Who I have gone to in the past has had devastating consequences. I would hope you could go to the police or a hospital or a doctor.’⁵⁰⁰ The scholarly literature, reports and submissions analysed revealed a number of examples of this lack of trust, particularly as this related to the criminal justice system. Again, as discussed above, the focus of this report as a whole is on complaint mechanisms and not the police. However, in so far as the police are an important reporting pathway for violence, abuse, neglect and exploitation, they are relevant for understanding where people with disability can turn to. Relevant to broadly understanding reporting pathways for violence, abuse, neglect and exploitation these accounts of the criminal justice system showed that some people with disability felt let down and traumatised by their previous experiences with courts and police, leading them to fear engaging with these services again. In relation to courts, one woman, in response to the question ‘Who would you go to for help?’ stated:

‘It’s actually, for me, it’s an actually horrifying question, because I’ve never really thought of it. Because I don’t have faith in the judicial system, because of—as a child sitting in that courtroom and they didn’t help me. They saw something was wrong. But nobody came to me and said, “Why aren’t you talking? Or why are you crying?” And they let me go back home into that situation.’⁵⁰¹

This traumatic experience stayed with this woman and resulted in her ‘losing faith’ in the justice system, leaving her feeling like she had no options to report violence or access help should she need to in the future. Because the criminal justice system relies upon perceived legitimate authority, failures of process and outcome can be experienced as disappointment for people who expect justice to be delivered. An account from a UK study of a woman who sought police help after receiving death threats reveals this disappointment and its impact on the potential for future complaint making:

‘But as far as the police were concerned I would never, ever, ever make that call of 999 again. That is how, that is how strongly I feel the police let me down. Because all they did was turn my life upside down [...] I feel that they do nothing to help.’⁵⁰²

In some cases, it is not just disappointment and loss of faith in civil institutions, but active fear of authorities and their ability to resolve complaints relating to violence, abuse, neglect and exploitation that lead to non-complaint scenarios. Thorneycroft provides an account from a woman with disability who describes feeling unsafe calling the police:

‘It’s sorted out, what happened. What happened. But they don’t, I don’t feel safe ringing them [the police] now if something goes wrong... They’re meant to help us, but they don’t know how to deal with people in the community... I think they judge us that have an intellectual disability.’⁵⁰³

In this account, the woman had experienced domestic violence and went to the police where they belittled her and did not help. She now feels like she wouldn’t go back to the police after her negative experience with them. When this woman was asked what she would do in the future if she experienced harm, she replied: ‘Nothing... I don’t know, we have to live with it. Because that’s how people with intellectual disability get treated.’⁵⁰⁴ In other words, the previous experience with the police not only prevented complaint making, it also creates a situation where violence against people with disability is understood by the victim-survivor as ‘normal’ and to be expected.

Fear of the police and the criminal justice system may relate to past experiences in different legal jurisdictions. A 2012 report from the National Ethnic Disability Alliance outlines that for some migrants and refugees, negative experiences with police and the legal system in their countries of origin made them reluctant to go to police to complain:

Some participants expressed they lacked an understanding of the legal system due to their limited English skills and low level of education, some refugees that they were fearful of the police and the legal system given their previous experiences from their home lands and travels.⁵⁰⁵

This demonstrates that just processes for complaint mechanisms will need to take into account building confidence in institutions and their ability to resolve complaints, and providing appropriate information – including to diverse communities – on complaint processes which helps to establish perceived neutrality and trustworthiness. The focus of the examples in this section also highlight the poor experiences some people with disability have with the police and the courts as reporting pathways for violence, abuse, neglect and exploitation. As we shall discuss in Chapter 8, this highlights both the need to enhance complaint mechanisms so they can work in a complimentary way with the criminal justice system, but also the need to improve the responsiveness of the police and the courts to people with disability who experience violence, abuse, neglect and exploitation.

5.1.8 Gender and Cultural Norms

As discussed in Chapter 3, gender and culture can shape complaint making and how complainants are treated. In the scholarly literature, reports and submissions we examined,

there were cases where gendered and cultural beliefs surrounding violence and shame influenced whether people with disability reported violence; in some cases, cultural beliefs of gendered norms might prevent complaint making. This was evidenced in an experience reported in a UK study, where a woman with disability describes her family keeping her sexual assault secret because of the perceived shame associated with reporting it:

‘I think the thing that hurts me the most was probably my parents’ reaction—my mum particularly, I think they must have been thinking do they phone the police, if they do, you know, it’d be a big scandal; it would be in the paper—all this kind of thing. A sort of shameful situation and I remember hearing my mum saying that ‘she’s young, she’ll just forget about it if we don’t mention it.’ And it was just swept under the carpet.’⁵⁰⁶

This woman’s reflection highlights how past attitudes towards violence against children – that it was shameful, that it would bring embarrassment to the family, and that children would be unaffected by and not remember violence or trauma – shaped this woman’s parents’ decision to refrain from reporting violence. Gendered and cultural norms can also shape the willingness of men to report violence. Sin et al’s 2019 study shares the experience of a man who was reluctant to report violence, restricted by the belief that men should be able to endure and deal with violence without feeling upset: ‘I was too ashamed and embarrassed to tell anyone. Because I’m a bloke, I’m expected to handle it. I still get upset and cry but it’s not acceptable for a man to do.’⁵⁰⁷

Within particular community contexts, complaining to authorities about violence, abuse, neglect and exploitation can be frowned upon because of the culture and histories of those communities. In the 2020 submission from the Ngaanyatjarra Yankunytjatjara Pitjantjatjara Women’s Council to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, a frontline staff member recounts an example of exploitation that was not reported:

‘One of our clients, living in community, was unable to access her own money from her bank account because of the security measures placed on her account by the bank due to frequent instances of family members (and particularly her sister) taking her money. However, her sister walked into a bank in a regional centre with a statutory declaration saying she was the client and removed all the funds that had accumulated. The bank has indicated that the funds cannot be returned to the client unless she reports her sister to the police, an act which would be totally culturally unacceptable.’⁵⁰⁸

According to this submission, in Anangu culture, resources are often shared, meaning that disability funding intended for one family member with a disability may be shared throughout the family, ‘in accordance with established priorities which may or may not include the family member who has the goods or money’.⁵⁰⁹ This communal approach to resource sharing makes it difficult for people with disability to complain when ‘their money’ is used or controlled by somebody else in the family.

Negative cultural norms can also materialise in forms of racism that prevent complaint making (and lead to a situation where individuals believe they are unlikely to be believed). For example,

in a 2018 Human Rights Watch report, it was noted that First Nations prisoners ‘did not feel comfortable seeking services because they faced racist stereotypes. One Aboriginal man with a disability told Human Rights Watch, ‘[They call us] “black cunt,” “sheep,” “mother fucker,” or “pricks.”’⁵¹⁰ While this statement was made in relation to accessing medical services, the racist attitudes of prison staff highlight the potential barriers faced by First Nations people when making complaints about violence, abuse, neglect and exploitation.

5.1.9 Powerlessness

As discussed in Chapters 1 and 2, people with disability face systematic forms of inequality and discrimination. Some people with disability have lifelong histories of violence, and multiple experiences of having complaints not taken seriously. Some people experiencing violence simply feel too scared, traumatised and shocked to report the violence, abuse, neglect and exploitation they have experienced. Further, many people with disability are disconnected from institutional decision making, meaning they have limited personal capacity to effect change in their circumstances. The feminist philosopher Iris Marion Young described one of the faces of oppression as the experience of ‘powerlessness.’⁵¹¹ For Young, this experience of powerlessness, was associated with social political structures removing recognition and agency from the subject, so that they appear to have ‘little or no work autonomy, exercise little creativity or judgment in their work, have no technical expertise or authority, express themselves awkwardly, especially in public or bureaucratic settings, and do not command respect’.⁵¹² Powerlessness as Young describes it has strong overlap with the testimonial injustice described in Chapter 3; in both cases, institutions and social structures conspire to devalue and remove the capacity for individuals to both exercise agency, and be recognised as having fundamental rights to speak and be heard. In these cases, it is important to recognise that powerlessness is not an *inherent* trait; instead individuals are *made powerless* by the structures around. As discussed in Chapter 3, just procedures are one way to value and humanise individuals; however failed procedural justice is complicit with making individuals powerless, by removing opportunities to speak, to be heard and to effect change.

To an extent, this idea of powerlessness helps to make sense of experiences described in this Chapter, where people with disability do not have the support to gain confidence or ability to report violence, abuse, neglect or exploitation. For example, in Thorneycroft’s 2020 study, a woman who was experiencing domestic violence over a period of time did not have the confidence to speak up about this abuse:

‘I was living with this person for nine, for nine months. And he punched me, and then I felt that it was OK. I couldn’t build confidence, but then I was getting bruises and people were questioning me.’⁵¹³

This quote highlights the relationship between a lack of self-confidence and acceptance of violence. It is only when others stepped in that this woman felt able to do something about the harm she was experiencing. Here, a factor of the powerlessness experienced by individuals is a lack of self perceived ability to take action around violence. A comment by a support worker in a

UK study highlights this: ‘The idea that one of our clients would say I want to raise a safeguarding or I want to complain or I want, it wouldn’t even come into their heads, it just wouldn’t...’.⁵¹⁴

For some people with disability this powerlessness arises due to the material reality of years, and perhaps decades, of persistent violence without possibility of relief or justice. This experience was summarised by a participant in Shah et al’s 2016 study:⁵¹⁵ a woman in the UK who survived ongoing domestic violence in the 1980s, and also experienced failures by health staff and police to understand or respond to the trauma she experienced:

‘... I don’t think I told anyone but lots of people knew because there was a lot of police involvement and things ... he made sure I was isolated from family and friends when there were opportunities to get help like from the police or from my doctor I was quite seriously injured a number of times and hospitalised a number of times ... I think in some ways that the attitude of the police could also be a huge problem because in some ways I felt that they looked on me as being just as bad because I wouldn’t do something about it; you know sort of ‘how do you expect us to help you if you won’t help yourself?’ Yes, that’s fine but I couldn’t help myself. I don’t think they were able to sort of understand this prisoner of war camp that I had going on.’⁵¹⁶

In this example years of persistent violence without intervention and protection from authorities and institutions mean that the victim-survivor had depleted resources and energy to make a complaint (‘I couldn’t help myself’).

The experiences of this person in Shah et al’s study mirrors other research with victim-survivors of violence; for example a participant in research on violence in disability group homes summarised: ‘You’re too scared to call the police when you’re being bullied.’⁵¹⁷ These examples highlight the shaping effect of unchecked violence on victim-survivors, and how unchecked violence informs expectations of relief or justice. Persistent violence without relief or justice creates a culture where those who experience violence fear speaking up about it: ‘When people get bullied, they are too frightened to speak up for themselves. They’re very scared and it’s not their fault.’⁵¹⁸ To an extent, this culture of fear draws attention to the importance of independent advocacy and the role of support and outreach in complaint mechanism design. In this regard, the account above from Shah et al 2016 is instructive: it was only when others intervened that any change occurred. In that example, eventually the police made the decision to press charges, despite the fact that the victim-survivor had not made any complaint, and she was subsequently able to leave the violent situation.⁵¹⁹ In this case, an appropriate reporting pathway that supported the victim-survivor, and the availability of forms of independent advocacy, could have prevented many years of violence and harm from occurring.

5.1.10 ‘I Wasn’t Taught That’: Lack of Awareness of Rights

In the scholarly literature, reports and submissions we analysed, there were examples of people who did not complain because they were not aware of their legal rights, nor were they aware that what they had experienced constituted criminal acts or acts of violence. As

discussed in Chapter 1, an element of the routine violence experienced by people with disability is its 'normalisation,' leading to implicit positive social sanction for perpetrators and forced acceptance of this violence by victim-survivors. Given these circumstances, the opportunities to report or complain about violence become constrained. Further, being of young age at the time of the offence, or having a history of institutionalisation, mean that some people are not provided information on what constitutes violence or their rights to complain, and are therefore unaware that they could make a complaint about this harm. This is especially the case when it comes to sexual violence. As people with disability are often thought of as asexual or as highly sexual,⁵²⁰ they are often denied sex education or receive inadequate sex education,⁵²¹ and often receive limited education on consent and healthy and respectful relationships,⁵²² leaving them more vulnerable to abusive and risky sexual encounters.⁵²³

A lack of awareness of rights as a cause for non-reporting of violence was discussed in Maher et al's 2018 study; the following comment was made by a service provider with reference to women with disability:

'they [women with disability] probably don't recognise some of the things that happen to them as crimes and so don't really follow through. So as far as barriers go, that's a significant one that people with intellectual disability often don't have high expectations as regards to their rights. So the bad things that happen to them, they just absorb and suffer it really. ...that's a definite trend that we've noticed.'⁵²⁴

Understanding that an experience of violence is an issue that is reportable is a key precondition for a complaint being made. If people do not understand that they have been wronged, or that they can report a wrong, then the complaint cannot happen.⁵²⁵ It is for this reason that rights education and information have to factor as elements of complaint mechanism design. Further, as the above quote highlights, a failure to provide rights education leads to 'low expectations' around rights and respectful treatment. Arguably, institutionalisation and segregation create the context for an expectation from people with disability that the violence, abuse, neglect and exploitation they have experienced is normal and is not worthy of just rectification. Growing up in institutions means some people with disability are excluded from formal and informal learning opportunities that would help them identify when criminal acts have occurred. Thorneycroft's 2020 study of life histories of people with disability and their experiences of violence, includes an account of a person with disability – Roger – who went between different institutions as a child and young man, and as a young adult, was raped.⁵²⁶ When asked if he reported this violence he responded:

'No I was too scared. I didn't even know it was a crime. Somehow the police found out, I don't know how, uh, and they came to the [refuge] and started asking me questions and then took me to the police station. They got me to make a statement, you know, I was talking about what I thought, or, you know, this happened, that happened, the police put words, it's like they were putting words in me mouth. But, I don't know if they were or not, but, yeah. And then they, uh, asked me to sign it.'⁵²⁷

Roger was sexually assaulted by a man at a time in Victoria when homosexuality was illegal. He states that he was coerced by police into signing a document saying he had engaged in consensual homosexual sex and was consequently imprisoned. This example of a historical injustice is shaped by highly problematic discriminatory policing and laws. But it also serves to draw attention to how failures to provide rights awareness and inadequate supports for people with disability who experience violence can contribute to circumstances where some people with disability can experience significant failures of justice.

The above case example helps to also highlight that lack of awareness of rights or low expectations of justice can result from circumstances where individuals experience years or decades of violence that becomes 'normalised' in such a way that it is difficult to imagine reporting this violence. In the context of violence experienced by First Nations people, a combination of State sanctioned and informal forms of violence and deprivation can lead to a situation where violence, abuse, neglect and exploitation is part of everyday life. The 2020 submission from the Ngaanyatjarra Yankunytjatjara Pitjantjatjara Women's Council to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability summarises this: 'One effect of the prevalence of some of the abuses [experienced by the Anangu people] ... is that these have become normalised, and are seen by Anangu as a part of everyday life and relationships'.⁵²⁸ Here the legacies of government policies which removed children from families can lead to histories of violence and alienation, and with this low expectations of justice in relation to complaints about violence. In Thorneycroft's study, another case example is provided of a First Nations woman who was sexually assaulted as a child in an institution and did not report this violence:

'I just didn't know. I was just too scared, and I wasn't, I was just too scared to say something, frightened, very frightened, at the age of six. And that's why, and I had fits too, and I didn't know what was right, what was wrong. You know, I just thought it was an ordinary thing, what he was doing. I thought he was allowed to do that, at the age of six, but I didn't know. I wasn't taught that.'⁵²⁹

A mix of fear and lack of information on what was 'right and wrong' meant that this woman was not equipped with the skills to recognise violence in her life ('I wasn't taught that'). This case highlights the importance of considering historical forms of violence within the complaints landscape and how these might be addressed. As was the experience with the Royal Commission into Institutional Responses to Child Sexual Abuse, recognition of historical violence will often require broader forms of collective recognition of injustice as pathways to enabling individuals to report violence and seek redress.

5.1.11 Inadequate Information and Knowledge on Reporting Pathways

Many of the above experiences of non-complaint reflect circumstances that are outside of the direct control of the complaint mechanism itself. Understanding these factors are important

in the design of the complaint mechanism; for example, outreach and rights education are important as strategies for building trust in a complaint mechanism and informing individuals of their legal rights. However, some of the experiences of people with disability described above relate to structural issues that shape the lives of people with disability; for example, segregation and institutional cultures which normalise violence. Complaint mechanisms can only go so far in addressing these; indeed, as shall be argued in Chapter 8, improving complaint mechanisms and reporting pathways around violence, abuse, neglect and exploitation should be accompanied by systemic reforms that aim at addressing the causes of violence themselves.

However, there are many examples of reforms that can be used to improve complaint processes and procedures that will make pathways for reporting violence, abuse, neglect and exploitation more effective for people with disability. One such reform is the provision of information to increase awareness of complaint mechanisms. In the scholarly research, reports and submissions we examined, there were a number of examples where people with disability did not make complaints simply because they were unaware that complaints options exist, or they were unfamiliar with how to begin a complaint process.

In some cases, this lack of information is interlinked with the need for general rights awareness. A UK study of people with psychosocial disability, showed that lack of information and education on complaint options was associated with a lack of awareness of legal rights: 'Mental health service users have little awareness of adult safeguarding, their legal rights or how to raise a concern.'⁵³⁰ This study highlights, as discussed in Chapter 2, the interconnection between accessibility of complaint pathways, and the rights people with disability enjoy under Articles 12 and 13, which obliges governments to guarantee equality before the law and rights to access justice on an equal basis with others. In some cases, realising these rights means having access to information on how to leave a situation of violence or abuse. An example provided by Harris and Woodlock draws attention to the role of information in combatting financial exploitation.⁵³¹ In this example, women with disability experiencing violence from intimate partners may be unaware of options that would allow them to manage their finances independently:

'So many women that I see haven't got their card with them. They've had it taken. They don't understand they can actually open another account, that we can help them have their Centrelink payment put into another account. I know that move in itself will be a danger sign. But they actually are completely unaware that they can change that reality, that the perpetrator can access all their money the minute it goes into the account. It's a huge issue, teaching some financial skills and regaining a bit of control over their own finances.'⁵³²

Occasionally, increasing awareness of complaint options involves adapting to evolving circumstances and new technologies. One area of change is the capacity of emerging technologies to facilitate new forms of violence and abuse, such as through social media. In these contexts it can be unclear who to complain to or what 'jurisdiction' the complaint relates to. In another example provided by Harris and Woodlock, a woman had a photo posted publicly to the internet without her consent, but did not know how to complain about this:

'I didn't know who to ask and I didn't know how I could get help to get the images off the internet so the whole internet didn't see it, you know what I mean? So I wanted to try and get rid of it. They want you to take a photo of yourself, then they put it on a website to everyone to see. I just know that it's out there and I don't know where it is and that's what's freaking me out.'⁵³³

As shall be discussed in Chapter 6, going to police and using other traditional justice avenues is not always effective, as police may also lack awareness around technology-facilitated abuse.

In some instances, complaint pathways exist, but appear to be not promoted, perhaps because there are strong organisational imperatives to ensure that they are not utilised. In the survey of scholarly literature, reports and submissions we conducted, there were examples which highlighted some of the difficulties faced by students and their advocates in making complaints. For example, parents are sometimes unaware of complaint mechanisms available beyond speaking directly to school staff. A report on inclusive education found that:

many of the parents interviewed did not characterise their grievances as complaints, and may simply not have realised that they had options beyond a conversation with the classroom teacher or principal. As noted in the preceding section, schools do not always seem to be advising them in this regard. Secondly, it is possible that willingness to seek redress from within the Department may be compromised by low levels of trust or a sense that nothing will change, particularly if parents feel let down or alienated after a dispute with a school.⁵³⁴

Here, parents were unaware of available complaint mechanisms because schools did not inform them of their options nor encourage parents to utilise these. Further, as discussed above, low level of trustworthiness and poor experiences with complaint can lead to reluctance to lodge a complaint. Such circumstances are not necessarily restricted to schools. In the context of tertiary education, a 2017 study by Fossey et al drew attention the fact that students with disability surveyed were unaware of options to appeal discriminatory academic decisions made against them: '... some students reported that their requests for reasonable adjustments were sometimes met with refusals. In these circumstances, they reported a sense of having few pathways to appeal these decisions.'⁵³⁵ As shall be discussed in Chapter 8, clear and consistent information on complaint mechanisms and reporting pathways is a comparatively inexpensive and easy to implement reform that would improve many individuals' ability to navigate complaints.

5.1.12 Complicated Reporting Processes

In some cases, information about complaint reporting processes is available, however a complaint is not lodged because the actual complaint process is perceived as burdensome and difficult. As discussed in Chapter 3, an element of just process is transparency: if a complaint process appears complex or opaque then this will deter complaint making. In the scholarly research, reports and submissions we examined, there were examples of experiences where complex complaint processes appeared to deter complainants. Robinson, in a study of school children and their families, summarised that:

In this research, little evidence was found of students and families accessing policy and legal support for prevention, early intervention and remedy or redress of harms... Many were unclear about their rights in relation to complaint making, and found the process draining and difficult.⁵³⁶

Here lack of information combines with complex and difficult complaint processes to deter complaint making.⁵³⁷ Even when children and their families are aware of their right to complain, the process is sometimes experienced as too difficult, and families may feel like the likelihood of an adverse outcome makes complaining a fruitless endeavour. A similar sentiment was shared in Harris and Woodlock's study of technology facilitated violence, where a frontline worker summarised that arduous reporting processes deterred people from making complaints, especially if they did not have support:

'Sometimes people don't report it [technology-facilitated abuse... because they felt okay, 'no one [is] going to listen, nothing [is] going to happen, it's just going to stay there, what's the point?'. Or the amount of red tape they have to go through to lodge an application and they said 'okay, forget it. Don't worry.'... They are worried it will be hard. There won't be much support. No one there to look into it.'⁵³⁸

This quote illustrates how the convergence of one of the factors described above ('there is no point') with a complicated complaint process can work to deter complaint making. In this case, it is not merely that the complaint process itself is exhausting, it is also that the process is experienced as a waste of time where it is not clear if it will lead to an outcome, either for the benefit of complainant or for others. In the procedural justice literature, explored in Chapter 3, this would be understood as a failure of a complaint process to enable an outcome that either serves self-interest or enhances group value.⁵³⁹ If complaints processes are complex, and the likelihood of an adverse or no outcome high, then potential complainants are disincentivised from complaining altogether. As shall be discussed in Chapter 8, some people with disability have experienced interconnected failures in both complaint processes and complaint outcomes; this history leads to a subsequent reluctance to make use of complaint processes.

5.2 Prevented Complaints

In the above sections of this Chapter we examined some of the many reasons why people with disability may choose not to complain about violence, abuse, neglect and exploitation. Before completing this Chapter on non-complaint, we also need to consider the problem of 'prevented complaints'.⁵⁴⁰ An accessible complaints process will create clearly available avenues for individuals to report their concerns, and appropriate pathways to report violence, abuse neglect and exploitation. As discussed in Chapter 3, fair process and procedural justice would imply that there is strong knowledge for potential complainants within institutional contexts about the processes for making a complaint, training and active facilitation by staff to enable individuals to make complaints, voice and recognition to support complainants, and transparent and

fair processes to manage complaints towards just resolutions. However, some people with disability find that complaint mechanisms are not merely inaccessible, but they are actively discouraged and prevented from complaint making. These experiences, found in the scholarly literature, reports and submission we analysed, show that in some cases, staff and institutions will work in an active way to prevent pathways to complaints. Further, in other cases, complaint mechanisms are inaccessible and complex, thus effectively preventing potential complainants. Finally, some people with disability are aware that they are unlikely to be believed, and thus are pressured to take additional steps, including collecting their own evidence before making a complaint. The need for additional evidence can act as a barrier and prevent complaint making.

5.2.1 Preventing Complaint Making

The scholarly literature, reports and submissions we analysed suggest that in some cases people with disability, particularly in institutionalised settings, not only lack access to complaint mechanisms, but are actively barred from making complaints. West, Ramcharan and Basser provide examples where people with disability in hospitals and mental health wards were prevented by staff from making a complaint.⁵⁴¹ In one example of a person who was admitted to hospital, West, Ramcharan and Basser describe a situation where staff had been reported to withhold identifying information about treating doctors so that the patient could not gather enough information to make a complaint:

Julian had his belongings removed and was ‘locked up’ after a voluntary admission. He felt over-medicated and found staff very rude. He did not view this as standard treatment but when he wanted to complain the hospital would not provide the names of the doctors responsible for his care, and he viewed it as all too hard to take any further action.⁵⁴²

West, Ramcharan and Basser suggest that gatekeeping by medical administrative staff is a significant issue, outlining situations where interviewees ‘had tried to gather information to start a formal complaint, but had been met with resistance by medical administrative staff and had given up.’⁵⁴³ While it may be common for people with disability to make verbal complaints in health settings, they may not always be followed up. This is because staff do not facilitate formal complaint making, and additionally because complaints avenues are often complex and arduous. Moreover many people with disability have other difficulties and sources of discrimination to contend with, making it difficult to have adequate time and energy to expend on the emotional labour of complaining.⁵⁴⁴ Such experiences of institutional gatekeeping to prevent complaints being made is repeated in international case studies. One woman who was voluntarily admitted to a mental health facility in the UK reported:

‘I went to the staff and I told them what happened [being raped by another patient] in the morning. And they basically just dismissed it. They wouldn’t let me make a phone call. They wouldn’t let me see an advocate. They wouldn’t let me talk to the police. They wouldn’t let me go to A&E (Accident and Emergency Department) so I could get myself medically checked out [...] And then they refused to let me off the ward which was very frightening because being a voluntary patient I assumed that I had rights to come and go as I wanted.’⁵⁴⁵

As this experience highlights, the implications for an individual who is effectively blocked from complaining in relation to violence are very significant: in this case, not only is an avenue for seeking justice in relation to an experience of violence closed off, but the systemic refusal to hear the complaint itself becomes a form of violence. Yet, this violence remains hidden from the scope and settings of ‘violence, abuse, neglect and exploitation of people with disability’ because complaint mechanisms are associated with response to and repair of past violence. Further, the system failure itself creates the circumstances for future violence: prevention of complaint increases the risks that further assaults might occur, and means that if this woman is ever able to formally report the attack, there would be less physical evidence in support of her complaint.

Examples of people with disability being prevented from complaining are found in other institutional settings, such as in the criminal justice system. In one instance, a man with disability describes being threatened with formal sanction for raising a complaint about his assault:

‘I was sexually assaulted [by other prisoners].... I know at least one of them raped me, but I kind of blacked out. I was bleeding, I still bleed sometimes. I reported it the same day to two of the supers [superintendents], I filled out the medical request form. They told me if I report it, I would go to the DU [detention unit] for six months. So I ripped up the form in front of them. Then when I went back to the unit, I got bashed up by some of the guys, not the ones who assaulted me.... They beat me up, stomped on me. Called me a dog [traitor].’⁵⁴⁶

Here the act of complaining can itself bring consequences and retribution. But further the ‘testimonial injustice’ experienced by people with disability can either render their testimony as ‘unreliable’ by institutional authorities (see Chapter 6), or alternatively be understood as a product of their disability itself.⁵⁴⁷ Certainly in the prison context, people with disability are often misunderstood as being defiant and difficult when requesting services or when speaking up. A prison psychiatrist interviewed by Human Rights Watch stated:

‘I haven’t seen anyone with an intellectual disability who hasn’t gotten worse in prison. They are often punished [by staff] when struggling to communicate or seeking help. The staff don’t get that people with intellectual disabilities don’t understand what’s happening. Staff take things personally and then act out in anger against the prisoner’⁵⁴⁸

This quote, while not specifically about reporting violence, reflects a prison culture where it is difficult to ‘speak up’ or make requests. It follows that if people with disability are dismissed and even punished when trying to communicate, they would not feel encouraged or supported to complain. In prisons people with disability are sometimes barred from making complaints by the practice of placing prisoners in solitary confinement after reporting violence.⁵⁴⁹ While this confinement is said to be done for the person’s own protection, solitary confinement might act as a deterrent from reporting due to its harsh nature.⁵⁵⁰ Solitary confinement cells are small, often windowless, with minimal furniture. When prisoners are held in detention units, they often have limited access to leisure, work and exercise facilities.⁵⁵¹ In this context, being sent to solitary confinement for protection after reporting violence may be experienced as a punishment

for complaining, and its distressing nature may encourage prisoners to feel that it is ‘not worth’ complaining about serious harm. Forms of institutionally mandated retribution for complaint making will be explored in Chapter 7.

The context of prisons also highlights the material barriers many prisoners face in making complaints due to the routine practices which isolate individuals from mechanisms which allow for the communication of concerns and reporting of violence. It is for this reason that monitoring and prevention strategies, such as the National Preventative Mechanism, introduced in Chapter 2 and discussed in Chapter 4, are important in these contexts.

5.2.2 Accessibility of Complaints mechanisms

The scholarly literature, reports and submissions we surveyed for this report suggested that people with disability in different settings may initiate a complaint process but can be discouraged from following this through due to the inaccessible nature of mechanisms. Accessibility of complaint mechanisms was described above as a reason that some people with disability may choose to not complain. However, it is also a reason that some complaints are *prevented*, as a person may seek to complain about violence, abuse, neglect and exploitation, only to discover that the mechanism is poorly adapted to enable access for a variety of potential complainants.

One area of concern relates to the capacity of complaint mechanisms to provide for supported decision making and diverse communication styles. For example, Keilty and Connelly describe a police interaction with a woman with cognitive disability who had experienced sexual assault: ‘The police felt unable to take a statement because of the client’s language skills, even though that officer had been known to take statements from women with intellectual disability before.’⁵⁵² This quote, from a sexual assault worker, highlights that some police may not take complaints further if they deem a complainant’s language skills inadequate. This is often due to perceptions that the person with disability would not be seen as reliable in court. Indeed, research on the interactions between women with disability and police suggests that communication barriers were significant in impacting complaint making: ‘there’s a lot of people who will not even get as far as the police being made aware because – well, they may not be able to communicate in the first place.’⁵⁵³ These communication issues extend to the capacity of complaint mechanisms to respond to people in diverse languages. The Royal Commission into Institutional Responses to Child Sexual Abuse saw this as a significant problem for complaint mechanisms aimed at reporting violence against children:

We heard that the complaint handling policies of some institutions were inaccessible because they did not consider the needs of all stakeholders. For example, in our discussions with multicultural stakeholders, we were told some schools knew that children spoke a certain language at home, but did not translate child protection policies into relevant languages and relate them in a cultural context that parents and carers could understand.⁵⁵⁴

This deficit in the design of complaint mechanisms was significant in relation to its impacts for First Nations people:

For example, in case studies and private sessions we were told of institutions that did not provide the necessary tools to enable victims with communication support needs to make a complaint. We also heard that some institutions responded to complaints made by victims from culturally and linguistically diverse backgrounds or Aboriginal and Torres Strait Islander victims without providing language supports, such as an interpreter. Sometimes victims and their families said institutions responded in culturally inappropriate or unsafe ways. Aboriginal and Torres Strait Islander survivors told us past and sometimes ongoing experiences of abuse and injustice mean they lack trust or confidence in institutions and government authorities.⁵⁵⁵

As the Royal Commission into Institutional Responses to Child Sexual Abuse reveals, and relevant to the discussion in Chapter 3 on procedural justice, poor procedural fairness undermines the perceived legitimacy of institutional authority.

Aside from the above issues of communication, reporting violence to police may also be experienced as intimidating for many people with disability. In this context, having disability advocates who are safe and supportive is crucial. One woman with disability highlighted:

‘Depending on the exact circumstances, I would probably go to the police with an advocate first. I’d go first to an advocacy organisation and have them go with me ... But if it’s an advocate, it’s somebody that knows you as well.’⁵⁵⁶

Some people with disability may feel safer and more empowered disclosing to an advocate first and may wish to be accompanied when they report violence. A study on sexual harassment in the workplace similarly found that people with disability were more likely to complain with the assistance of an advocate or anti-discrimination body.⁵⁵⁷ This potentially speaks to the process of complaining being intimidating and overwhelming to navigate alone or without expertise.

5.2.3 ‘Unreliable’ Witnesses

In Chapter 3, we explored the concept of ‘testimonial injustice,’ described as a ‘prejudice’ which ‘causes a hearer to give a deflated level of credibility to a speaker’s word.’⁵⁵⁸ It was argued that the systemic forms of discrimination faced by many people with disability often work to undermine their credibility as witnesses, and thus are important to consider in the context of just procedures and complaint mechanism design. This testimonial injustice is reinforced by legal forms of segregation, such as substitute decision making, which compromise the ability of people with disability to be heard on an equal basis with others and be recognised by law.

Relevant to this, the research shows many circumstances where people with disability, and especially women with disability, are framed as ‘unreliable’ witnesses. We saw this discussed above in cases where people with disability do not complain out of fear of not being believed. But this testimonial injustice also takes shape when individuals complain and are treated as ‘unreliable’ and thus are effectively prevented from complaint making. One effect of this are

instances, as described above, where testimony of people with disability is either ignored or imagined as a behaviour associated with an impairment or condition. This testimonial injustice also creates additional pressure for people with disability to produce evidence to support complaints, since people with disability will need to produce more evidence than a person without disability to substantiate a claim. Women with disability are often acutely aware of this, and feel an additional level of pressure before making a complaint to have all the evidence with them to 'prove' they have experienced violence. When asked who she would go to report violence, a woman said: 'I would focus on collecting evidence rather than an individual I would go too [sic]... Who I would go to depends on the type of violence (crime) and the evidence I am able to collect.'⁵⁵⁹ Note the implications of this reflection on evidence collection for equality before the law as described by Article 5 and Article 12 of the Convention on the Rights of Persons with Disabilities (see Chapter 2). People with disability, like any other member of the community, should not have to feel they need to prove what happened to them before making a complaint. If people with disability want to engage as victim-survivors with the criminal justice system, it is the responsibility of the authority receiving the complaint to investigate and 'prove' the complaint, not the victim-survivors themselves.

5.3 Conclusion

This Chapter describes situations of 'non-complaint,' where complainants are deterred from complaining about violence, abuse, neglect and exploitation. Section 5.1 explores some of the reasons individuals do not complain. This includes individuals experiencing generalised fears of retribution or not being believed, which prevents them from complaining. Experiences described in the scholarly literature, reports and submissions surveyed for this Chapter suggest that some people with disability are not aware of complaint processes, lack information on their rights, and experience forms of powerlessness which prevent complaint making. Some people with disability choose not to complain because, based on previous experiences, they do not believe that a complaint process will lead to an outcome, or they experience a complaint mechanism as unduly complicated or burdensome to navigate. In Section 5.2, we examined examples where people with disability were prevented from making complaints. In certain institutionalised and closed settings (for example, hospitals and prisons) some people with disability report being barred from taking a complaint further. As discussed, this arguably works in a circular way to reinforce an environment where violence is routinised, as failure to formalise complaints means evidence of previous violence is not available, and perpetrators and systems are not held to account. Section 5.2 above also discussed some of the experiences of poor accessibility encountered by people with disability, particularly in relation to supported decision making and support for diverse communication needs. Examples of people being treated as 'unreliable witnesses' were discussed; this has implications for people with disability making complaints who feel compelled to collect their own evidence before making a complaint, as they are aware of being viewed by complaint authorities as 'unreliable.'

In many of the examples above, people with disability and their advocates chose not to complain and instead, for their own protection and mental and physical wellbeing, preferred to withdraw from a service. This response is itself revealing, as it tells us that the failure of

complaint mechanisms to respond to violence, abuse, neglect and exploitation in turn may create circumstances where people with disability will choose deprivation and loss of rights in order to minimise their exposure to violence and abuse. The scholarly literature, reports and submissions we surveyed for this Chapter found examples of this in health care settings. A UK study found that ‘many participants reported reluctance about returning to hospitals or GP surgeries because of the poor treatment that they received’. While some patients changed hospitals, others ‘simply refused to attend appointments.’⁵⁶⁰ In this study a participant said:

‘Well you stop using them...you think they weren’t helpful last time, what’s the point in going and sometimes you have to work on your thinking and say well give them another chance. Like you do with the GP, you have a barrier wall but you still have to go, but for some people the barrier stays up for such a long time and they miss out and that’s wrong.’⁵⁶¹

This participant’s reflections reveal the broader system wide problems created by ineffective complaint mechanisms. Aside from creating multiple cases of failed justice at an individual level, a poorly operating complaint mechanism will not be able to alert institutions to structural problems that affect the system as a whole. In a health context, for example, complaint processes that do not respond to the needs of people with disability will contribute to the system failures of health services to provide equal outcomes to people with disability. We can see this in a US study, where a person with disability indicated that they similarly would prefer to ‘miss out’ than to be treated discriminatorily by health services:

‘I am unhappy with my doctor. I am so unhappy with him, if he’s the only one there, I won’t go. I will book it only when his understudy is there...I will miss my appointment because he’s the only one there...I know that’s bad for my health but...he pushes my buttons and is very rude and makes me feel stupid. He has a tendency of making you feel beneath him. He’s a doctor and you’re just a patient and you don’t know anything. I know my body and I know if something is wrong with me—I’ve been in my own body for 50 years. He thinks he’s better and smarter than I am and we bump heads, we clash.’⁵⁶²

The above complaint does not necessarily amount to violence, abuse, neglect and exploitation and or/ criminal activity. However, the example tells us something about how people will respond to failed complaint processes relating to violence. As discussed above, some people will live with violence because they have no other option, and because no relief or justice is available. Other people, as the above example highlights, will withdraw to protect themselves, even if this creates other harms as a result. This latter approach is reflective of what Scott Avery labels ‘apprehended discrimination’, where people from minority groups - in the context of Avery’s study, First Nations people with disability - will avoid or opt out of service systems due to the realistic and rational fear that they will be treated in a discriminatory way. Avery highlights that this is a process, culminating in ‘a threshold point at which the accumulated exposure to discrimination is so great that the participant expects to be discriminated against’,⁵⁶³ resulting in self-exclusion and the avoidance of situations where discrimination is likely. Both of the above outcomes – either learning to live with violence or avoiding services to escape violence - reflect failures in justice, with effects for both individuals and society at large.

Chapter 6: Experiences of Complaint Procedures

In Chapter 2, this report explored ideal principles relating to procedural justice. In that Chapter it was highlighted that procedural justice principles as they are applied to complaint mechanisms place a high value on forms of respectful treatment towards complainants, accessible and transparent processes, and the ability of complainants to express voice. This Chapter details lived experiences found in scholarly literature, reports and submissions, which reveal examples where people with disability reported poor processes after lodging a complaint. These examples include disrespectful treatment where complainants are labelled as ‘being difficult’; poor processes such as unsatisfactory communication and examples of complaints that are never resolved; and unacceptable examples of failed complaint procedures, including examples of complainants being forced to have continued interaction with their perpetrators, especially in closed settings. Analysis of lived experiences of poor processes after lodging a complaint contributes to the overall finding expressed in Chapter 8 that for at least some people with disability who report violence, abuse, neglect and exploitation, neither just procedures nor just outcomes are experienced; indeed, the experience is that ‘nothing happened.’

As noted in Chapter 5, this Chapter is not intended to provide generalisable findings about what all people with disability might experience when seeking to utilise a complaint mechanism to report violence, abuse, neglect and exploitation. Our approach does not include a large sample survey, so the results cannot be generalised. Further, the experiences below are not the result of a new empirical study, nor are they intended to be used to evaluate the performance of a particular complaint mechanism available within an Australian context. Rather, this information provides guidance on the kinds of experiences people with disability may have navigating complaint mechanisms.

6.1 Disbelief

As discussed in Chapter 5, some people with disability do not complain because they fear they will be disbelieved. This fear reflects a reality for others who do complain in so far as the lived experience data contained in scholarly literature, reports and submissions surveyed for this report suggest that when some people with disability lodge a complaint, they are indeed met with disbelief at the violence they experience. In some cases this disbelief is the product of an internal culture which assumes that staff are inherently beyond reproach and therefore that all complaints must be vexatious. For example, in a report from a health setting, a person with disability describes the process of complaining about having to wait six weeks for support, despite being in pain due to an injured back and unable to perform personal care:

‘I went to see the person in charge ... he didn’t give a s**t ... somebody else who was handling the respite in there said to me table it at the meeting ... I was attacked from the members at the table saying to me “they don’t do this they don’t treat their clients like this” ... everything I’ve had to fight to get’⁵⁶⁴

This complainant confronts an institutional culture which effectively prevents complaints from being heard because of an assumption that ‘they don’t treat their clients like this.’ As discussed in Chapter 3, a lack of independence of complaints processes within organisations is a result of internal cultures which work against complaint making. A similar observation was made in the Royal Commission into Institutional Responses to Child Sexual Abuse: ‘they suffer from conflicting staff loyalties, they discourage internal informants, they run into problems of institutional bias and self-protection, and they are not perceived as open, transparent or impartial.’⁵⁶⁵ The dynamics of these internal cultures pose a particularly worrisome challenge in the context of the current emphasis on ‘local level’ resolution in the design of complaint mechanism processes, as outlined in Chapter 4.

However, many people with disability also face an interconnected barrier in the form of systematic discrimination which undermines their apparent ‘credibility’ as witnesses and victim-survivors: this was discussed as a form of ‘testimonial injustice’ in Chapter 2. For example, a UK study highlighted that people with psychosocial disability in mental health facilities described ‘receiving unsympathetic or disbelieving responses from staff on the ward to which they disclosed who discouraged them from going to the police.’⁵⁶⁶ Here, it is not just that the complainant is disbelieved when they disclose a complaint; in this case those who complain are effectively blocked from taking forward their complaint through other pathways, such as the police. This experience overlaps with other experiences described below, such as complaint mechanisms ‘pre-judging’ an outcome in advance and as a result choosing not to process a complaint: for example, an assumption that because the perpetrator has cognitive disability that therefore it is not possible to achieve an outcome by making a complaint.

Women with disability are likely to face forms of testimonial injustice when they complain about violence, abuse, neglect and exploitation, a result of the prevailing attitudes that discredit both people with disability and women as being ‘unreliable’ (see Chapter 2). As one sexual assault worker described: ‘The first thing the police asked me was ‘Do you believe her’? The impression was that she was making it up to get attention.’⁵⁶⁷ Here, women with disability are often believed to be a-sexual or conversely, highly sexual and ‘promiscuous’,⁵⁶⁸ and thus it is assumed that the complainant either fabricated the complaint, or consented at the time. Due to these stereotypes, women with disability are less likely to be believed when they make a complaint about sexual assault, impacting their treatment by complaint mechanisms or the police.⁵⁶⁹ For women with disability who have had previous contact with police as offenders or under mental health legislation, these stereotypes can be compounded by police perceptions their sexual assault complaints are a manifestation of their criminal behaviour, psychosocial or cognitive disability, or both. The disbelief experienced by women with disability when they report violence may be interconnected with the assumed ‘credibility’ of partners and carers. In one example, Phillipa, a woman with disability, was disbelieved because of the social respect and ‘standing’ granted to her partner:

Phillipa experienced repeated physical, sexual, and psychological violence at the hands of her partner for over 8 years. Her partner was a 'well respected' member of the local community. She tried on a number of occasions to report the violence to the Police, but this was difficult as the Police told her that it was 'too expensive and time consuming' for them to organise an Auslan interpreter. The police told Phillipa that she was 'imagining' the violence and that she was 'lucky' to have a partner who 'cared' for her because she was 'deaf'⁵⁷⁰

This example of interpersonal violence highlights the way in which the capacity of complaints to be 'believed' by complaint mechanisms and the police when complainants with disability report violence, is shaped by numerous factors, including socially perceived authority and credibility of perpetrators.

The tendency to disbelieve women with disability is also shaped by race and ethnicity. For example, First Nations women with disability are less likely to be believed when reporting violence, due to racist stereotypes: 'So [Aboriginal] women with disability can present to police and then are just not taken seriously. I mean, they might be viewed as troublemakers or drunk or just not believed ... that's a pretty common story.'⁵⁷¹ This highlights the need to understand the unique position or standpoint of First Nations women with disability through an 'intersectional' understanding of their experience of violence.⁵⁷²

Emerging technologies create a quickly changing and disorienting landscape which alters opportunities for violence, abuse, neglect and exploitation to occur.⁵⁷³ However this evolving landscape means that complaints bodies are often unaware of the nature and extent of violence facilitated by new technologies, such as social media platforms, and are thus incredulous when women come forward to make these complaints. As one frontline worker highlighted:

'Some of these women are dealing with workers who may be disability workers or NDIS or a whole range of people who actually have very little knowledge about this sort of technologically assisted abuse. So that's partly why they're not believed. They think they're making it up because it sounds too unbelievable. Yet the person we're dealing with actually understands and has worked through getting help, getting advice, trying to change what they're doing. There's an assumption that she's not capable of actually having done all those steps because the person she's dealing with has such limited knowledge around this stuff so therefore doesn't believe her. I find that a lot with the police. I find it a lot with FACS [Family and Community Services]. I find it a lot with disability workers.'⁵⁷⁴

Here, disbelief is created not necessarily as a result of cultures which prevent complaint making, nor as a result of stereotypes which render complainants 'unreliable,' but due to lack of knowledge by complaint mechanisms themselves about how new technologies shape practices of violence, abuse, neglect and exploitation. Regardless of the cause however, in all of these cases the result is the same: the complainant is rendered 'unreliable', and their account is disbelieved.

Finally, it should be noted that perhaps some people who report violence are not believed because their allegations cannot be substantiated. However, non-substantiation is not a barrier to placing faith in a complainant that they are telling the truth. The observation from the Royal Commission into Institutional Responses to Child Sexual Abuse (see Chapter 1) is that a condition of much interpersonal and institutional violence is that there may not be evidence available to substantiate an allegation of violence, abuse, neglect and exploitation. However, an important principle when considering these instances of violence is that inability to substantiate an allegation of violence is not proof that this violence did not occur; indeed, in many institutional contexts, the ‘balance of probabilities’ might suggest that the violence has occurred, but is not able to be substantiated.

6.2 Normalisation of Experiences of Violence

The scholarly literature, reports and submissions surveyed in this Chapter show that some people with disability who make a complaint do not experience disbelief, as described above. Instead, these people experience a negative form of acceptance where they are in fact believed, but their experience of violence is minimised and normalised as expected and acceptable. Here, people with disability are encouraged to accept the violence, abuse, neglect and exploitation they experience, and are provided advice to ‘just ignore’ violent behaviour or to ‘stay away from’ violent individuals.

Arguably this experience of normalisation of violence occurs across many domains; however, our research highlighted that this is common in segregated and institutionalised settings, where internal cultures may mean that violence is sometimes normalised, and staff may therefore be more tolerant of its occurrence.⁵⁷⁵ Frohmader and Sands provide an example of this in the case of a woman who experiences sexual assault within a segregated congregate care facility:

‘Josie is 41. She has an intellectual disability and she lives in a group home ‘village’ style complex... Josie was raped by a male co-resident within the grounds of the complex. She immediately disclosed the rape to an on-site support worker who advised her to ‘just keep out of his way’. The rape was not reported to the police and Josie was not offered any support or counselling.’⁵⁷⁶

Sexual assault should be treated as a serious crime and proper criminal procedures should be followed: in this case, as indicated, a pathway to reporting criminal activity should have been part of the complaints handling process. Instead, in this instance, the staff member’s advice was to simply avoid the perpetrator. This response not only works against proper criminal procedures and responsabilises the victim-survivor, but is, of course, also unrealistic in a closed setting, and as shall be discussed below, will mean that the victim-survivor is likely to continue to have to interact with the perpetrator, even after a complaint has been lodged. Secondly, the response seriously misrepresents the severity of this crime and the impact this violence has on a person’s life. The worker’s response in this example minimises and trivialises what is a considerable harm. As discussed in Chapter 3, a just procedure would involve respectful

treatment that recognises equal rights before the law; clearly, in this instance, there has been no respectful treatment and failure to recognise equality before the law. In a UK study there was a similar instance reported where a complainant's experience is normalised and the complainant is simultaneously stereotyped and dehumanised:

'Gemma told me that she was unhappy about attending one of her weekly activity groups at the day centre, because a woman in the group kept verbally assaulting her. We spoke to Gemma's key worker about this. However, the key worker was already aware of these issues. She reminded Gemma that she likes the group activity and that she should 'simply ignore' the woman. She could not be persuaded to change Gemma's group or indeed to talk to the woman who was upsetting her. When Gemma turned her back to us the key worker rolled her eyes at me. Later on she described Gemma as a 'drama queen'.⁵⁷⁷

Gemma's experience reveals another dimension of normalisation of violence: downplaying of violence in disability settings may be for the convenience of support staff. By encouraging victim-survivors to accept violence, the service does not need to confront the more difficult task of responding to the causes of violence, abuse, neglect and exploitation, and in this example, the staff member does not need to go to the effort of rearranging the activity groups to make Gemma feel safe. Gemma's experience recounted above also demonstrates what complaining might do to the complainant in terms of how they are perceived. People with disability who complain are often written off as difficult, dramatic, and demanding - a theme that will be explored further below (see Section 6.3 'Being Difficult').

Violence can also be normalised where a complaint mechanism assumes that because a perpetrator is a person with disability there would be no utility in pursuing a complaint. A UK study highlighted an example where a person with disability was threatened with violence, complained, and was then informed that the complaint was invalid because the alleged perpetrator was also a person with disability: 'When Peter reported the incident he was told that the man who threatened him 'cannot help it.'⁵⁷⁸ Here again it can be observed that there is a failure of just process. The liability, criminal or otherwise, of a potential perpetrator of violence, abuse, neglect and exploitation should be established as a result of an investigation process, and not used to rule out the possibility of a complaint. Even if a perpetrator was found to be not liable for violence, abuse, neglect and exploitation, this does not rule out the possibility that the victim-survivor may have experienced violence, is owed protection and potentially, remedy. The service provider's response above highlights that no effort was made to address violence, which in this context is seen as both inevitable and insignificant. Complaint mechanisms abandoning an individual who has reported violence, abuse, neglect and/or exploitation to them because it is predetermined that an outcome will not be realised is a theme explored below (see Section 6.8).

A variation on this experience of 'normalisation' of violence against people with disability is called 'diagnostic overshadowing', where symptoms are assumed erroneously to be caused by an impairment or health condition.⁵⁷⁹ Diagnostic overshadowing can occur in the context of health settings, where pain or injury are attributed to disability and little attempt is made to

investigate their underlying cause, leading to delayed examination and diagnosis, misdiagnosis, poor treatment, irreversible long term damage and occasionally premature death.⁵⁸⁰ However, 'diagnostic overshadowing' can conceivably also occur where the effects of violence against people with disability (such as emaciation or physical or psychological injury) are written off as associated with an impairment or health condition, and not as evidence of the effects of violence, abuse, neglect and exploitation.

6.3 'Being difficult'

In Chapter 5 we highlighted instances where individuals who initiate a complaint are either not believed or alternatively, their experience of violence, abuse, neglect and exploitation is treated as routine and therefore not complaint worthy. A different experience is when *the complainant themselves* is treated as a problem: that is, the belief that the complainant is just 'being difficult.' Here the complainant is stereotyped as a result of the act of complaining, and this stereotype shapes their interactions with complaint mechanisms in ways that mean that fair procedures and just outcomes are not possible. Being categorised as 'difficult' after complaining reveals, to an extent, an institutional expectation that people with disability should be grateful for any service they receive, no matter how substandard or unprofessional. This expectation stems from a charity model of disability where people with disability are perceived as both passive and subject to patronising forms of care.⁵⁸¹ As a result of this perception, when people with disability complain, they are often treated as though they are being unreasonable and demanding. This treatment conforms to what philosopher Ahmed has described in relation to what the act of complaint making assumes about the person making the complaint, and how complaint making effects their treatment by institutions: in Ahmed's words, '*a complainer arrives before a complaint is made.*'⁵⁸²

In health settings, the stereotype that people with disability are just 'being difficult' when they complain contributes to systematic neglect that leads to less favourable health outcomes. West, Ramcharan and Basser describe an example where a person with disability attempted to complain about delays to treatment due to service provider error:

'Mitchell related that after his x-rays and referrals had been lost and his procedure consequently cancelled, he had then been patronised and treated as difficult by the dental staff when he complained about the situation. Mitchell communicated that he felt upset about this experience.'⁵⁸³

Complaint here serves an important purpose in flagging inadequate processes to safeguard medical records and ensure timely treatment. However, in this case the complainant was treated as the problem for making the complaint. Further, as discussed above, the complainant was not provided forms of respectful treatment which are essential to satisfying principles of procedural justice; on the contrary, the complainant was patronised.

The scholarly research also reveals instances where people with disability are treated as ‘being difficult’ and as a result are barred from making complaints: ‘Basically the police in the past, they haven’t said these words but it’s basically, ‘You go away, you stop expecting us to respond or we will charge you.’⁵⁸⁴ Failure to take complaints seriously can have significant consequences. Human Rights Watch documented a tragic incident at Casurina Prison where a First Nations prisoner was assumed to be ‘crying wolf’:

‘Instead of placing him in a ligature-minimized cell in another unit, prison staff assigned Mr. Cameron to a regular cell. Despite his well-documented history of self-harm, prison staff perceived Mr. Cameron as “cry[ing] wolf” and “playing up” to create a change in environment... Being “out of country,” was a source of distress for Mr. Cameron and he asked to see an elder or Aboriginal Visitor’s Service worker on numerous occasions in May and September 2014 and again in May and October 2015. Mr. Cameron’s last request was made a mere three days before he self-harmed at Greenough Regional Prison. However, the coroner’s report did not find any evidence to suggest that any of the referrals were actioned.’⁵⁸⁵

In this case, Mr. Cameron’s requests to see an elder, important in minimising the distress of being off Country, were dismissed; this arguably played a role in his self-harm and ultimate death. The above circumstance is not strictly an example of a complaint relating to violence; but reveals the consequences that negative stereotypes of ‘being difficult’ and ‘crying wolf’ can have in terms of potential for harm and death through institutional failures to respond.

6.4 Poor Communication and ‘Handballing’ of Complaints

As discussed in Chapter 3, core aspects of procedural justice comprise perceived trustworthiness, neutrality and recognition of voice. Information about the complaint process, how it will be resolved, its progress and resolution are also important. After making a complaint about violence, victim-survivors should be regularly informed about the progress of their complaint, as well as its outcome. These needs of victim-survivors for news of resolution have been well documented in relation to complaints of sexual violence, as well as other forms of harm.^{586 587}

However, in the scholarly literature, reports and submissions we surveyed, we encountered examples of people with disability who were rarely informed of how their complaints progressed, and were often ‘kept in the dark’ about the outcome of their cases. One area where this was highlighted was in relation to complaints made to police relating to violence. In one UK study, a man with psychosocial disability who had been assaulted and threatened recounted: ‘I made a statement for the police and everything to what happened. And nothing never got done about it. Nothing. I never heard back from them’.⁵⁸⁸ As shall be discussed below, the experience of ‘nothing happened’ appears to be a commonplace outcome for some people with disability who complain about violence. The failure of a complaint mechanism to deliver an outcome is arguably made worse by the failure to provide any information about how the complaint will be handled, or any information on the progress

of the complaint. As shall be discussed in Chapter 8 experiencing both poor procedural justice and inadequate justice in outcome appears to be common for some people with disability when they complain about violence, abuse, neglect and exploitation. Another UK study highlights this interconnection between justice failures in procedure and outcome:

'My solicitor wrote to the police asking why there hadn't been an investigation into the attempted rape and stabbing. The police wrote back saying that they had lost the incident log number and referred me to a psychiatrist. But I wanted some action against that man, not a referral.'⁵⁸⁹

In the example provided above, it is only when this woman's solicitor contacts police that any update is given on the status of her case. And in this example, an enquiry into procedure leads to a discovery that an outcome has been reached which is completely unsatisfactory in terms of just outcome.

Poor communication can also occur at the same time as agencies 'handball' complaints between each other without taking responsibility for resolution.⁵⁹⁰ One example from the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, described poor complaint process involving a 13 year old – Taylor – who experienced sexual violence on a school bus from another student. After making several complaints to her school to no avail, a formal complaint was lodged:

Taylor's mother contacted the Department of Child Protection; there was no mandatory notification made by the school. After some months, the Department of Child Protection said they could not investigate as it was outside their mandate and it had occurred in a community setting. They said they would return the matter to police. After some further months, they [the Department of Child Protection] told Taylor's family that the police would not investigate as the perpetrator has an intellectual disability—and no contact was ever made between Taylor, her family and the police.⁵⁹¹

Many months went by with Taylor and her family expecting to hear from police. That they never heard back, and the further news from Child Protection that police would not investigate, was incredibly distressing, compounding the trauma Taylor and her family had already experienced. Several years after the assault, Taylor developed suicidal ideation and was taking medicine to treat depression.⁵⁹² Frohmader and Sands describe a similar situation where a complaint is moved from one agency to another, leading to no resolution in the end:

Rose is eight, has limited mobility and limited verbal communication. She suffered a broken hip at an after school hours care program. When her mother collected her from the centre, the staff didn't acknowledge that Rose had suffered an injury, claimed that Rose had been throwing a tantrum. Staff stated that Rose refused to walk, so they left her on the floor in the hallway to think about her behaviour. Upon presenting her daughter to hospital with a serious unexplained injury, Rose's mother was promptly investigated by the state government child protection agency. The child protection

agency referred the matter to the government community services agency. This agency responded by referring the case to the state government education agency that regulates after school hours programs, including the centre where Rose had been injured. However, the investigator from this agency stated that they do not investigate child protection matters, and handed the matter back to the community services agency. The agency for community services, in turn, stated that they only investigate threat of harm in the home and 'their hands were tied' in the matter. Nothing had been done to investigate the staff at the after school hours care program, nor to investigate the cause of the injury. As a result, Rose's mother lodged complaints with two government agencies and the relevant complaints body about how poorly the after school hours care program managed the incident. Rose eventually named the staff member who was responsible for her injury, and she was interviewed by the police... Rose was unable to disclose any details about the nature or origin of her injury during the interview. The advocate suggested that a different form of questioning, such as using more contextual questions concerning Rose's injuries, be attempted, but the police deemed that all communication strategies had been exhausted. The police stated that Rose, her communication methods and her story were not reliable enough to take the investigation further. They claimed that her interview would not be admissible in a court of law, and ceased investigating the issue.⁵⁹³

Rose and her mother's example reveals multiple failures in basic procedural justice, including lack of transparency of process and stifling voices of complainants. Further, the complainant, who raised the complaint about the institution, is in turn targeted as a potential perpetrator, leading to an adverse personal outcome for the person who reports violence, where the complainant themselves is potentially redirected as the object of complaint.⁵⁹⁴ A similar issue occurs when women, particularly First Nations women, report domestic and family violence. Research shows that when women report these forms of violence, they themselves are sometimes charged with minor public order crimes and assault.⁵⁹⁵ This contributes to the high proportions of First Nations women who are imprisoned.

6.5 Improper Procedures and the Criminal Justice System

In Chapter 3 we explored conceptions of procedural justice and noted that transparent and neutral processes are essential for perceived fair treatment. Arguably, in contexts associated with the reporting of violence, abuse, neglect and exploitation, clear transparent processes are important. Transparency is particularly important where complaint processes are utilised to notify authorities of potentially criminal activities. Notifying authorities poses an immediate challenge in services settings and institutional environments, as local complaint mechanisms and procedures will have to interact with the investigative role of police and the criminal justice system. Within disability settings, it is common for people with disability to first complain to the service provider before taking their complaint elsewhere (if they do this at all). Indeed, as outlined in Chapter 4, it is commonly expected and encouraged that a person with disability will seek local resolution of their complaint before appealing to any additional complaint mechanism.

As such, effectiveness of the local complaint mechanism in creating clear processes for dealing with potential crimes and interacting with law enforcement agencies is important.

It is possible that some services may not follow appropriate procedures when people with disability report incidents of violence. This carries the risk that complaint procedures effectively 'contaminate evidence' and prevent the possibility of a fair trial. One interviewee from a public prosecuting service highlighted that:

'Contamination of evidence is a problem ... people need to be aware it is important their evidence is not contaminated ... one service took the person through the allegations in front of the offender; they need to get the police straight away. We need a protocol with the care places saying if there is a complaint, this is what to do.'⁵⁹⁶

Not following proper complaint procedure has significant consequences. In the above example, going through allegations of violence in front of the offender would be highly intimidating for the victim-survivor, and may discourage them from making further complaints. Further, the perpetrator could use the situation to undermine the victim-survivor and deny that any violence had occurred. The 2015 Senate Affairs Inquiry described a similar example of improper process relating the murder of a 94 year-old man:

The coronial inquest was told that a nursing assistant found Mr McCulloch in his bed with significant nose and face injuries. Without checking Mr McCulloch's pulse or assessing whether he was alive or dead, the nursing assistant left the room to inform the Director of Nursing. Initially, the nursing assistant was told not to call police; however, nearly an hour later a decision was made to call police... In the meantime, the scene was left unsecured, Mr McCulloch's body was left unsupervised, and the man staff suspected to be the killer was left free to roam the ward. Detective Sergeant Casey said there was evidence the body was interfered with... The suspect, whose name is suppressed, was left in the same room as the body for periods of time.⁵⁹⁷

This incident highlights the importance of disability services being aware of proper procedure. Failing to follow this allows for tampering of evidence, and ultimately jeopardises the ability to collect sound evidence for a conviction in response to violence against people with disability.⁵⁹⁸ As such, and as discussed in Chapter 4, poor local complaint processes can deny people with disability access to legal justice in relation to violence, abuse, neglect and exploitation.

6.6 Continued interaction with perpetrators

As indicated above, some people with disability who complain about violence report experiences of having continued interaction with perpetrators of violence. In some cases, perpetrators were other people with disability using the same services or supports; however, in the survey of scholarly literature, reports and submissions we surveyed, there were examples of people with disability who were made to have continued interaction with staff members who

were perpetrators. For example, Frohmader and Sands describe an example of a person with disability being forced to interact with a staff member accused of violence:

Luka is 30 years old and has Down Syndrome. He was attending a day program run by a non-government organisation... Luka was assaulted by a staff member. Luka returned home from his day program with very red marks on his wrists. He then enacted a scene of having his wrists twisted, and named the perpetrator of this attack. Luka's sister, Ivana raised these issues with the day program. However, the day program manager claimed that contact with the staff member would continue until an investigation had been finalised, and continued to place them together.⁵⁹⁹

Here, the victim-survivor was forced to have continued interaction with the perpetrator while the complaint was investigated. Within disability service contexts, it is not clear how common it is for perpetrators to have continued interaction with victim-survivors after allegations of violence, abuse, neglect and / or exploitation are made. One disability and aged care advocate highlighted the potential risks that occur when a person with disability is made to continually see a perpetrator whom they have recently complained about:

Retribution is such a difficult thing. You complain about someone who is providing you with very intimate levels of care, and then the management still sends that same person to look after you. That is completely unacceptable, particularly in the nursing home domain.⁶⁰⁰

It is possible in closed settings that some people with disability will continue to receive 'care' from the person they have just recently complained about. This 'care' is experienced as intimidating, and if the staff member is made aware of the complaint, there is the potential for retribution.

6.7 Adverse Effects

The scholarly literature, reports and submissions we surveyed for this Chapter highlighted experiences where complaint making led to negative effects for complainants. One example is the withdrawal or suspension of service following a complaint:

John, an Aboriginal man in his mid-20s living in a rural area was participating in community access and day programs through a disability service provider. He uses a wheelchair. On one occasion, a staff member took control over his wheelchair, and ran him into furniture repeatedly. He experienced significant swelling and bruising, which left him in pain for weeks. When he reported this to the service, they suspended all of the services he was receiving while they investigated. They advised that accessing another service provider would involve extra costs because that service was 13km further away, and that John would have to pay these extra costs.⁶⁰¹

This example highlights the interaction of poor complaints processes with resource constraints. In this case, the complainant is asked to cover the costs of ensuring continuity of service after

a complaint is made. Arguably the above example also highlights the limited options for people in rural and regional areas, where choice of provider may be limited.⁶⁰² These costs of ensuring continuity of service should be carried by the service system, since enabling free of charge complaints and ensuring continuity of service provision for people who complain are essential principles of complaint management.

In education settings, loss of a right to education as a result of complaint can have significant implications. Above, an account from the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings was provided of Taylor, a school child who experienced sexual assault on a bus. This case study provides an example of the dramatic consequences that complaint can have in an educational setting for the ability of a student to continue to receive education in a way that is equivalent to other students:

Taylor did not say anything when she got off the bus at home but next day she told the staff she had been raped. The principal told her she had not been raped and talked to her about the seriousness of making accusations. She sent Taylor home with a letter to her parents that said the school would like to talk to them about Taylor being suspended... A meeting was proposed for the next day and the school told Taylor's mother that the boy who raped Taylor would also be attending the meeting, with his parents. Taylor's mother flatly refused. Taylor's mother attended with her support person, Taylor's psychologist. The mood was hostile. The school had concerns that Taylor continued to use the word 'rape' when referring to the rape that was carried out against her on the bus and it said other students were upset by the use of the word. The solution was to implement a containment policy whereby Taylor would be sent to detention in the office for three weeks. The purpose of this was to minimise the exposure of the other children in the learning support unit to the account of Taylor's rape and to prevent Taylor from speaking out about it. Taylor's mother and the psychologist objected strenuously to this arrangement because 'Taylor should not be punished for being raped'. Eventually it was agreed that she would be let out with the other students at recess and lunchtime but would have to be under the constant supervision of an education assistant. After the meeting, Taylor was segregated from the other students. It is the mother's opinion that Taylor's segregation and the reinforcement that she had done something bad was almost as damaging to her as what happened to her on the bus.⁶⁰³

Here the complainant experiences a string of adverse outcomes as a result of the way in which the school conducted its complaint process. This complex case example demonstrates the effects of poor procedural justice in managing complaints, which as indicated are damaging in ways that are commensurate with the violence initially experienced. Further, it is not merely that the process fails to recognise the 'voice' of the complainant; it is also that the complainant experiences 'testimonial injustice' (described in Chapter 3) which treats the testimony of the person with disability as unreliable, and inherently vexatious. In education settings, such complaints might lead to disruptions to the delivery and quality of education received and, in more extreme circumstances, to loss of right to education. In another example related by the 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, a student not only experienced injury as a result of

systematic bullying, but was subsequently prevented from continuing in school due to the incapacity of the school to provide support:

‘In 2005 my son began in a mainstream, government school...By mid-2006 ongoing, unchecked and unreported bullying and harassment by older students resulted in a head injury. After I lodged a complaint the school decided they were ill equipped to ensure my son’s safety and support his education.’⁶⁰⁴

Here complaint in relation to repeated violence led to the school derogating from responsibility to provide protection to the student, rather than deal with the source of complaint. It cannot be emphasised enough how significant these experiences of complaint can be during the formative years of formal education. Having experiences of violence and complaint dismissed, ignored, or worse, having these turned against the complainant and their family with extremely harrowing results can impact people with disability across their lifespans. As seen in Chapter 5, having early experiences of complaints being dismissed or suffering adverse outcomes after complaining can result in a sense of powerlessness, lack of confidence, and an extreme reluctance to report further incidences of harm.

In some cases, adverse consequences can take the form of retribution against complainants for complaint making. Retribution is arguably more acute in closed settings, where complaints have limited opportunities to ‘escape.’ This is highlighted in a 2018 Human Rights Report on the experience of a person with disability in prison who complained about sexual assault:

‘When I finally managed to find someone to tell [about the sexual assault] and the guards found out, they put me in the punishment unit. I was told it was for my safety. And there was nowhere else they could put me. And then the guards on call taunted me.... All night I could not sleep.... I could just hear the guards giggling outside. I had to wait for a couple of days before I was transferred to another prison. I am suffering from depression.... I get no support.’⁶⁰⁵

Here the prisoner was effectively placed in solitary confinement as a consequence of making a complaint and was subject to taunts, compounding the trauma of the original harm.

6.8 ‘Nothing was done about it’

In the survey of scholarly literature, submissions and reports analysed a theme that emerges in response to the question of what happens when people lodge a complaint, is that ‘nothing was done’: despite the complaint being lodged, no complaint process is initiated and no outcome eventuates. This is a variation of the experiences of people with disability who have a complaint prevented (Chapter 5), with the difference that the complaint is initiated and apparently received, however with no evidence of process or outcome.

As described above, in some circumstances ‘nothing is done about it’ because the alleged perpetrator is also a person with disability, and the complaint process predetermines that a

just outcome is not possible, even before attempting to process the complaint. For example, a complaint mechanism might refuse to investigate because ‘the offender also had an intellectual disability’.⁶⁰⁶ Here, the refusal to investigate participates in dehumanising the victim-survivor of violence by straightforwardly denying equal rights under the law:

‘Once I called the police and they said they don’t come out to people like us because we’re not normal... someone I lived with hit me... I was moved to a different house after that. That was about 12 months ago. I called 000. The person said we can’t come out. He was so rude to me. I had a staff member with me when I made the call.’⁶⁰⁷

In the above example, the police and first responders ‘prejudge’ the outcome of a complaint based upon a discriminatory appraisal of the complainant and their fellow residents. A woman in a UK study describes a similar experience, where a complaint is not processed because it is assumed that as a result of her psychosocial disability she would not be able to substantiate the allegation:

‘[The police said] they wouldn’t take my case to court because I was a mental health person. I wouldn’t be able to explain myself properly. I don’t know what they said, something like that. And you hear that a lot from people with mental health, you know, they just leave you.’⁶⁰⁸

These experiences where complaints do not lead to the activation of a complaint process can result in a loss of trust in complaint mechanisms and the authorities attached to them. In the same UK study, a woman reports a history of failed complaint leading to a reluctance to complain about violence, which in turn leads to a loss of faith in authorities and their capacity for fair processes:

‘To be honest, I don’t trust [the] police anymore. [...] their track history is shit with me, like I said I’ve never once gone to court for any crime that’s happened to me. Never. I mean, I haven’t even given a statement when it’s been a rape.’⁶⁰⁹

Some people with disability who register a complaint experience a total failure in the complaint mechanism in relation to the complaint being processed or leading to any outcome. Some reports and submissions highlight this as a feature of life within segregated accommodation settings such as group homes: ‘I did complain to myself, to the house staff. Staff did nothing.’⁶¹⁰ Another resident in a group home stated: ‘I tell one of the staff about the other guy having a go at me but basically the staff aren’t doing to anything about stopping the argument or stopping him calling me names.’⁶¹¹ An example provided by Frohmader and Sands highlights one example where a person with disability experienced multiple incidents of violence, made complaints, but there was no evidence that the complaints were either processed or resolved:

Carol, a group home resident, was reported missing. A couple of hours later, she was brought back to the group home by a taxi driver. Blood was found on her underwear and she was taken to the doctor. Carol disclosed to her doctor that she had been sexually assaulted twice by two different people in the time that she was missing. She also said that the group home manager had previously sexually assaulted her. Carol had disclosed the sexual assaults to group home staff a number of months earlier but nothing was done about it.⁶¹²

The above situation also highlights the risk for complaint processes where there is no independence associated with the mechanism. In this example, the group home manager was the alleged perpetrator; clear processes would need to be available to staff to independently support the complainant to take this serious allegation forward without fear of retribution from the manager. The allegation also reveals the way in which violence within closed settings can become routine and 'normalised'. It is only when Carol is assaulted by people outside the group home that any action is taken, with Carol being taken to the doctor and reporting the violence she experienced there.

The scholarly literature, reports and submissions we analysed reveal a number of examples of complaints not being processed and leading to no outcome in educational settings. Leaving aside the problems this poses for individuals in seeking justice, the failure to process complaints has a number of systemic effects. One of these is that histories of prior complaints on issues are effectively erased, leaving no documentation that the complaints (and the incidents they respond to) occurred:

Frank told his mother he was taped to a chair while at school, and this was confirmed by the tape marks on his wrists. He was locked in rooms and subjected to restraint on numerous occasions, at least once witnessed by his mother. When attempting to make a complaint some years later, the school refused to admit the abuse occurred, and said they had no documentation so could not investigate the complaint. Frank was a young primary school child, and still suffers the trauma of those years. No assistance has ever been offered by the State Government Education Department at any time and Frank ended up being hospitalised halfway through his primary school years due to psychological damage.⁶¹³

As discussed below, erasing histories of complaints removes the possibility for rectification of historical injustice. Further, in some cases, the failure of the complaint mechanism to process and resolve the complaint not only leads to an injustice for the complainant, but also enables perpetrators to harm other individuals:

Sebastian is 11 and has intellectual disability. He attended an after school care facility every day. Sebastian was sexually assaulted by a 14 year old boy who attended the after school care. His mother reported this to the police and to the after school care facility. Nothing was done by either agency to ensure Sebastian's safety. Instead, the after school care facility recommended that Sebastian attend counselling at a local sexual

assault counselling service. They stated that this was to prevent Sebastian turning into a perpetrator himself. Additionally, the police completely failed to investigate the sexual assault. This was despite Sebastian's mother finding out that the 14 year old had sexually assaulted younger boys on a number of other occasions. Apparently the other incidents had been reported and investigated. Sebastian's mother was distraught that her son's case was not being looked into by the police or the after school care facility.⁶¹⁴

Here the complainant experiences an outcome that, while potentially helpful, is not adequate as a sole response; counselling support services are appropriate after an experience of violence, but on their own do not equate to a fair outcome for the victim-survivor, nor will this lead to structural change. The complaint itself is not processed and does not lead to a resolution. The alleged perpetrator is able to harm other individuals. A UK study describes a similar circumstance where a complaint is not processed, an adverse outcome for the complainant ensues, and the perpetrator is left to harm others.⁶¹⁵ Hollomotz describes an example of a student at a residential school being sexually assaulted by a roommate. In this example the perpetrator then accuses the victim-survivor of assault as a strategy to displace responsibility: 'then you elbow them in the face to get them off you and they go and tell on you because they raped you. They say *you* raped *them*.'⁶¹⁶ As Hollomotz observes, the victim-survivor 'was not listened to when he reported the incident, leaving the violator unpunished and indeed free to roam within the residential school, making it likely that further incidents would occur.'⁶¹⁷

The above examples highlight that in education settings, children and young people experience significant violence with limited capacity for complaint mechanisms to process complaints or satisfactorily resolve them. Robinson notes in a 2018 study that:

Many examples were provided where children were not protected after experiencing violence or abuse; where their complaints were not pursued... Little evidence was seen in this research of participatory mechanisms that promoted safety for students with disability as part of the school community, such as accessible ways to make anonymous contributions or complaints.⁶¹⁸

As indicated above, this suggests that these educational setting are one site where violence becomes normalised through the failure of complaint processes to respond.

Inaction by complaint processes to both register and process complaints and to resolve them in a meaningful way can have significant and potentially fatal consequences for complainants. As discussed in Chapter 3, there is an interaction between application of procedural justice in complaint processes and violence within closed setting, such as prisons.⁶¹⁹ Ignoring complaints in custodial settings has significant consequences, as demonstrated in the example of an Aboriginal man who died in custody after multiple complaints about his treatment were not acted on:

Mr. Bell... 28, an Aboriginal prisoner with a psychosocial disability, was held in prolonged solitary confinement in his cell for over 22 hours a day for 13 months when he took his own life on September 8, 2015, at Casuarina Prison. Mr. Bell was serving concurrent sentences including life imprisonment for sexual assault and murder of a 10-month-

old baby. At his sentencing hearing, his lawyer contended Mr. Bell would be targeted and killed in prison due to the nature of his crime. Fellow prisoners assaulted Mr. Bell multiple times and on one occasion even fractured his skull. Mr. Bell also complained of ongoing mistreatment by custodial staff. However, the coronial inquest found little evidence of the records of these complaints and how they were addressed.⁶²⁰

Here, failure to register, process, and resolve complaints leads to a situation where the complainant is not protected from continued and inescapable violence. Note, as discussed above, that failure to process or act on a complaint also obscures the possibility of record formation: the complainant may have made numerous complaints, but a failure to process these compromises any ability to demonstrate that complaints had been made in the past. This failure to process complaints stifles the possibility of rectifying historical injustices for the victim-survivor and their families.

6.9 Conclusion

The above accounts of people with disability navigating complaints processes explore different experiences of failures in basic procedural justice. Some of these experiences relate to failures of process at the point of initiation of a complaint, where complainants are disbelieved; where complaints are minimised and where violence is normalised; and where complainants are treated as just 'being difficult.' There are examples above of extremely poor process by complaint mechanisms: inadequate communication and lack of 'voice' provided to complainants; inappropriate investigation procedures which contaminate evidence; complainants not being offered protection from perpetrators after an allegation about violence is made; and examples of adverse outcomes for complainants, including retribution. Finally, many accounts are provided above where neither just process nor just outcome followed complaint making: in these cases, people with disability who report violence relate an experience that 'nothing happened' after they complained.

An overwhelming feature of many of the experiences recounted above is that violence does not appear to be constrained to one incident of complaint: instead, some people with disability have a lifetime of experiences of violence, followed by attempts to complain which are either thwarted or not processed. Thorneycroft's study of life histories of people with disability who experienced violence highlights this trajectory.⁶²¹ In one example, a young man experienced physical and sexual assault; but when he complained to a manager 'the man did not care'.⁶²² This was a historical example of failed complaint process, recounted by a person with disability when they were older. This account illuminates the negative educative role that inadequate complaint processes have: some people with disability are instructed by these experiences to have low expectations that they will neither experience fair treatment when they complain, nor experience a just outcome following a complaint. This example also highlights that unmade or unresolved complaints are not a problem of recent invention. The task of designing inclusive and accessible complaints mechanisms must be able to respond to historical experiences of violence, abuse, neglect and exploitation which have not been resolved for years or decades.

However, as discussed in Chapter 3, just procedures are an opportunity for people who are otherwise systematically excluded or disadvantaged to experience inclusion through fair and respectful treatment. Thus, rather than being one more source of dehumanisation, a fair complaint process can be a powerful way to treat individuals with dignity and afford them voice. Certainly, there are examples of such respectful treatment in the literature we studied. For example, in a UK study, Koskela et al describe an example of a police officer following accepted process, and this being experienced in a highly positive and affirming way by the complainant:

‘He [police officer] took a lot of time to explain things and do things like give me his name and his number and he was very kind of, he, he kind of acknowledged that it must have been very hard for me [...] he let me know when he’d be back in touch next.... Which I really appreciated.’⁶²³

These forms of respectful treatment can happen in a variety of different contexts and be experienced as positive for complainants. Robinson provides an example in an education context of a complaint leading to validation for a person experiencing bullying:

‘...around the time of the bullying one of the key people at the school got Thomas to come into her office and talked with him and supported him. I can’t remember exactly what she said but she told him he was important and was a nice person and thanked him for coming and telling her what was happening. It was great for his self-esteem.’⁶²⁴

Here we see, in line with some of the findings of procedural justice literature described in Chapter 3, that the experience of a well conducted procedure can itself represent a form of ‘justice.’ Maher et al describes an example of a woman with disability, Sarah, experiencing ‘justice’ through the process of being heard in a genuine and respectful way:

‘I was in tears thanking that police officer [who indicated that she believed Sarah], I said, “I want you to know, whatever happens from now on with that court case, if they walk off...”, and I said, “Do you know what, you have done the justice, you have done it. It’s already done.” And that really touched her, she was emotional about it, and I said, “You’ve done it”.’⁶²⁵

As shall be discussed in Chapter 8, there is much scope to create consistent and fair processes for responding to people with disability who report violence, which both satisfy the rights to equality before the law, and also are a source of recognition and ‘humanisation.’

Chapter 7: Experiences of Complaint Outcomes

In Chapter 6, we described experiences of people with disability navigating complaint processes. As discussed, our survey of scholarly literature, reports and submissions revealed many negative experiences of people with disability engaging with complaint procedures. However, in that Chapter, we did not focus on outcomes. In this Chapter we look at outcomes and whether these are experienced as just or fair. Ideally, a complaint should not only be fairly handled, but also arrive at an outcome that makes sense to the complainant at the level of individual rectification, and potentially also lead to change of practice or institution (or as discussed in Chapter 3, initiate a process of transformation). For example, a minimum expectation for individuals when they complain about violence is that they personally will receive recognition and redress, and that this will lead to an end to this violence for themselves and potentially others. This process leading to rectification and redistribution does not need to be onerous or slow. Robinson's 2018 study described a recollection of a positive experience of a complaint leading to swift and productive resolution that altered the material circumstance of violence experienced:

'My dad came to the school and talked to the principal about some bullying and told the principal to stop it. A few people were bullying me. Then the kids got into trouble and sent from school and stopped doing it. Teasing me and pushing me around. It was good when dad went up.'⁶²⁶

However, in the scholarly literature, reports and submissions we analysed for this report, positive experiences of outcomes related to complaints on violence, abuse, neglect and exploitation were rare. This Chapter explores some of these negative and adverse outcomes experienced by people with disability who complain about violence, abuse, neglect and exploitation.

As noted in Chapter 5 and 6, this Chapter is not intended to provide generalisable findings about what all people with disability might experience when seeking to utilise a complaint mechanism to report violence, abuse, neglect and exploitation. Our approach does not include a large sample survey, so the results cannot be generalised. Further, the experiences below are not the result of a new empirical study, nor are they intended to be used to evaluate the performance of a particular complaint mechanism available within an Australian context. Rather, this information provides guidance on the kinds of experiences people with disability may have navigating complaint mechanisms.

7.1 No Tangible Outcome

In Chapter 6 a number of examples were cited where the predominant experience of people with disability navigating a complaint procedure was that 'nothing happened.' In other words, a complaint was lodged, however the complainant did not perceive that the complaint process had progressed and there was no outcome received. In this section, a variation on this experience is described: namely, a complaint is lodged, it is processed in a perceptible way, but there is

‘no outcome’. In this context, this often means that even if a complaint mechanism returns an outcome, it is not perceived by the complainant as leading to material change, and importantly, for the purposes of this report, the situation of violence, abuse, neglect or exploitation continues.

In the scholarly literature, reports and submissions we analysed for this report, we came across a number of examples of this scenario— that is complaints lodged and processed, but with no tangible outcome – in disability service contexts. For example, a resident in supported accommodation is described as experiencing repeated physical and emotional violence, however the complaints processes did not lead to a tangible outcome or change in circumstance:

Gary, a man with intellectual disability, was subject to ongoing physical and emotional abuse in a non-government group home. The abuse was being perpetrated by a female co-resident. Support workers who witnessed the abuse reported these incidents to the service coordinator of the group home. However, despite these reports being made, the service did not take appropriate action to ensure Gary’s safety.⁶²⁷

Here, Gary remains in a situation that is unsafe, despite complaints being made. Another example noted in a submission describes repeated complaints about violence in a residential boarding house:

Between 2000 and 2011 allegations were made regarding rape, sexual assault, theft, poisoning and physical assault involving over 40 residents of a boarding house. A committee of seven residents at the boarding house exercised control over the others, meting out physical punishment, rape, solitary confinement, and massive prescribed doses of psychotropic medications to sedate residents deemed ‘out of control’. One man said he had been grounded in his room for a month, and another said he had been “hit everywhere, kicked and punched everywhere” over the course of 10 years. Despite repeated requests for action from disability advocates the police, guardianship authorities, ombudsman and state government failed to intervene. Residents were not removed from the house until 2011 and are now seeking compensation for false imprisonment, physical injury and financial loss against the boarding house owner and the state government.⁶²⁸

This example describes a situation of prolonged historical injustice, with multiple complaints lodged, presumably processed by different agencies; however, with no material change in circumstances resulting. The example also highlights the way in which institutional failure to act early in response to initial complaints not only amplifies the extent of the preventable harm experienced within this residence, but also potentially intensifies the legal, financial and personal consequences of inaction.

In some cases, the failure of complaints processes to produce outcomes reflects the inflexibility and resource constraints of the service itself, which means that complaints are not resolved because there is no feasible resolution (apparently) available. As discussed in Chapter 4, many

complaint processes place an onus on services to in the first instance provide local resolution of complaints through conciliation. However, conciliating a complaint at a local level will be difficult if the local service lacks the resources to meaningfully offer rectification. One example of this was the experience of a service provider who refused to tailor their services for a First Nations man living in a remote area who requested different meals:

‘One of our clients in one of the communities said he didn’t like the agency meals. He’s like “I don’t like this meal” and that’s last December ... he refused to eat it ... and then the clinic noticed and they said “Oh this guy getting skinny”. And he’s really skinnier and skinnier, and he refused to eat any of the agency meals and then I had a chat with the person who does the meals, and she said, “Oh no, we can’t really separate, make a special meal for this person”. So, the services, they don’t really see what the person wants and then try and work around that, trying to support [them]. “We do it that way and ... if you don’t want it, that’s your problem.”’⁶²⁹

The above example highlights how failure to respond to a person’s needs in this circumstance arguably can lead to a situation of neglect that puts that person’s health at risk.

In Chapter 6, it was suggested that in many school education settings, complaints of violence do not appear to be processed, leading to no outcome. In the scholarly literature, reports and submissions we analysed, there were also cases where complaints were received, processed and apparently acted upon; however, no tangible change resulted. This dynamic was summarised by Robinson:

It was clear from the comments made by a number of children and young people that they had little hope or expectation that sharing their views would result in change. Even where they told others about harms occurring at school, it was unusual for change to happen quickly. Until a significant crisis event, few reported feeling that speaking up about interpersonal abuse, particularly from peers, made a difference.⁶³⁰

‘Telling off’ the student who is being violent in a perfunctory way will not lead to change. Unless this sanction actually encourages the perpetrator to desist from violence, it will be experienced as ineffective by the complainant, as it does not result in any change in circumstances. For example, a primary school student interviewed for a 2010 study recalled that ‘if somebody tells on somebody and he [the teacher] just stops the class by clapping and tells them, ‘Be nice’ ... but it doesn’t work ... the class just still be’s rude to me.’⁶³¹ Another primary school student with disability concurred that approaching teachers about violence is often ineffective: ‘Teachers are hopeless ... yeah they don’t do anything. They just say, ‘Say sorry’, and that’s not good enough.’⁶³² As discussed in Chapter 3, apologies in some circumstances can represent a powerful form of justice where it represents a significant admission of wrong followed by change in practice; however, apologies become mere performative formalities when perpetrators make these admissions and then continue to repeat acts of violence. Robinson’s study describes a situation where a complainant experiences no change in the circumstances of violence but is at least directed to a counselling service: ‘School kind of helped me out, but they didn’t help the

bullying side, so it kept happening. But I learnt how to handle it better from the counsellor.¹⁶³³ Note that while counselling helped the complainant validate his experience and offered him coping strategies as well as emotional support (that is, offer forms of recognition); this outcome will not lead to a material change in the incidents of violence experienced by this student (that is, provide rectification and redistribution).

The COVID-19 lockdowns in Australia and elsewhere created many challenges for children with disability and their schooling. These challenges were not always addressed appropriately by school staff. The following account of a student from a culturally and linguistically diverse background highlights how people with disability and their families are often made responsible for finding solutions to the structural barriers they face:

X is a child with visual impairment who was attending a state primary school. Previously, X was supported by the school with accessible technology to support her learning. X's mother and father are both essential workers and as such X could not be kept at home for schooling. With the changes in place to respond to COVID-19, the school placed all children onsite in one classroom. However, with the school no longer having a Special Education teacher onsite, X was not provided with adequate support and equipment required for her learning. X's parents were told that the teacher in charge had difficulty installing the accessible software to the computer in the class X was placed in. The parents raised the issues with the school, and nothing was done. With X having no proper support for 3 weeks, X's parents continued to approach the school and felt increasingly frustrated. X's mother was told to find a solution and teach her child at home or to find another school that can assist during the time COVID-19 restrictions were in place.⁶³⁴

The above example is not explicitly related to a complaint about violence, abuse, neglect and exploitation, but is illustrative of the experience of complaint making leading to no tangible outcome, which in this case, prevented this student from accessing their right to education on an equal basis with others. Note that provision of onsite learning for children of essential workers during the COVID-19 lockdowns was a commitment made by Governments; failure to provide this to the student in the above example not only is discriminatory, but also has flow on effects for the workforce delivering essential services during the pandemic.

Interactions by people with disability with police can also lead to experiences where a complainant lodges a complaint, it is processed, but does not result in an outcome that changes the circumstance of a complainant. In a 2012 study by Walter-Brice, a woman with disability who complained about violence succinctly summarised this failure of just outcome: 'Well they [police] told him off that's all ... I wanted to get him locked up and away from me.'⁶³⁵ In another example, a woman from a culturally and linguistically diverse background, who was experiencing technology-facilitated violence from an ex-partner, went to police; they told her there was nothing that could be done to help her:

Participant B has 3 children and is going through divorce proceedings from her abusive ex-husband. Before their separation, Participant B used to share her mobile phone with her ex-husband at his request. For approximately two years Participant B has had all her phone calls, Facebook account, messages and other information on her phone monitored via spyware. Due to the ex-husband's ongoing abuse, Participant B commenced divorce proceedings and reported the incidences to police. Participant B states that her ex-husband constantly threatens to share her information from her messages, her intimate photos, and any other information on the phone to her friends and family. When Participant B reported this to police, they informed her that there was nothing she could do given the SIM card in the phone is under the ex-husbands name. To this day, she lives in fear that his threats will eventuate.⁶³⁶

In the above circumstance, the person with disability complains but experiences an outcome that leaves her in a situation where she is threatened by an ex-partner. As result, no tangible change in circumstances is experienced by the person who complains.

In some cases, the failure of an institution to respond to the needs of a person with disability means that either the situation of violence, abuse, neglect or exploitation continues, or worse, that additional violence is visited upon the complainant as an outcome. The survey of scholarly literature, reports and submissions we conducted highlighted examples within prisons that illustrate this situation. In an account described by Human Rights Watch, a prisoner with disability describes a situation of neglect shaped by the failure of the prison itself to respond to the specific needs of the prisoner:

'I stayed in the medical unit because they didn't really have anywhere for prisoners who are disabled. I had diarrhea and I [was] lying in my own shit, because they are like, 'You have to wait.' The staff weren't interested [in helping me].'⁶³⁷

The above prisoner had made requests to be moved to a toilet. This request led to no tangible outcome, meaning that the situation of neglect continued and was arguably exacerbated. Some cases of complaint result in institutional actions which support the use of violence. Dave, a young First Nations man had the following experience in prison:

Dave... was found 'unfit to plead' in a criminal matter. He was indefinitely detained in a maximum security prison... In response to repeated banging of his head causing bleeding, prison officers strap him to a chair and inject him with tranquilizers until he is unconscious. This has happened on numerous occasions. The government corrections department responded to complaints by stating that it has a 'duty of care' to prevent the man from hurting himself, and that the prison is not equipped to manage people with cognitive impairment.⁶³⁸

Here, restrictive practices are utilised purportedly to fulfill a 'duty of care.' Complaints are received, presumably processed, but lead to no tangible outcome, either in addressing the underlying causes of the prisoner's detention, his behaviour in response, or the forms of forced physical and chemical restraint that follow to try and control this behavior.

7.2 Dissatisfaction with Outcome

The above sections detailed instances where responses to complaints were inadequate and ineffective, resulting in little tangible change in the life of the person with disability. In this section we explore when a complaint results in a material outcome, but when the complainant is nonetheless dissatisfied with this outcome. As discussed in Chapter 3, a perception of a just outcome related to a complaint is at least partially related to the expectations of the person who makes the complaint, and in this respect, the forms of remedy that a complaint mechanism provides should ideally take into account what the complainant would like to occur to rectify the injustice. However, the survey of scholarly literature, reports and submissions we conducted highlighted examples of dissatisfaction with outcomes of complaints related to violence, abuse, neglect and exploitation. These outcomes included perpetrators being found innocent; complainants perceiving that the perpetrator's punishment was not adequate; or outcomes that solve a complainant's immediate problem, but simultaneously create other adverse consequences.

Some people with disability may experience a criminal justice system that either does not sanction perpetrators of violence, or provides minimal negative outcome to those who perpetrate violence towards people with disability. A UK study provides an example of this in describing the experience of a woman with disability who had been sexually assaulted by a staff member at a disability service: 'At first I didn't tell anyone, but then [...] the abuse went really bad. I told my parents and we went to the police. We took [violin] to court, but he walked away free.'⁶³⁹ Maher et al's 2018 study presents an experience of a woman with disability who experienced violence from her ex-husband:

'[I]t was the family violence as well as sexual assault through the whole ten years of our relationship. I don't think—as far as feeling that justice has been served—I don't think the gravity of sexual assault within a marriage ... the impact of that is just not taken into account in a court hearing. The sentencing was incredibly light, and everybody has said that.'⁶⁴⁰

These women with disability felt that they did not receive a just outcome from the criminal justice system. In Jessica's case, this has deterred her from making future complaints using this system. This sense of dissatisfaction with outcomes can also be experienced by people making complaints against institutions within the criminal justice system. For example, a Sisters Inside report of 2013 describes a complaint made by a woman with disability against a prison transport service which did not lead to a satisfactory outcome:

A non-Aboriginal woman was being transported from the Brisbane Women's Correctional Facility to attend court in Toowoomba. She suffers from a number of physical disabilities. The woman was placed in a canopied ute unrestrained, and during the trip she was flung about in this confined area, unable to stabilise herself due to her disabilities. She consequently vomited, and had to travel dirtied by her vomit. On arrival she was, despite being soiled and in distress, made to clean the ute out. Sisters Inside advocated for this woman and took her complaints to the CMC. Unfortunately the CMC found that 'reasonable force' had been applied in this instance.⁶⁴¹

The Crime and Misconduct Commission (CMC) determined that the treatment of this woman involved ‘reasonable force’ despite the fact that she had physical disability and was not able to steady herself when she was being transported to court.

Above, this Chapter has highlighted a number of examples in education settings where complaints relating to violence are either not actioned or do not lead to any tangible change in circumstance for the complainant. However, there were also examples of complaints leading to an action or outcome, but this being seen as unsatisfactory from the perspective of the complainant. For example, a mother described what happened to her son in a mainstream classroom:

‘Mainstream was really bad. Eric was in the support unit there and Jules in mainstream but it wasn’t working. He was being thrown on the ground, stood over, stomped on and kicked. There was one incident where he got pushed over on the ground and kids circled him, they were just walking over the top of him.’

[Interviewer:]... ‘How did the school deal with that?’

‘The principal got involved, they were thinking about suspending them but decided not to because there was 11 of them so they ended up giving them three-day detention.’⁶⁴²

A continuing theme in some of the literature we surveyed is the inadequacy of complaint processes relating to violence in schools, either in terms of complaint processes or in terms of outcomes. The above example highlights this; despite the seriousness of the assault experienced by the student, the perception of the complaint outcome was that a disproportionately ‘light’ sanction was applied to the perpetrators for largely utilitarian reasons (presumably to avoid the disruption and negative publicity associated with suspending 11 students). Here, there is a failure in just process and just outcomes.

Dissatisfaction with outcomes associated with complaints relating to violence, abuse, neglect and exploitation can occur in different spheres, including in relation to online interactions. People with disability, despite being ‘on the wrong side of the digital divide’, are increasingly using digital technologies and social media platforms to meet new people, find intimate partners, and use other services.⁶⁴³ ‘Digital criminology’ is showing however that perpetrators of domestic and other forms of violence are using new technologies to abuse victim-survivors.⁶⁴⁴ Women with disability are one group experiencing technology-facilitated abuse:

Linny is in her 40s and has three children. She has an iPad and an iPhone and likes using Facebook and going on TikTok to watch videos. She has had to block her ex-partner on Facebook as he was sending her abusive messages... He also posted photos featuring Linny, but when she reported this to Facebook it was not seen as violating their terms of use. This upset her but she did not want to stop using Facebook, as it was important to communicate with her other friends.⁶⁴⁵

This example highlights an emerging area of concern that shapes the lives of people with disability. Here, complaint processes existed; however, the social media platform in question was not able to intervene to stop an ex-partner sharing photos without her consent. In this case, Linny experiences dissatisfaction with the outcome, as she would like to continue to use social media because of the connectivity it enables.

7.3 Perpetrator Moved On

A variation on an experience of dissatisfaction with the outcome of complaint relating to violence, abuse, neglect and exploitation is the knowledge that not only did the complaint lead to minimal change, but that the perpetrator continued to work with people with disability in a different locality. The scholarly literature, reports and submissions we surveyed revealed several examples where perpetrators were simply ‘moved on,’ allowing them to interact with different people with disability or services after complaints were made about their behaviour. In one example, management at an aged care home did not consider sexual assault to be a serious matter:

Julie, a staff member in an aged care facility reported to management that a coworker had taken sexually explicit photos of a number of aged care residents. These photos were of the genital region of residents, and they were being shown to students who were on placement at the aged care facility. Management of the aged care facility did not view the matter as serious, and responded by moving the coworker to another aged care facility.⁶⁴⁶

As discussed in Chapter 1, ‘total institutions’ create internalised cultures that potentially tolerate and reproduce violence. Senior staff who do not take assaults seriously can facilitate institutional cultures where violence goes unchecked. Frohmader and Sands describe a similar situation in a group home:

A woman with disability in her 50s, Lorraine was “digitally raped” by a staff member while showering in a government-owned group home. An incident report was made after the woman told another worker what happened, but that report was later rewritten by a supervisor. The worker who allegedly raped the woman was then transferred to another home and the matter was not referred to police.⁶⁴⁷

In this example a complaint is lodged; though the process that follows is poor. There is no referral to the police of what was a criminal matter. In this example, senior staff prevent just outcomes for people with disability by simply moving the perpetrator on to a different facility, and in this case, preventing the complainant from accessing further complaint avenues.

The above example from Frohmader and Sands highlights that when a perpetrator is ‘moved on’ there is often multiple failures of both just process and justice in outcome. Frohmader and Sands describe another example which reinforces this picture:

Sergio resided in a not-for-profit group home. He has intellectual disability and autism. His co-resident, Isaac, recently started displaying ‘challenging behaviours’ as a result of working with one particular staff member. To manage Isaac’s ‘challenging behaviours’, management instructed the staff member to cease working with Isaac and instead, begin working with Sergio. Isaac eventually disclosed that he had been physically assaulted by the staff member. He reported this to the police, telling them that the support worker had kicked him, and that he had also broken a camera over Sergio’s head. The police failed to investigate the assault because Sergio and Isaac both have intellectual disability. The service then stated that as the police would not investigate, they could not dismiss the staff member who was accused of assault. Sergio’s sister supported him to leave the group home, and organised counselling for him. She found a respite place until he could get more permanent accommodation in a different group home. Sergio’s sister wanted to ensure the issue was investigated and responded to appropriately for the sake of the other residents who still resided in the group home and at risk of being assaulted by the staff member. Sergio’s sister reported the matter to the National Disability Abuse and Neglect Hotline. The case was not thoroughly investigated because the guardianship body said they couldn’t proceed with the case as Sergio was no longer living in the house in which the assault occurred. No further complaints had been made by other residents, so no further action has been taken.⁶⁴⁸

Here, multiple complaint avenues are explored; but do not eventuate in a change of circumstance for the complainant. In each case, a complaint is registered, processed, but leads to no tangible outcome. In some respects, the above example highlights the impact of silos between agencies, and arbitrary demarcation between jurisdictions, which halts the processing of a complaint and leads to a failure of outcome. Note further, that the complainant’s sister lodges complaints explicitly to alert the system that the perpetrator may assault other people with disability (i.e. this is the just outcome being sought); however ‘no further action’ is taken, and the perpetrator presumably was allowed continued interaction with other clients.

7.4 Ambivalent Outcomes

In the scholarly literature, reports and submissions we surveyed, there were a number of examples of people with disability experiencing an ambivalent outcome as a result of a complaint about violence, abuse, neglect or exploitation. By ambivalent we mean that while the complaint led to a tangible outcome, it was only partially satisfactory and did not necessarily resolve the underlying problem. This ambivalence in outcome was highlighted in the example of a complaint about a placement of a child with disability in a non-ideal school context:

‘As soon as I saw what they’d put her into, I started to lobby for them to get her out of there ... They took her out of that class, but it took time. It took meetings with I don’t know how many people, and to get a support person for her in the standard class.’

[Interviewer:]... ‘Did that help?’

‘Yeah. I don’t think it made it any easier for her to go, but I don’t think it damaged her as much.’⁶⁴⁹

While this mother's multiple complaints resulted in her daughter eventually getting support to attend a mainstream class, her daughter's schooling situation was still not ideal, and her daughter remained fearful and reluctant to engage with schooling. This example also highlights the role of advocates 'lobbying' to ensure that a complaint made leads to a fair outcome; this theme will be explored in more detail below.

The above example also highlights that some people with disability, their families and allies are asked to reconcile themselves to situations that are 'good enough', rather than outcomes which promote the flourishing of people with disability. As discussed in Chapter 3, whether a complaint process is experienced as satisfactory in achieving justice, is dependent upon an individual's expectations, which are in turn set by the prevailing environment. Within the context of a society where people with disability experience systematic discrimination and have severe resource deprivation, this creates the circumstances where some people with disability, their families and allies, may not complain where, in different circumstances involving people without disability, complaint would be considered entirely justified. This dynamic is highlighted in the following example:

Trish is a wheelchair user and she has an intellectual disability. She resides in supported accommodation run by a not-for-profit, religious organisation. Trish asked for assistance from a disability advocacy organisation as she felt she was not being properly cared for by support staff. This involved being put to bed at 5.30pm every night, and not being got up until 8.30am the next day. The support staff did not provide Trish with toileting assistance, and as a result she was wetting the bed. Trish and her parents were also concerned that staff in the supported accommodation had made no effort to report or make necessary repairs to Trish's wheelchair... Despite being concerned about Trish's wellbeing, Trish's parents were also very concerned about where she would go if they 'rocked the boat' with the service provider. They entered into negotiations with management staff, and it was decided that Trish would be moved to a purpose built group home. Regardless of the fact that the service had withdrawn services to cut costs, Trish's parents were happy with what was offered, as they did not want to lose Trish's place in the home.⁶⁵⁰

The experience of Trish and her parents articulates how expectations and circumstances shape experiences of justice. From a human rights standpoint, Trish is not being provided equal treatment nor being provided the resources to live independently, as would be required under Articles 5 and 19 of CRPD (see Chapter 2). From this perspective Trish's example highlights an outcome that is difficult to describe as 'satisfactory,' and where complaint would be entirely justified. Even if Trish's parents are happy, given the context, with the outcome of the complaint; the outcome does not respond to the original complaint in an appropriate way, and arguably violates the rights of the person with disability.

As noted in Chapter 4, complaint mechanisms often seek to conciliate a complaint on an individual basis at a local level. For example, if a carer is occasionally late to provide a scheduled service, it would be appropriate for a person with disability to lodge a complaint

to highlight that the service is not operating as it should, and notify the service of the inconvenience this causes. However, complaints relating to violence, abuse, neglect and exploitation potentially differ in nature, urgency and gravity. These complaints will rarely require individual resolution alone; on the contrary, complaints about violence will likely generate the need for change at the level of institutional practices and policies (for example, policy change to address the circumstances that created the situation of violence). System wide change requires a complaint mechanism of suitable transparency, independence and power to achieve outcomes. Complaint mechanisms can be equipped to provide this transformational justice. As part of the survey of scholarly literature, reports and submissions we examined, there was a rare example of a complaint leading to practice change, as described by West, Ramcharan and Bassar:

John who utilises a wheelchair for mobility and has ongoing, chronic pain management issues, described a breach of his dignity and privacy at a hospital where doctors, without his consent or prior knowledge, attempted to use him as a case study in front of a full lecture theatre of trainee doctors. They had requested that in front of the class, he remove most of his clothes for an examination and discussion of his medical conditions for the purposes of training. He described that he had been very angry, distressed, and embarrassed, 'well he copped a mouthful I can tell you. I made such a stink about it . . . I made a big stink about it and evoked the privacy act. Because of this they have changed the way that they do a case conference. The compensation for me was getting a written apology. I was able to stand face-to-face to the general manager of the hospital and tell him what I thought of this.'⁶⁵¹

The example of John above highlights the way in which the outcome of a complaint mechanism might respond in more ideal ways by addressing both the demands of the complainant and simultaneously, utilising the complaint to effect system change. The complainant in this case was offered the opportunity for 'voice' in multiple ways; not merely in having the opportunity to speak to the general manager, but also being asked for his view point in order to change practice. It is instructive that West, Ramcharan and Bassar note that John was in a minority of complainants in their study who knew about human rights provisions and who were both aware of and able to navigate various complaint mechanisms to have their grievances addressed.⁶⁵²

7.5 'Lobbying' for a Just Outcome

As discussed in Chapter 6, a just procedure will operate with a transparent, fair process that is neutral in its operation. However, the experiences of people with disability navigating complaints processes described above often involve active advocacy and 'lobbying' of authorities and administrators of the complaint process by the person with disability or an advocate in order to attain a just result. Here it is clear that unless the complainant 'keeps on' the complaints process, then a fair outcome will not eventuate.

In the scholarly literature, reports and submissions we examined, there were examples of extensive lobbying and advocacy by parents on behalf of children with disability in educational settings. One mother complained because her son was denied access to the school bathrooms:

‘even then when I was having the discussion with this senior person from the Department of Education and the principal, they were trying to tell me that it wasn’t – it was permitted by law, what they were doing, under the Disabilities Discrimination Act – and I had to say, look I don’t see – I don’t care about the Disabilities Discrimination Act – this is an Human Rights issue. And it suddenly – oh we started talking about how the toilets were going to be open. But, as you can imagine I was not very popular in the school after I’d done that...’⁶⁵³

While this mother’s desired outcome of having the toilets unlocked during school hours was achieved, the process to achieve this outcome - complaining to both the school principal and the Department of Education, and invoking a human rights discourse - was lengthy and complicated, with the Department and the school defending restriction on access to the toilets with reference to the Victorian Disability Discrimination Act 2006. Here the parent must be an active campaigner in order for the complaint mechanism to deliver a fair outcome; in this case the complainant must be ready for the complaint to be taken to the highest level and the complainant must be cognizant of human rights policy discourse in order to secure an outcome that represents some form of ‘justice’. As Ahmed argues, forcing individuals to ‘escalate’ complaints in order to attain outcomes is potentially ‘another method of stopping complaint.’⁶⁵⁴ The example above also foreshadows a theme explored below, that people who complain often experience adverse outcomes, such as this mother’s sense that she was ‘not very popular in the school’ after complaining.

In some cases, the complaint mechanisms encountered by people with disability and their advocates will appear to actively work against the complainant to undermine a fair outcome. In an example described in Robinson’s 2016 study, a foster mother of a child who was in the out-of-home-care system (OOHC) complained to several government ministers, the ombudsman, and about the ombudsman, in relation to ‘the lack of therapy support offered, the system’s failure to provide essential support and aids, the lack of access to education in a mainstream setting, and the lack of consultation and appropriate planning for transitioning out of OOHC’.⁶⁵⁵ Here the complainant not only had to manage the original complaint, but also manage the complaint about the complaint process.⁶⁵⁶ To address the lack of consultation and planning around OOHC, ‘a transition meeting was held with no notice and no support people in a location the child had requested the department not to come to – her school’.⁶⁵⁷ The foster mother explained:

‘So, because I was being so fierce in my arguments for her to have what she needed, they moved in on her alone, without me, and made her – she tells me they made her tell them which one of those four therapies she would like to keep. Extremely manipulative. She actually said two. She actually felt quite proud of herself for living through that scenario, and for being able to say two of them... And these are people that you should be able to trust.’⁶⁵⁸

In this example, the process to resolve the complaint completely disregarded the wishes of the child with disability to not have any meetings at her school. The child with disability had no support person with her, and was compelled to make a significant decision on her own, with no forewarning. Importantly, the example highlights a perception that complaints will not be resolved in a fair or transparent way utilising transparent procedures. The failure to follow fair processes to produce a fair outcome leads to the delegitimization of the institutions and authorities that receive the complaint ('And these are people that you should be able to trust').

7.6 Adverse Outcomes

In the scholarly literature, reports and submissions we surveyed, the most commonly documented outcome of a complaint relating to violence was an adverse outcome. Adverse outcomes included experiencing forms of punishment after making a complaint, having to withdraw from services because complaints weren't addressed, and experiencing health problems as a result of complaints being unsatisfactorily resolved.

Within disability settings, there were accounts of complainants who, as a result of the complaint, experience retaliation and personal loss. Karen Burgess was a manager at a disability day centre in Melbourne who raised concerns about the use of restrictive practices in the centre.⁶⁵⁹ Soon after this, Karen was dismissed from her job. She also highlighted that several other staff who acted as whistleblowers were fired from their jobs soon after making complaints:

'There are many staff that find themselves in this position and end up leaving the industry because they cannot handle the types of situations they are confronted with. There is a lot of pressure that comes to bear on people who are like me, who speak up and out against the type of abuse that is happening in these institutions... There was another staff member at [organisation name withheld] who was fired, two weeks after my termination, because of also raising practice issues and concerns. She is no longer making complaints because of the pressure that came to bear on her, but there was a second staff member who was also fired in this period because she was making direct complaints about concerns at this site.'⁶⁶⁰

Staff who complain face serious adverse consequences for making complaints, including losing their jobs, and experiencing mental health issues including post traumatic stress disorder.⁶⁶¹ The adverse consequences of these staff complaint experiences highlight the intense personal costs for those who complain in circumstances where complaint mechanisms do not follow basic procedural justice principles, such as protecting complainants from retribution. These consequences also highlight the importance of multiple pathways to report violence, and protection for those who do so. As discussed in Chapter 1, complaint mechanisms are only one pathway for reporting violence, and ideally should be complemented by other protected pathways for alerting authorities to violence, abuse, neglect and exploitation, including, for example, through reportable conduct schemes and whistleblower legislation.

People with disability who are frustrated by failed complaint processes can also experience adverse outcomes in terms of their own personal health:

Kelly, a 22-year-old woman living in a Community Residential Unit who has physical disabilities and requires full assistance with toileting, menstrual care and showering, made multiple complaints to staff about the lack of female support workers. It is unacceptable to her, and an abuse of her right to bodily autonomy, to be forced to have her personal care needs attended to by male staff. This has resulted in her foregoing showers and delaying bowel movements, leading to multiple and very serious health problems. Kelly was very anxious about staff finding out that she is accessing advocacy services for fear of retaliation and further neglect but could not attend meetings outside the Unit to discuss her case because she needed attendant care to leave the house which is not provided for her.⁶⁶²

Kelly made multiple complaints to staff and requested that more female staff be employed. However, these complaints were dismissed. Understandably, when complaints are ignored often the only solution is to modify behaviour, to protest, and limit exposure to violence, often resulting in other, detrimental outcomes, such as loss of work, denial of education, and in this case, a decline in health. In some cases, people with disability who experience a failure of complaint mechanism will respond in ways that in turn lead to an adverse consequence. The 2015 Senate Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings described an example involving a complaint of sexual harassment made to a disability employment service:

Shelley is a young Aboriginal woman with intellectual disability who works at an Australian Disability Enterprise (ADE). Shelley has been subject to ongoing and intense workplace bullying and sexual harassment from 3 or 4 other workers. One day, one of the male employees who bullies Shelley, took her by the hand, saying, 'Come on, come with me', and then grabbed her on her bottom. Shelley reacted, saying, 'Don't do that, don't touch me like that, I don't like it.' She complained to her supervisor, who told the male employee that his behaviour was inappropriate. He is known to have sexually assaulted several other female employees. Although, this behaviour is ingrained in the workplace culture, there has been limited intervention by ADE management, in breach of all the usual protections afforded employees by industrial law. The ADE management claim that sexual harassment and sexual assault is the responsibility of the police to investigate, but the police did not respond or investigate these reports. Shelley began to respond violently to the bullying and sexual harassment, and so ADE management suspended her from her job.⁶⁶³

Here the complaint process failed to deliver an outcome that was satisfactory, either for individual rectification of injustice or redress of the systemic causes of violence. Due to this failure, the complainant began to react violently to the sexual harassment at the ADE and was suspended from her job. Here the complainant is punished, instead of the initial perpetrator.

In disability service contexts, there were accounts of families who complained experiencing adverse consequences in the form of not being allowed access to their family member after the complaint. A family who complained about the use of restrictive practices reported: 'They've shut the door now. They wouldn't even pick up the phone. They shut us off... Where do you go? This is our daughter. I'm not allowed to visit my own daughter? What is this all about?'.⁶⁶⁴ In another example relating to the use of restrictive practices in disability accommodation, a family were barred from seeing their family member with disability after making a complaint:

...a grandmother arrives to see her grandson on a freezing Tasmania winter's day. She finds him locked out of his own home in a courtyard that is used as a cage. No staff are present and she cannot get to him. Staff are located at the rear of the property smoking and laughing. The courtyard was a regular punishment and lockdown space, no amount of family requests or demands or reporting this to the senior practitioner ceased this restrictive practice in three years. But as expected the provider made it clear we the family were the problem and the service decides to stop family visits and drop in and time for Nan to visit him in his own home.⁶⁶⁵

Here the complainant – a concerned family member – is effectively punished for making a complaint. The person with disability themselves also experiences an adverse outcome in the form of loss of connection to family. In some cases, and as detailed above, a complaint made by a parent can lead to the parent themselves being subject to scrutiny by authorities. A UK study describes a situation where a woman reported having her children taken away from her after making complaints about domestic violence:

'I did try but they just didn't grasp it ... and when I did turn to anyone for help it went all wrong so in the end I nearly lost the kids, I did lose the kids for at least a while ... Me: I was branded as the worst mum in the world.'⁶⁶⁶

This testimony supports the findings we reported in Chapter 5 where women with disability refrained from reporting violence due to a well-founded fear of having their children removed from them.

There were other examples encountered in different settings where making a complaint can lead to punishment for the person with disability for complaint making. In the example below, a woman was held overnight in a cell after making multiple complaints after experiencing domestic violence. Police did not believe her, and made no effort to support her to communicate with them:

'I went back, and then they locked me up in the cell, telling me I'm crazy. Put me in the cell, and told me to stay there.'

(Support worker: 'so...')

'I'm crazy, that's what they said.'

('So how did they lock you up in the cell?')

'With the keys.'

('So, can you try to just, describe it to me in a little bit more detail?')

'They put me, you know, the cell in gaol.'

('That's silly. Were you being, violent, were you doing anything?')

'No, trying to talk to them...'Cause they didn't understand what I was trying to say, but they didn't then get a liaison officer or anyone to help me, or they couldn't be bothered.'⁶⁶⁷

As discussed in Chapters 2 and 4, support for complainants to lodge their complaint, and openness from complaint mechanisms about the form that complaints take (whether written, verbal or non-verbal) is an essential aspect of enabling accessibility. In the above example, the complainant was not supported to report violence. Further, the failure to report violence in a 'correct' format contributed (at least in the complainant's self-understanding) to being punished for complaining. In some cases, the complainant themselves is not 'punished'; instead, the adverse consequence is directed at a family member. In the section above, the example was provided of a school child being denied access to a toilet, and the work undertaken by their parent to advocate for change. This same case example also illustrates the way in which punishment can be directed at a 'third person' as a way to exact a consequence upon the complainant for their complaint:

'But my son is toilet trained and he kept coming home from school with bags with soiled laundry. And I said "why – he's toilet trained, why is – isn't he just allowed to go to the toilet?" I learned that the school locks it's toilets at recess and lunch time so the pupils can't access the toilets. And they said – "Oh no, it's not possible to unlock a toilet. Your son has to ask – go up and ask a staff member for the toilet". And I said "well he has a social and communication disability – he can't go up and ask for the toilet, just let him go". That's what we do at home. And they refused to allow him to use the toilet... after I'd done that and I think that – nonetheless my son still kept coming home with soiled laundry. And I said "but the toilets are unlocked aren't they?" "Yes they're unlocked, they're unlocked, that's OK"... And they were making him carry a card around his neck to go up to the teacher, which he couldn't do. So they – I thought how – after all that we'd been through you're so determined that he just won't be allowed to go to the toilet. And that really scared me... people will get even with you by doing something nasty to your child. And that made me quite scared and, um. He was – I felt that my boy was being punished for soiling his pants because he went through a stage where he started to eat his stools. And when I went up to school and said "look this is what's happening, this is" – I'm horrified and we've been to the psychologist... it didn't reflect well on them that my boy had been so traumatised that rather than let someone see that was something in his pants, he would try to make it go away by eating it. And that just – I – that just – I'd lie in bed at night and just cry and cry over that. That just made me ill.'⁶⁶⁸

In this example, persistent complaints lead to a response that dehumanises the subject of the complaint; in this case, the child is asked to carry a sign around their neck following a complaint by a parent. Further, the response from authorities is perceived as a punishment through the dehumanisation of a family member ('And that really scared me... people will get even with you by doing something nasty to your child'). Finally, the failure to resolve the complaint, and the intensification of the indignity imposed, produces a response from the subject of the complaint that exacerbates the situation: the complainant's son eats his faeces in an attempt to conceal that he had accidentally defecated in his clothes. These adverse outcomes resulted from the fact that the school's response to the complaint was to adamantly deny the complainant's son the opportunity to freely use the bathroom.

In some cases, due to the failure of complaint mechanisms to provide just resolution, complainants may be forced to take steps to protect themselves and others from violence, abuse, neglect and exploitation, even if this leads to loss of service. In the scholarly literature, reports and submissions we examined, there were examples of this in educational contexts, where parents took the difficult decision to withdraw their children from school in order to protect them from violence, abuse, neglect and exploitation. This occurred when a First Nations boy was sexually assaulted by a peer at school, with his mother stating that 'another kid was [pause] was interfering with my boy in the school system'. Avery, the author of the article summarised what happened afterwards:

[His mother] had taken up the matter with the school and the police but they had done nothing. As a consequence, she had withdrawn her son from the school, and at the time of the interview, her son was not receiving any schooling or education.⁶⁶⁹

Despite experiencing violence which the school and police had a responsibility to respond to, this boy did not receive any outcome from complaining, and as a result misses out on an education. A similar situation happened to Chloe, who was pulled out of school by her mother due to her school's continued use of restrictive practices:

Chloe is ten and lives in a small regional town... Chloe was attending a mainstream primary school in her local area. This school had a room purpose built for Chloe which they would put her in when she would act out. This purpose built area was a walled off section of a room, with Perspex windows. Chloe was made to remove her shoes before entering the room. There was no furniture in the room, nor any resources or activities to keep Chloe amused. Chloe was put in this room on a daily basis for hours on end. Her mother was concerned by the use of the room, and contacted an independent advocate for assistance. They in turn contacted the government education agency and the agency came to the school and assessed the room. They reported that the room fit within their policies and guidelines, and the police were not contacted. Chloe's mother pulled Chloe out of this school. She had a lot of trouble enrolling Chloe in another school, as the town was quite small, and word had got around that Chloe was a 'problem' student. After one year of advocating for Chloe's right to an education, a school finally agreed to enrol her. Nonetheless, Chloe still experiences difficulties in her education as a result of her previous experiences.⁶⁷⁰

In this example, a complaint is made about the use of seclusion within an education setting. Authorities, including a government agency, validate the continued use of restriction. Understandably, this leads the parent take their child out of school to protect them from further harm. While this prevents the immediate risk of violence, it means that child with disability faces another form of harm: namely, a denial of their right to education.

7.7 Conclusion

In Chapter 3, this report examined ideal principles for just outcomes. It was noted that a just outcome might involve an act, or set of actions, which aim at rectification and redistribution in response to a complaint. This might include legal remedies such as compensatory damages; a decision that applies a criminal sanction to a perpetrator; an order to prevent an institution from behaving in certain ways; or a direction to compel an organisation or agency to take steps that will result in justice. Just outcomes may also involve forms of recognition, which while not leading to any form of monetary remedy, provide a statement which establishes the ‘truth’ of the complainant; an example of such a form of justice is a formal apology from an organisation for a past wrong. In addition, it was noted that just outcomes will extend to dealing with structural or institutional injustices; and with this must adopt transitional and transformative justice framings which respond to systemic and mass forms of violence.

In the scholarly literature, reports and submission we analysed, there was little evidence of just outcomes which were capable of satisfying these ideal principles. The experiences described in this Chapter highlight different forms of outcome that arise after a complaint in relation to violence, abuse, neglect and exploitation has occurred. There were occasional examples of positive outcomes in the scholarly literature, reports and submissions examined. However, overall, when looking at experiences of violence, abuse, neglect and exploitation and the complaints that followed, the overwhelming number of stories examined related to negative experiences of outcomes.

As we saw in Chapter 6, some complainants describe the experience that after a complaint is made, ‘nothing happens’. Above a different variation on this experience was described: namely that although the complaint might lead to an ‘outcome,’ this is not tangible to the complainant, and does nothing to alter the situation of violence experienced. Some complainants describe dissatisfaction or ambivalence with a complaint outcome, sometimes because the perpetrator receives no sanction or a minimal negative consequence; in some cases, it is evident to the complainant that the perpetrator has simply been moved to another service. Evident above are a number of cases where complainants have to pursue and ‘lobby’ decision makers in order to attain a just outcome. As discussed, this highlights a failure of the complaint procedure itself to work in a way that is effective and transparent, forcing complainants to have to push for a fair outcome. Finally, there are cases where complainants experience an adverse outcome after making a complaint; in some cases this may be a loss of service, in other cases this may be in the form of retaliation or ‘punishment’ for complaining. As we have previously noted, for some complainants, when complaint mechanisms fail to respond to violence, abuse neglect and exploitation the only solution is to try to seek protection from harm, even if this means loss of service.

Chapter 8: Summary and Conclusions

This report has explored the question of how complaint mechanisms might be designed to operate as a pathway for reporting the violence, abuse, neglect and exploitation experienced by people with disability. To an extent the research question could be straightforwardly answered by exploring how complaint mechanisms currently operate, and recommending improvements to make them more effective in their response to violence, abuse neglect and exploitation. However, as this report has demonstrated, the use of complaint mechanisms as a reporting pathway for violence, abuse, neglect and exploitation points to a complex set of problems relating to human rights to equality before the law and non-discrimination, the continuing reproduction of violence in institutionalised and segregated environments, and the historic and continuing failure of justice systems to respond adequately to people with disability. In responding to the original research questions, this report has sought to disentangle some of these problems in order to recommend pathways forward.

As discussed in Chapter 1, a complaint mechanism is a procedure within an organisation, institution or governing authority which allows individuals to report negative experiences and problematic conduct and policy; seek individual rectification; and, where appropriate, trigger system change. At the same time, a 'complaint mechanism' can also refer to the diverse range of public bodies and agencies that are made responsible for handling complaints, which includes various commissions, ombuds, government departments and bespoke complaint or oversight agencies. In this report, we have separated complaint mechanisms from the operations of the police and the courts as a pathway by which those who experience violence, abuse, neglect and exploitation may seek justice. But as discussed throughout this report, and below, the relationship of the police and the courts to complaint mechanisms must be a continuing focus.

For a variety of reasons, many people with disability utilise complaint mechanisms to report violence, abuse, neglect and exploitation. However, as indicated above, using complaint mechanisms for these reasons creates a unique set of problems, including: whether complaint mechanisms are fit for purpose as a reporting pathway for violence, abuse, neglect and exploitation; whether complaint mechanism outcomes can guarantee equality before the law and equal justice for people with disability; how complaint mechanisms interact with police and courts; the capacity of complaint mechanisms to deal with and respond to historical violence; and the problem of how complaint mechanisms might respond within the contexts of institutionalised forms of violence, and violence that has been authorised by law.

This report untangles some of these problems and limitations, and provides guidance on how complaint mechanisms might be ideally structured as reporting pathways for violence, abuse, neglect and exploitation based upon human rights, violence prevention, procedural justice, justice in outcome and the lived experiences of people with disability. In order to understand the role of complaint mechanisms in reporting violence, abuse, neglect and exploitation, we have gone 'back to basics' in understanding what a complaint mechanism is and what principles might inform its operation. We have looked at 'best practice' standards for complaint mechanism design, compared processes and outcomes of complaint mechanisms against police and courts, and explored how the Royal Commission into Institutional Responses to Child Sexual

Abuse understood complaint mechanisms as a response to violence. We have examined principles from the scholarly literature and international norms on human rights, violence prevention, justice in process and justice in outcome to understand in an 'ideal' sense how a complaint mechanism might function in relation to violence abuse, neglect and exploitation, particularly where this violence has structural causes. We have looked at complaint pathways within the Australian landscape, as reported on websites and where appropriate and available, legislation, policies and procedures, and noted some basic issues around consistency of information, accessibility, interactions with police and the kind of processes and outcomes available through a complaint procedure. We have examined lived experiences of people with disability navigating complaint mechanisms, captured through a survey of scholarly literature, reports and submissions. This survey gave insight into why people may not complain, how people might experience complaint procedures, and what sort of outcomes people with disability who complain about violence, abuse, neglect and exploitation might receive; three insights which might not have otherwise been apparent if we had instead centred scholarly or official representations of these mechanisms.

This Chapter offers a summary of the findings from the report and what these findings mean for the reform of reporting pathways for violence, abuse, neglect and exploitation experienced by people with disability

8.1 The Structural Drivers of Violence, Abuse, Neglect and Exploitation and the Role of Complaint Mechanisms

Much violence, abuse, neglect and exploitation experienced by people with disability relates to institutionalisation, segregation, society wide discrimination and prevailing negative attitudes that people with disability also experience. These experiences have direct bearing on the design of complaint mechanisms which are reporting pathways for violence, abuse, neglect and exploitation experienced by people with disability. These mechanisms must not only address violence, abuse, neglect and exploitation that is inherent to the institutions and structures that continue to govern the lives of people with disability, they must also seek to overcome the widescale discrimination and stigma that normalises experiences of violence and devalues the perspectives of people with disability.

As discussed in Chapters 1, 2 and 3, the context for much violence, abuse, neglect and exploitation experienced by people with disability relates to segregation of people with disability, and systemic forms of institutionalisation. The Royal Commission into Institutional Responses to Child Sexual Abuse made clear that there were strong links between institutionalised environments and violence; it also made clear that institutionalised cultures will prevent complaint making.⁶⁷¹ The Royal Commission into Institutional Responses to Child Sexual Abuse drew on well-established social theory which has highlighted dangers of institutionalised environments, defined as 'a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an

enclosed, formally administered round of life.’⁶⁷² These same factors apply to the lives of many people with disability who live, learn and work in closed and segregated settings such as group homes, special education schools or classes, day programs and Australian Disability Enterprises.

In addition, society wide discrimination and endemic negative attitudes and stereotypes shape how people with disability are seen; these attitudes devalue, disempower and dehumanise. As we highlighted in Chapters 5, 6 and 7, and relevant to design of complaint mechanisms, many people with disability have experiences of not being believed when they report violence. Many also face attitudes that normalise and naturalise their experiences of violence, abuse, neglect and exploitation.

In some cases, violence towards people with disability is legitimated by law. For example, some forms of restraint and seclusion are provided legal sanction, not merely in criminal justice settings, but in a variety of closed settings including forms of supported accommodation. Use of this violence is extensive and, to an extent, documented; for example annually there are millions of incidents of ‘authorised’ and ‘unauthorised’ restrictive practices within NDIS funded services.⁶⁷³ In some cases law can also support incarceration of people with disability in ways which are at odds with international human rights law; for example Australia’s mandatory immigration detention regime which has implications for asylum seekers with disability, or the use of arbitrary and indefinite forensic mental health detention against people with cognitive and psychosocial disability.

Further, violence, abuse, neglect and exploitation experienced by people with disability is interconnected with other fields of oppression, including gender, race and sexuality. For example, women with disability experience disproportionately high rates of violence, and as described in Chapter 6, may not be believed when they report this violence. First Nations people with disability may face over policing and criminalisation which also shapes their experiences of violence, including at the hands of the law.

The above highlights that many of the causes of violence, abuse, neglect and exploitation of people with disability are systematic in nature. Violence prevention will require structural change – that is, changes to institutions, cultures, social practices, attitudes and law – to prevent these forms of violence, abuse, neglect and exploitation from being repeated.

Complaint mechanisms potentially have capacity to respond to some of the above factors which create and reproduce violence, abuse, neglect and exploitation against people with disability. However, many contemporary complaint mechanisms are not necessarily equipped to provide justice in relation to violence, abuse, neglect and exploitation. This is because many complaint mechanisms are non-independent and combine regulatory oversight with complaint resolution processes. They are thus potentially established with a policy goal to regulate services and maintain codes of conduct, and not necessarily designed to respond to violence, abuse, neglect and exploitation from a victim-centred and justice-focused perspective. This observation is best evidenced by comparing the resources and approach of a complaint mechanism with the processes of police and courts. As Chapter 4 detailed, the websites of many complaint

mechanisms appear to place emphasis upon quick local complaint resolution prior to escalation of the matter to an external authority. This approach, while potentially inexpensive, is inappropriate as a way to respond to violence, abuse, neglect and exploitation because of the potentially poor justice of procedures associated with local complaint resolution, and the likely inadequate justice associated with outcomes.

Police and courts, on the other hand, are resourced, at least in theory, to impartially investigate, to gather evidence, to protect victims-survivors and witnesses, to prevent potential perpetrators from committing further harm, to hear the case in a public forum using transparent processes, and to apply remedies, including potential criminal sanctions. Of course, focusing reforms on resourcing of police and courts does not mean in practice that police and courts will always provide an outcome that is desirable. Nor does this mean that police and courts are equipped to lead structural change in our society. Indeed, as discussed in Chapter 3, many of the forms of transformational justice required to eliminate violence, abuse, neglect and exploitation experienced by people with disability will necessitate reform that goes beyond the limits of the criminal justice system. Related, and discussed in more detail below, police and courts respond in far from ideal ways to some people with disability who report violence, abuse, neglect and exploitation, and complaint mechanisms can offer alternative forms of process and outcomes that may be desirable for some complainants, and additionally, may be able to prompt system changes in ways that courts cannot. However, relying on complaint mechanisms *single-handedly* to respond to violence, abuse, neglect and exploitation is dangerous. Limitations of complaint mechanisms can lead to a failure to prevent individuals, services and systems from perpetrating violence. Worse, use of a complaint mechanism pathway as the only way to report violence can effectively *enable* systems to continue perpetrating violence, abuse, neglect, and exploitation and prevent justice for victim-survivors. Sole dependency on complaint mechanisms can also result in failure to make necessary reforms to our justice systems in order to make them inclusive, accessible, safe and responsive to people with disability seeking to report violence, abuse, neglect and exploitation.

Comparing complaint mechanisms to the police and courts highlights different forms of justice available, and the limits of how complaint mechanisms function in relation to violence, abuse, neglect and exploitation. This comparison also helps to illustrate that despite the above limitations, complaint mechanisms *can* serve an important role in providing a reporting pathway for violence, abuse, neglect and exploitation where the complaint mechanism is separated legally, organisationally and operationally from other policy goals such as regulating services. This is because a complaint mechanism might offer forms of process and outcome that are not available elsewhere. For example, a complaint mechanism can serve an important role in providing individual procedural and outcome justice that is not necessarily available through other pathways such as police or courts, perhaps because the mechanism may utilise conciliation or inquisitorial methods of investigation (as opposed to the adversarial process of some courts), or because the mechanism may have a lower requirement of evidence in order to grant an individual redress. A complaint mechanism can also be uniquely placed to interact with organisations in order to implement institutional change through translation of individual complaints into system wide action, and through own motion investigation powers. For example,

the power of some Ombuds to table reports in Parliament, initiate inspections and largescale inquiries, or work with government departments towards change, are important as part of a process of transformational change of institutions.

The capacity of complaint mechanisms to interact with governments and civil society is worth emphasising. Governments and civil society have the capacity to create the conditions where experiences of historical and continuing violence, abuse, neglect and exploitation are recognised and reported. Governments can also initiate system change, including through public processes of transitional and transformative justice. Transformation of organisations, practices, cultures – necessary to reduce violence against people with disability – is likely to be successful when people with disability, governments and civil society are part of the process of change. Finally, some complaint mechanisms – such as international human rights treaty bodies – provide a pathway to address system wide problems and legally authorised violence. While treaty complaint bodies – such as the United Nations Committee against Torture – have limitations in terms of the potential cost and complexity of pursuing complaints, the time taken to arrive at decisions, and lack of enforceability, they potentially provide an avenue to test domestic legal arrangements against international human rights law and contemporary standards of rights and justice.

In summary, much of the violence, abuse, neglect and exploitation experienced by people with disability has structural and institutional causes. For a range of reasons, complaint mechanisms are ineffective as a way to single-handedly respond to these experiences of violence, abuse, neglect and exploitation or address the need for systematic change. However, complaint mechanisms do have some unique processes and outcomes that may be appealing to some potential complainants, and have the capacity to influence transformational change in ways that differ from courts and the law. For this reason, it is vital that people with disability have available to them complaint mechanisms as one of a range of options for reporting violence, abuse, neglect and exploitation.

8.2 Complaint Mechanisms and Interaction with the Law, Police and Courts – Equality before the Law and Elimination of Legally Authorised Violence

As discussed in Chapter 2, people with disability are entitled to enjoy human rights to non-discrimination, equality before the law, and equal protection from violence, abuse, neglect and exploitation. These human rights mean that people with disability should be guaranteed equal access to police and courts in order to report and obtain justice for violence, abuse, neglect and exploitation. People with disability should also be guaranteed equality in outcome in relation to complaints made about violence, abuse, neglect and exploitation.

Rights to equality before the law pose a challenge for use of complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation. This is because of the difference

between outcomes associated with complaint mechanisms and those available through the police and the courts. Not all outcomes offered by courts and police are available through complaint mechanisms; for example, a complaint mechanism will typically not apply criminal sanctions. This difference means that the existence of complaint mechanisms as a reporting pathway for violence, abuse, neglect and exploitation potentially poses a challenge for equality before the law and non-discrimination, particularly where this leads to systematic differences between the treatment and outcomes experienced by people with disability. In other words, if our society encourages people with disability to use different processes to report violence, abuse, neglect and exploitation to everyone else, and these processes lead to different and inferior outcomes, then this potentially undermines equality before the law.

If, on the other hand, complaint mechanisms operate in a *complementary* way with police and courts – for example, by offering an alternative referral pathway to legal justice, or by offering forms of justice that are alternatives to legal justice without taking away rights to legal justice – then it would perhaps be non-contentious to utilise complaint mechanisms to deal with violence, abuse, neglect and exploitation. However, in practice some complaint processes appear to effectively replace the rights of people with disability to access police and courts. For example, it is unclear if use of restrictive practices, whether ‘authorised’ or ‘unauthorised,’ can be reported to police under current regulation.⁶⁷⁴ It would appear that individuals only have recourse to a complaint mechanism in the case of the use of unauthorised restrictive practices; and even in this circumstance, it is unclear if this recourse is realisable in all instances because of the lack of clarity over whether NDIS providers or the NDISQSC are required to notify individuals when they are subject to unauthorised or authorised restrictive practices.

If a complaint mechanism effectively removes rights of people with disability to access legal justice in relation to violence, abuse, neglect and exploitation, then this is a violation of human rights of people with disability. Similarly, at the government level, if resource allocation continues to be invested in complaint mechanisms as a solution to violence, abuse, neglect and exploitation, rather than into the transformation of police and courts so they are accessible and responsive to people with disability, then this is also a violation of human rights of people with disability. In this respect, as suggested above, the operation and validation of complaint mechanisms as a reporting pathway for violence, abuse, neglect and exploitation cannot be separated from a broader discussion around the responsiveness of the police and the courts to people with disability.

Legal authorisation of some forms of violence effectively means that some people with disability are denied both rights to protection from violence and rights to complain about this violence. As indicated above, legal authorisation and social sanction provided for the use of restrictive practices in a variety of settings ignores an obligation to protect people with disability from violence (as required by Articles 14-17 CRPD) and simultaneously, by default, prevents complainants from attaining justice. A common expectation is that individuals should have the right to immediate relief and protection from violence; indeed, this is one of the reasons police are given powers to effect swift intervention responses. However, it is not clear whether people with disability in all circumstances can access swift intervention by the police in response to violence.

For example, people with disability subject to restrictive practices do not appear to enjoy this right to immediate protection: under NDIS rules unless there is ‘serious injury to a person with disability,’ there is a 5 day reporting period applied for a use of an unauthorised restrictive practice by NDIS providers (and this reporting period only refers to reporting by an NDIS provider to the NDISQSC, rather than reporting to police).⁶⁷⁵

The problem of the replacement of legal pathways – such as courts and police – with complaint mechanism pathways is exacerbated by experiences of some people with disability around the poor responsiveness of police and courts to violence, abuse, neglect and exploitation.⁶⁷⁶ As evidenced in Chapters 5, 6 and 7 of this report, some people with disability report ongoing negative interaction with police and courts – for example experiences of systemic discrimination and violence by First Nations people with disability at the hands of police – which means that reporting violence to police is not viable for some community members. As we shall discuss below at 8.6, improvement and transformation of the responsiveness of police and courts to people with disability is part of the landscape of reforms that are required to ensure viable reporting pathways for violence, abuse, neglect and exploitation.

None of the above suggests that complaint mechanisms cannot operate in a *complementary* way with police and courts. In this context, as discussed above, it is important to note that some people with disability may prefer to utilise a complaint mechanism because of the different just processes and outcomes provided by the mechanism. A complaint mechanism may offer different processes for the substantiation of complaints, such as conciliation or inquisitorial methods which might be experienced more positively by complainants. Complaint mechanisms may also offer the possibility of anonymous complaint processes, or offer outcomes, including the prospect of system wide change, that cannot be provided by a court. However, as indicated above, care needs to be taken to ensure that even where a complaint system operates in a complementary way with police and courts, that it does not remove equal rights to justice, or prevent police and courts from responding to criminal activity or from providing pathways to redress.

In practice, as indicated in Chapter 4, based on a survey of websites and where available and appropriate legislation, policies and procedures, there is a lack of transparency within existing complaint mechanisms regarding the referral pathways to police when violence, abuse, neglect and exploitation is reported. While some mechanisms make clear that criminal activity will be referred to police, our exploration in Chapter 4 of the information offered by Australian complaint mechanism websites revealed limited information on how complaint mechanism investigation processes interact with police investigation. For example, complaint websites often failed to address the steps a complaint mechanism would take to facilitate police investigation, or steps they would take in order to avoid evidence contamination or eroding quality of evidence over time. Even if a matter is referred to police, the work of the complaint mechanism will not be over; on the contrary, if an allegation of violence, abuse, neglect and exploitation is substantiated, implications for the service system must be acted on.

8.3 Improving Existing Complaint Mechanisms: A Focus on Process and Outcome

As detailed in 8.4, 8.5 and 8.6 below, significant steps can be taken to create an institutional architecture that could forge strong pathways for people with disability reporting violence, abuse, neglect and exploitation. The recommended structures – a new independent complaint mechanism, a national redress scheme and reform of police and courts – will provide the most substantial and effective pathways. However, reform of existing mechanisms is possible and also necessary, even when the more radical recommendations of this report are adopted. This section provides detail on reform options for existing complaint processes.

Chapters 5, 6 and 7 indicate that some people with disability who complain about violence, abuse, neglect and exploitation have a combined experience of failure of justice in process *and* justice in outcome when they complain about violence, abuse, neglect and exploitation. As discussed in Chapter 5, non-complaint and prevented complaints are a reality for some people disability. Some experiences include being threatened in order to prevent complaint-making; or a general fear of retribution. In many cases, non-complaint is intimately tied to the reality that many people with disability cannot escape institutional and segregated environments, and thus any complaint will realistically result in adverse consequences. A victim-survivor, quoted in Chapter 5, summarises this:

The thing that I found most disturbing was a similar experience to mine, by a young women who has Bi-polar and said she was restrained by several hospital staff and stripped naked too. I fully believe her account as I have experienced this myself. It is a sad that staff do get away with their human rights abuses of mental health patients who are vulnerable and unwell - we are all afraid to speak out because one day we may need to return.⁶⁷⁷

As outlined in Chapter 6, some people with disability who complain experience extraordinarily poor processes in complaint handling. Some people with disability who report violence are not believed, or are assumed to be 'difficult'. Other complainants experience improper processes, such as having to provide evidence in the presence of a perpetrator, or having evidence contaminated in ways that would prevent a criminal justice investigation from substantiating a claim. For some people with disability who complain about violence, abuse, neglect and exploitation, the experience is that after they complained 'nothing happened.' An experience described in Chapter 6 summarises this failure to act:

Josie was raped by a male co-resident within the grounds of the complex. She immediately disclosed the rape to an on-site support worker who advised her to 'just keep out of his way'. The rape was not reported to the police and Josie was not offered any support or counselling.⁶⁷⁸

This experience highlights that a failure to process a complaint will lead to a failure in achievement of a just outcome. As Chapter 7 revealed, some people with disability who

complain about violence receive either an outcome that leads to no tangible change or to an adverse consequence, including retribution against the complainant. In some cases, these dual experiences of failed justice in procedure and outcome are merged in such a way that they are indistinguishable; the general experience of attempting to make a complaint is felt to be frustrating and futile because the complaint either goes nowhere, or leads to a negative outcome. This was summarised by Sally Robinson in relation to complaints made in a school context:

It was clear from the comments made by a number of children and young people that they had little hope or expectation that sharing their views would result in change. Even where they told others about harms occurring at school, it was unusual for change to happen quickly. Until a significant crisis event, few reported feeling that speaking up about interpersonal abuse, particularly from peers, made a difference.⁶⁷⁹

Indeed, as documented in Chapter 5, poor experiences with previous complaints is one reason that some people with disability refrain from making further complaints in relation to violence, abuse, neglect and exploitation.

Our mapping exercise in Chapter 4 (and in Appendix A), based on a survey of websites and, where appropriate, legislation, policies and procedures, illustrates that there is a plethora of complaint mechanisms potentially available to people with disability as reporting pathways for violence, abuse, neglect and exploitation. However, there are few, if any, that appear fit for purpose as a pathway to report and seek justice in relation to violence, abuse, neglect and exploitation. As indicated in Chapters 5, 6 and 7, a lack of options to report violence, abuse, neglect and exploitation means that some people with disability and their families are placed in unacceptable circumstances, including having to live with routine violence; withdraw from crucial services in order to gain relief from violence; and actively campaign and lobby for justice because complaint mechanisms cannot be relied upon to provide fair transparent processes or just outcomes. Experiences of poor performance of complaint mechanisms with respect to people with disability is often interconnected with other spheres of oppression. For example, some women with disability are not believed; some First Nations people with disability have complaints ignored due to underlying racism; some LGBTIQ+ people with disability experience police and other authorities that refuse to act on homophobic violence; and many schoolchildren with disability and their parents face years of complaints leading nowhere.

As shall be discussed below, these problems are best rectified through an independent, neutral, trustworthy and effective complaints pathway that can respond to violence, abuse, neglect and exploitation. However, there are also many potential reforms that would improve existing pathways and their effectiveness in responding to violence abuse, neglect and exploitation. For example, based on the websites and /or legislation, policies and procedures examined in this study, there are problems with existing complaint mechanisms at the level of transparency of processes, and these can be rectified at low cost through the application of consistent standards of information on websites, printed materials and other accessible media. As Chapter 4 discussed, there is great variance in the information available on complaint mechanism websites about processes, information requirements and outcomes. This problem is particularly

acute in relation to reporting pathways on violence, abuse, neglect and exploitation, as there is either absent or inconsistent information within complaint mechanism websites on how to report violence, abuse, neglect and exploitation. Clear consistent agreed principles on how reporting of violence, abuse, neglect and exploitation should occur would improve the transparency and perceived trustworthiness of existing procedures.

Many complaint mechanism websites surveyed in Chapter 4 and Appendix A recommend local resolution of complaints prior to escalation to higher complaint bodies. Often the explicit or implied recommended process at a local level is conciliation. Conciliation at the local level is inappropriate for complaints relating to violence, abuse, neglect and exploitation, because it will require victim-survivors to negotiate with local service contexts. Victim-survivors will be reluctant to engage with a local organisation – that is, potentially, the service context where violence occurred – in order to gain relief and justice. Further, as discussed in Chapter 4, some disability service websites give the impression that local organisations are granted discretion over whether an issue of violence, abuse, neglect or exploitation should be referred to the police. This discretion is inappropriate for a number reasons, including that it potentially allows organisations to create barriers to reporting violence, abuse, neglect or exploitation where there is an organisational interest in maintaining secrecy or protecting staff. As discussed in Chapter 4, it may be that actual processes utilised by complaint mechanisms may differ in practice; for example, local organisations may always refer complaints relating to violence, abuse, neglect and exploitation to relevant authorities. However, many of the websites we examined do not make this clear, and this lack of clarity may deter potential complainants, or create an expectation that complaints relating to violence abuse, neglect and exploitation will be resolved using processes and procedures which are publicly stated, however intended for other types of complaints.

The above discussion points to the need for clearly separated, transparent and reliable pathways for complaints about violence, abuse, neglect and exploitation. Reporting of violence, abuse, neglect and exploitation must occur through a clear dedicated pathway, with unique complaint handling processes which are proportionate to the seriousness of these complaints. There are examples of these clearly demarcated procedures that could be shared; for example, the Victorian Department of Education has a dedicated website for current and former students to report abuse.⁶⁸⁰ A clear dedicated pathway for reporting violence and abuse sends a strong signal that these complaints have a level of seriousness and require different processes that go beyond other grievances about breaches of organisational codes and practice. Related to this, and in line with the discussion at 8.2 above, equal rights of people with disability under the law would be better ensured through use of agreed and consistent pathways that describe how violence, abuse, neglect and exploitation will be reported to police; that remove service or organisational discretion in reporting violence; and that stipulate how the complaint mechanism will work in a complementary way with police and courts. We shall discuss in more detail a proposal for an independent complaint mechanism pathway in Section 8.4 below.

In line with the discussion of procedural justice in Chapter 3, based on our survey of websites and where available and appropriate, legislation, policies and procedures, existing complaint

processes could also be improved through consistent application of accessibility standards to support complaint making. A consistent and best practice approach to accessing interpreting services, and availability of Easy Read, Auslan and translated information into appropriate community languages, would promote access for a variety of people with disability. Supported decision making must be resourced by complaint mechanisms to enable people with disability to report violence, abuse, neglect and exploitation and ensure equality before the law; this is particularly important where complaints are related to the substitute decision making of legally appointed guardians.

In this context, and something confirmed in Chapters 5, 6 and 7 of this report, advocacy services play an important role in enabling complaints about violence, abuse, neglect and exploitation. Supporting interaction between advocacy organisations and complaint mechanisms, and resourcing the work of advocates, will help promote the accessibility of complaint mechanisms. Advocacy organisations also play an important role in providing rights awareness. As highlighted in Chapter 5, some people with disability do not complain about violence, abuse, neglect and exploitation because of generalised public perceptions that this violence is acceptable and because of a low awareness of their rights. Resourcing civil society to promote awareness of rights – as per Article 8 CRPD – is essential to addressing fundamental barriers that prevent complaint making in relation to violence, abuse, neglect and exploitation. Awareness raising is interconnected with the challenge of creating living environments and workplaces with strong cultures and norms that resist and ‘call out’ violence, abuse, neglect and exploitation. As discussed above, there is reason to believe that negative organisational cultures that promote and support violence, abuse, neglect and exploitation against people with disability are related to segregation and institutionalisation; this view is certainly supported by inquiry processes such as the Royal Commission into Institutional Responses to Child Sexual Abuse and the United Nations Committee on the Rights of Persons with Disabilities.⁶⁸¹

As discussed in Chapter 3, even where it is not possible to provide a just outcome, justice in process is an important opportunity to offer respectful treatment to individuals who may have experienced dehumanisation, and to provide ways to include individuals who have been socially excluded. In this context, complaint processes are an opportunity to enable voice and recognition for people with disability who have survived violence, abuse, neglect and exploitation, and to validate their experiences through the design of the mechanism. One area for clarity and improvement for complaint mechanisms is information and processes on how victim-survivors can be supported even if complaints cannot be substantiated. A key lesson from the Royal Commission into Institutional Responses to Child Sexual Abuse, which can be applied here, is that the ability to substantiate a claim of violence should not be connected to whether or not the claim is granted legitimacy: that ‘a complaint remains unsubstantiated does not mean that the alleged abuse did not occur.’⁶⁸² In this context, and relevant to our discussion at Section 8.5 below, it is reasonable to assume that many people with disability have experienced historical violence, abuse, neglect and exploitation that remains unreported for years or decades. Because of the historical nature of these experiences, there may be limits on the ability of justice processes to substantiate these experiences of violence, abuse,

neglect and exploitation. Nevertheless, these experiences must be treated seriously and justice principles applied. Existing complaint processes should be adapted to recognise and support these claims.

Based on our survey of websites, and where available and appropriate, legislation, policies and procedures, there is much work that can be done to make clear what outcomes are available through complaint mechanisms that respond to violence, abuse, neglect and exploitation, and how these outcomes compare to those that might be available through other processes such as courts. As indicated in Chapter 4, there is unclear, and often absent, information on complaint mechanism websites about the potential outcomes of complaint processes. This means that complainants who wish to report violence, abuse, neglect or exploitation have minimal information on what possible remedies are available to them, and thus do not know if complaining will be worth the effort. The lack of information on potential or actual outcomes is further exacerbated by general lack of transparency on how complaint mechanisms investigate and deliberate. We note that this lack of information stands in contrast to the centrality of open justice and public access to information, including on outcomes, that is routine in the criminal and civil justice systems. There are of course important reasons why complaint mechanisms do not provide transparency on outcomes, including the wish for anonymity from victims-survivors and rights to privacy. However, there are potential implications relevant to use of complaint mechanisms as reporting pathways for violence, abuse, neglect and exploitation, including that minimisation of the capacity of the complaint mechanism to provide public education or provide deterrent effects through public availability of its findings. Further, and related, as highlighted above in Section 8.2, since complaint mechanisms typically do not provide outcomes that arise in the criminal justice system (for example criminal sanction for perpetrators) or those in civil justice systems (such as compensation, including punitive damages) there is a risk that complaint mechanisms *in practice* undermine equality before the law for people with disability who use these to complain about violence, abuse, neglect and exploitation. Relatedly, some outcomes provided by complaint mechanisms, such as an organisation making a policy or practice change in response to a complaint, are subtle in nature, have long implementation lead times, and may not be perceived by complainants as delivering justice at the individual level. These outcomes may not reflect an acceptable rectification for victim-survivors of violence, and may contribute to the experience described in Chapter 7 that complaints lead to ‘no tangible outcome’.

In summary, there are a number of principles that might shape the design of complaint mechanisms to improve their capacity to respond to violence, abuse, neglect and exploitation. Outcomes for complaints about violence, abuse, neglect and exploitation should not limit any rights complainants have before the law. Moreover, potential outcomes of complaint processes should be clearly articulated on websites and accessible materials. Further, this information should articulate the alternative outcomes possible if individuals utilise other pathways, such as police and courts. Information on outcomes should clearly articulate forms of individual rectification available for survivors of violence and the potential system wide implications of complaints in helping to prevent violence experienced by others.

8.4 An Independent Complaint Pathway to Respond to Violence, Abuse, Neglect and Exploitation

As Chapter 4 and Appendix A demonstrate, based on our survey of websites, and where available and appropriate, legislation, policies and procedures, there are a plethora of complaint options available to people with disability, but few, if any, appear to provide a pathway with strong perceived independence, neutrality, transparency, trustworthiness, effectiveness and capacity to support and recognise the voice of complainants in relation to violence, abuse, neglect and exploitation. This is in part due to a confusion of responsibilities. As indicated in 8.1 above, many complaint mechanisms are established with policy goals around organisational policy compliance, accountability for funding, and resource efficiency in grievance resolution. However, these mechanisms are inappropriate as pathways to report incidents as serious as violence, abuse, neglect and exploitation because of their conflicting policy objectives, their lack of perceived independence and organisational and institutional goals which can deter from a focus on justice for the individual. The emphasis upon conciliation and quick and cheap resolution of complaints found on some complaint mechanisms' websites highlight their poor fit as just procedures to deal with violence, abuse, neglect and exploitation. The Nobel Prize winning economist Jan Tindbergen is associated with the idea that we typically need a discrete policy instrument to address each policy target, and that for a policy instrument to achieve its goal it must be effective and selective in its targeting.⁶⁸³ Arguably, existing complaint mechanisms, for the many reasons outlined above, lack selectivity in their purpose for dealing with violence, abuse, neglect and exploitation; and are not effective in their responses. Further, in simultaneously attempting to meet other policy objectives (such as regulation of services), some complaint mechanisms risk working at cross purposes with the important task of responding to violence, abuse, neglect and providing justice.

In theory, police and courts might be better equipped to deal with violence, abuse, neglect and exploitation experienced by people with disability. Indeed, as indicated above, and discussed further in Section 8.6 below, improving responsiveness of police and courts to people with disability is essential for realising equality before the law and an equal right to justice. However, as indicated in Section 8.2 above, many people with disability have had negative interactions with police and courts which means there is a reluctance from some people with disability to engage with these institutions when seeking justice in relation to violence, abuse, neglect and exploitation. This reluctance means that some people with disability may choose to utilise a complaint mechanism to report violence, abuse, neglect and exploitation rather than go to police. Again, this tension illustrates that, at least at present, police and courts are poorly equipped to respond to some people with disability who experience violence.

Given the above factors, there is scope for establishment of an independent pathway that provides a dedicated mechanism to report and respond to violence, abuse, neglect and exploitation experienced by people with disability. This pathway must have strong perceived independence, neutrality, transparency, trustworthiness, effectiveness and capacity to support

and recognise the voice of complainants. The independent mechanism would have a prioritised violence prevention brief, and a public perception that it exists as a ‘defender of rights’ of people with disability; these factors would instil confidence in potential complainants that the mechanism exists to provide justice in relation to violence, abuse, neglect and exploitation. The independent mechanism should have the capacity to protect complainants and offer immediate relief from situations of violence. The independent mechanism would potentially support reporting to police and courts where this is requested by complainants, and would work in a complimentary way with these authorities. The mechanism would offer its own clear pathways for reporting violence, abuse, neglect and exploitation; unique processes such as conciliation and inquisitorial investigation which provide alternative procedures to the criminal justice system; and unique outcomes that are not available from courts, informed by transitional and transformative justice approaches. Use of the mechanism would not, however, remove legal rights of people with disability to seek justice through courts. The mechanism should be effective, and have a capacity to work across different governmental and jurisdictional ‘silos’. The independent mechanism would have own motion powers of investigation, a public reporting function, including to Parliament, and the capacity to compel other agencies to respond to individual and systemic complaints. The independent mechanism could be complemented, and interact with, reportable conduct and whistle-blower schemes which provide alternative pathways for violence, abuse, neglect and exploitation to be reported and acted upon. The independent mechanism would be designed from the ground up to support access, outreach and justice for First Nations people with disability, Culturally and Linguistically Diverse people with disability, women with disability, children with disability, older people with disability, and LGBTIQ+ people with disability.

Recognising that many people with disability experience violence in contexts where they are not free to leave at will – such as closed settings – the independent mechanism would cooperate as part of the National Preventative Mechanism established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The independent mechanism would further elaborate and support pathways to complain to international treaty bodies, and where appropriate would work in coordination with the Australian Human Rights Commission. These functions would enable the mechanism to be part of civil society campaigns to end violence towards people with disability, including legally authorised forms of violence.

The above described pathway for reporting violence, abuse, neglect and exploitation is ‘ideal’ in nature. We have deliberately not attempted to suggest what organisational form it should take – e.g. as an Ombud or part of an existing mechanism – nor whether there is need for one such mechanism nationally, or whether it would be replicated in different jurisdictions or in different systems or service contexts. Rather, the aim of describing the pathway is to acknowledge that at present there is a gap in terms of addressing the problem of violence, abuse, neglect and exploitation experienced by people with disability, and that responding to this gap requires thoughtful application of some consistent design principles to develop an appropriate response. It is these design principles that we articulate in this report.

8.5 A National Redress Scheme

As indicated in 8.3 above, many people with disability have experienced historical violence, abuse, neglect and exploitation that remains unreported for years or decades. While some complaint mechanisms examined in Chapter 4 potentially have the capacity to respond to historical complaints of violence, abuse, neglect and exploitation, it is not clear that existing complaint processes are adapted to recognise and support these claims. There is also a broader set of issues around historical violence, abuse, neglect and exploitation related to the importance of responding to demands of people with disability for recognition, rectification and just distribution. Australia has and continues to enable mass scale violence against people with disability. High rates of violence experienced by people with disability (including that which is legally authorised) require government and society wide justice, which moves beyond individual rectification, and which seeks to acknowledge historical wrongs to provide transitional and transformative justice. Transitional and transformative justice is one way to work systematically to address the ‘testimonial injustice’ experienced by people with disability which systematically silences and devalues experiences; it is also one way to frame system change along the lines of truth, accountability, redress and institutional reform.

A National Redress Scheme in response to violence, abuse, neglect and exploitation might provide society-wide acknowledgement of responsibility for the systematic violence, abuse, neglect and exploitation experienced by people with disability. A National Redress Scheme would serve as a complaint pathway for historical experiences of violence, abuse, neglect and exploitation. This Scheme would have reduced requirements for evidence to substantiate claims in order to gain individual redress for past violence. It would have capacity to hear complaints while protecting anonymity of complainants. The Scheme could function as a pathway to formally report violence, abuse, neglect and exploitation to an appropriate complaint mechanism or the police where complainants endorse these approaches. As discussed by the Royal Commission into Institutional Responses to Child Sexual Abuse, a redress scheme thus has the potential to function as an important part of the complaints landscape.⁶⁸⁴

A National Redress Scheme would only be effective if attention is paid to processes which support complainants to tell their stories, are accessible and available, support decision making, and are designed to minimise trauma to the person in collecting information. Thus, attention would need to be paid to how the scheme was designed, processes of evidence gathering utilised by the scheme to substantiate claims, and protections available to complainants, including in minimising need to recount experiences of violence again and again. A National Redress Scheme would only be effective if it is designed from the ground up to support and provide outreach and justice for First Nations people with disability, Culturally and Linguistically Diverse people with disability, women with disability, children with disability, older people with disability, and LGBTIQ+ people with disability. There is a distinct role here for civil society in being part of the process of transitional and transformative justice, including in the provision of resources to advocacy organisations to support people with disability who wish to report historical experiences of violence, abuse, neglect and exploitation.

8.6 Enhancing the Capacity of Police and Courts

As indicated in 8.1 and 8.2 above, people with disability should have equal access to police and courts in order to report violence, abuse, neglect and exploitation. However, as indicated in Section 8.2 above, some people with disability have had negative interactions with police and courts which means there is a reluctance to engage with these institutions when seeking justice in relation to violence, abuse, neglect and exploitation. A failure of the criminal justice system to support equality before the law and non-discrimination leads to a fundamental collapse in trust and perceived legitimacy, and allows for violence to be carried out with impunity. This was summarised in an experience cited in Chapter 7, derived from a UK study, but illustrative of the system wide implications of the failure of the police and the courts to provide justice to people with disability:

'To be honest, I don't trust [the] police anymore. [...] their track history is shit with me, like I said I've never once gone to court for any crime that's happened to me. Never. I mean, I haven't even given a statement when it's been a rape.'⁶⁸⁵

The focus of this report has been the functioning of complaint mechanisms as a pathway to report violence, abuse, neglect and exploitation. However, as described above, it is impossible to separate this focus from the operation of the justice system as a whole and its responsiveness to people with disability. Although out of scope for this report, it is acknowledged that improvement and even transformation of the processes and responsiveness of police and courts to violence, abuse, neglect and exploitation ensures that people with disability enjoy equality before the law. We note the finding of the report for the Disability Royal Commission by Leanne Dowse et al, which observes that:

There is significant variability across jurisdictions and very little consistency in regard to strategic approaches to policing and disability and to disability justice more broadly. Some appear to have almost no strategy whilst others have quite a depth of strategy and planning. Very few initiatives though are evaluated with almost nothing available publicly. There is almost no recognition in police strategies and plans of the impact of co-occurring, compounding or intersectoral factors affecting people with disability. Some Police services in Australia are beginning to make inroads into the longstanding inadequacy of police responses to people with disability, but these are not yet practised widely. These efforts are characterised by attempts to generate service wide strategic leadership, enhanced procedural guidance for and enforcement of the use of independent third persons/intermediaries and innovation in models of engagement with First Nation's communities. These are commended in the literature and by advocates.⁶⁸⁶

Improving the processes and responsiveness of police and courts to violence, abuse, neglect and exploitation would elevate the trustworthiness of authorities in recognising and responding to violence, abuse, neglect and exploitation, and would create realistic alternatives to complaint

mechanisms for people with disability for reporting violence. In this context, there is scope to support enhanced legal and advocacy services to advise people with disability on justice system pathways to legal redress, including victims compensation schemes.

8.7 Conclusion

Complaint mechanisms are an essential part of the administration of contemporary large-scale organisations, and can be found almost everywhere where an organisation seeks to continually improve services through feedback from those it engages with. To an extent, a study of complaint mechanisms could be constrained to the somewhat dry details of how to govern and facilitate communication and interactions between organisations and their stakeholders. However, as this report has demonstrated, the utilisation of complaint mechanisms to report violence, abuse, neglect and exploitation by some people with disability generates a different set of nuanced and profound concerns that go to the heart of the civil and political rights exclusions and fundamental discriminatory treatment experienced by people with disability in our society. Application of human rights obligations, particularly those which relate to non-discrimination, equality before the law, access to justice and freedom and equal protection from violence, and a commitment to violence prevention, just processes and just outcomes, suggest radical transformation is required of existing complaint mechanisms. Fundamental reform of pathways to report violence, abuse, neglect and exploitation is essential in order to work towards elimination of violence, abuse, neglect and exploitation in the lives of people with disability. This report has outlined the design principles to guide this reform pathway.

Appendix A: Australian Complaint Mechanism Landscape Table

Jurisdiction:

- Federal
- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia

Sector	Name of complaints body/organisation	Name of complaints body/organisation	Opportunity to make a complaint	Resolution of complaint	Outcome of complaint
Education	<u>Department of Education, Skills and Employment</u>	Who can complain? Not specified. Types of violence the complaint applies to/excludes Not specified. Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Complaints can be made verbally or in writing. Where a complaint concerns "complex or serious matters" then written form is encouraged. A complaint may also be referred to another investigative/regulatory body if more appropriate. If possible, the Department will aim to address the complaint "quickly and informally". Where a quick resolution is not possible the following process is applied (but may vary on a case-by-case basis): 1. <i>Acknowledgement:</i> "The department will acknowledge the complaint within five business days. The complainant will be provided an appropriate timeframe for a response and a contact for queries regarding the complaint." 2. <i>Assessment</i> "The complaint will be allocated and assessed."	Any interim measures prompted Not specified. Any report to police prompted "Where a complaint raises a risk of significant harm to one or more individuals or an allegation of criminal conduct, the matter will generally be referred to the police or other appropriate authority." Relationship of complainant, perpetrator or context The complaint body may be both the perpetrator and the investigator of the complaint. Nature of complaint resolution process The department states that complaints "are handled in a way that is proportionate and appropriate to the matter being complained about."	Range of possible outcomes This is unclear. The department states: "The response may include the particulars of an investigation, findings or decisions reached and any outcomes, remedies or action proposed." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The department states that "complaint management is integrated with the department's core business activities so that any lessons or systemic issues can be appropriately actioned." Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified.

Sector	Name of complaints body/organisation	Name of complaints body/organisation	Opportunity to make a complaint	Resolution of complaint	Outcome of complaint
			3. Investigation "Where it is not possible for the department to resolve the complaint at the initial point of contact, an investigation may be undertaken. The purpose of an investigation is to resolve a complaint by reaching a fair and independent view on the issues raised. The investigation should resolve factual issues and consider options for complaint resolution. 4. Response "The department endeavours to provide clear and informative responses to complainants. The length of time it takes for the department to investigate and respond to a complaint will depend on the nature and complexity of the issues involved. The complainant will be kept informed of progress with the investigation until the matter is finalised."	The nature of complaint resolution is unclear. The department states: "The response may include the particulars of an investigation, findings or decisions reached and any outcomes, remedies or action proposed. In some instances, the department may have limitations on the extent of the information that can be provided to complainants for example, to protect personal privacy." Role of victim-survivor in complaint resolution Not clear. It appears that the department takes a complaint and investigates it by checking with the staff involved. The victim-survivor has an opportunity to provide further information if they are not happy with the initial response.	Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome "In some cases, it may be appropriate for the department to offer internal review of how the complaint was handled and resolved, taking into account any additional information provided by the complainant. External review options may also be available depending upon the nature of the complaint. The complainant has the right to pursue an independent review of the outcome by the Australian Ombudsman, in which case the department will provide as much information as possible on request by the independent reviewer to assist in the outcome." Any incidental consequences of complaint resolution "There are no adverse repercussions for making a complaint.

Sector	Name of complaints body/organisation	Name of complaints body/organisation	Opportunity to make a complaint	Resolution of complaint	Outcome of complaint
			Form of complaint Complaints can be made verbally or in writing. Anonymous and/or confidential complaints are permitted. However, these may hinder the department's ability to investigate a matter properly, and/or to provide effective resolution of any dispute. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	For example, complainants are allowed to comment on any adverse findings reached by the department regarding their complaint, before it is finalised. If the department then upholds its decision not to accept their complaint, this will be "noted and explained" to the complainant. Role of perpetrator (individual/service provider/government) in complaint resolution Not clear. It appears that the department takes a complaint and investigates it by checking with the staff involved. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	The department is open about the process, advises complainants of progress, and, where appropriate, gives complainants the opportunity to respond and to seek internal review of complaint outcomes." Relationship to police and CJS "Where a complaint raises a risk of significant harm to one or more individuals or an allegation of criminal conduct, the matter will generally be referred to the police or other appropriate authority." Any confidentiality or privacy rules (protective of or gagging complainant): The department allows for both anonymous and confidential complaints. It also stipulates that at times there will be limitations on the amount of information provided to a complainant in order to protect the privacy of the alleged perpetrator or other staff involved. What information is publicly available from the complaint resolution? Not specified; it appears none.

Sector	Name of complaints body/organisation	Name of complaints body/organisation	Opportunity to make a complaint	Resolution of complaint	Outcome of complaint
					Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Two of the principles which underpin the department's complaints process are "accessible" and "responsive", under which the department discusses its aim to "respond appropriately to all complainants including by extending special assistance to vulnerable people and those with particular needs".

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Health	<u>Australian Health Practitioner Regulation Agency (AHPRA)</u>	Who can complain? Anyone can make a voluntary notification. There are also circumstances in which “a registered health practitioner, employer or education provider” must make a mandatory notification. AHPRA can also decide to initiate own-motion investigations into practitioners where concerns of the below nature come to its attention through any means. Types of violence the complaint applies to/ excludes Does not have to relate to actual acts of violence, but to unsafe practices that have the potential to cause harm in the future. This may include where a practitioner’s professional conduct, knowledge, skill, judgement or care is below the standard expected of the profession. It may also include instances where the practitioner is not considered suitable (for various reasons) to hold their registration;	Process to complain Notifications can be made: - Verbally (including by phone) - In writing (including by email or “other electronic means” such as their online portal) Verbal notifications will be recorded by AHPRA. Once a notification is received, AHPRA refers it to “the applicable Board(s) for preliminary assessment”. There are <u>15 National Boards</u> that are categorised by profession. Within 60 days of receiving a notification the relevant Board must assess it and decide whether it should proceed to an investigation. Part of this assessment includes considering whether it is more suitable to refer the matter to a consumer complaints body. The Board may decide not to take further action if: “the notification is frivolous or vexatious; - it is not practicable for the Board to investigate;	Any interim measures prompted The relevant Board can take immediate regulatory action to “restrict or suspend a practitioner’s ability to practise” at any time, if they reasonably believe that doing so is “necessary to protect the public from a serious risk, or is otherwise in the public interest.” Interim measures can include: “the suspension of, or imposition of a condition on, the health practitioner’s registration - accepting an undertaking from the health practitioner - accepting the surrender of the health practitioner’s registration; - if immediate action has previously been taken by suspending a health practitioner’s registration, the revocation of the suspension and the imposition of a condition on the registration, and	Range of possible outcomes Once an investigation has concluded, the investigator provides the relevant Board with a written report; detailing any findings, and recommendations. Upon receiving such recommendations, the Board may decide to take further action, including: - taking immediate action to restrict a practitioner’s practice, caution them, impose conditions or accept an undertaking from them - referring the matter to a health or performance & professional standards panel - referring the matter to a relevant tribunal A health panel, or a performance and professional standards panel “has the same powers as the National Board, as well as the ability to reprimand a practitioner.” An independent tribunal “has the power to reprimand, fine, suspend or cancel a practitioner’s registration.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	where they have an impairment that affects their practice; where they have contravened particular laws/regulations and/or where they have improperly obtained their registration. A mandatory notification must be made after a practitioner “forms a reasonable belief” that another practitioner or student has engaged in “notifiable conduct” – such as having practised while intoxicated, engaged in sexual misconduct in the course of their practice, or “placed the public at risk of harm” either because they have an impairment or have not acted in accordance with “accepted professional standards.” Mandatory reporting must also occur after a “relevant event” which includes circumstances such as a person being charged with criminal offences, and/or other regulatory/civil penalties, or being investigated for them. Limitation periods Not specified. However, their guidelines state that the AHPRA Board may decide to take no further action with respect to a	- the person to whom the notification relates has not been, or is no longer, registered in a health profession; - the subject matter of the notification has already been dealt with adequately by the Board - the subject matter of the notification is being dealt with, or has already been dealt with, by another entity, or - the health practitioner to whom the notification relates has taken appropriate steps to remedy the subject matter of the notification and the Board reasonably believes no further action is required about the notification.” Form of complaint Notifications can be confidential or anonymous. “While notifications may be made confidentially or anonymously, there can be limitations in progressing investigations of anonymous notifications.” Role of victim-survivor The victim-survivor can be the “notifier” but doesn’t have to be.	- if immediate action has previously taken by imposing a condition on a health practitioner’s registration, the suspension of the registration instead of the condition.” “Examples of behaviour about which immediate action may be taken include: - alleged serious criminal conduct (including where charges have been laid but before any conviction); - conduct unconnected to practice that may diminish the public’s confidence in the profession; - serious performance issues; - sexual misconduct; - substance abuse; - breaches of conditions on registration.” “Examples of other circumstances in which immediate action might be taken include where: - a practitioner has, or may have, an impairment that could pose a serious risk to the public;	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: AHPRA states: “The practitioner will be provided with the opportunity to make written or verbal submissions about the proposed relevant action.” There is no mention of any systemic response in relation to an individual complaint. However, AHPRA notes that “even if a Board decides to take no further action about a notification, the Board can consider the notification at a later time as a part of a pattern of conduct or practice by the health practitioner.” Any enforcement or monitoring of outcomes This is unclear for all actions taken. However, AHPRA does state that: “If a PPSP or responsible tribunal decides to impose a condition on a practitioner’s registration,	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		notification if “given the amount of time that has elapsed since the matter that is the subject of the notification occurred, it is not practicable for the Board to investigate or otherwise deal with the notification.” Evidentiary requirements With respect to any immediate/interim action: “[i]t is not necessary for the relevant Board to make factual findings regarding alleged conduct before making a decision to take immediate action.” That is, “[t]he conduct forming the basis of the allegations does not need to be proved on the balance of probabilities when the Board considers taking immediate action.” Once a matter is investigated and referred to various panels or tribunals for a determination, different evidentiary standards are applied depending on the context. For example, “a panel must observe the principles of natural justice but it is not bound by the rules of evidence...”	It is unclear whether a victim-survivor would be notified of any complaint by a third party against a practitioner who had harmed them. Role of lawyers/advocates It is unclear the role of lawyers in the early stages of an investigation. However, if the matter proceeds to a panel or tribunal hearing, “the practitioner may be accompanied at the hearing by an Australian legal practitioner or other person for support. A legal practitioner or support person may only appear on behalf of the practitioner with leave of the panel.” With respect to advocates, they state: “Ahpra is also conscious of the impact that being involved in a notification process can have on notifiers, practitioners and other people. Ahpra and other bodies provide support throughout the notifications process.”	- a practitioner’s registration was improperly obtained because the practitioner or someone else gave the relevant Board information or a document that was false or misleading in a material particular; and - a practitioner’s registration has been cancelled or suspended in a non-participating jurisdiction (whether within Australia or elsewhere). Any report to police prompted “In some circumstances, Ahpra may refer notifications to the police and/or other national or state-based regulatory bodies.” Relationship of complainant, perpetrator or context AHPRA is a regulatory body; it exists to instil public trust in the health profession and prevent future violence and unsafe practice. Nature of complaint resolution process If the relevant Board believes that it is necessary	it must also decide a ‘review period’ for the condition. At the conclusion of the review period, the relevant Board will review whether the conditions are still required.” “Generally speaking, the primary purpose of conditions (as a final form of disciplinary action) is to: - manage the risk posed by a practitioner by restricting their practice; and / or - assist in facilitating the rehabilitation of a practitioner; and - enable ongoing monitoring regarding the practitioner’s compliance with the conditions.” Breaching a prohibition order is a criminal offence. Powers of complaint body to investigate, monitor and take action “Investigators appointed under the National Law have various statutory powers to obtain evidence and information relevant to an investigation, including: - powers requiring a person to provide information, answer questions or produce documents, and

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		The standard of proof for a panel hearing is the civil standard known as “satisfaction on the balance of probabilities” that the alleged behaviour occurred. This means that the panel must be comfortably satisfied that the practitioner actually behaved in the way that is alleged but does not mean that the panel must be satisfied ‘beyond reasonable doubt’.” Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Can be an individual practitioner, and/or an “employer”.		to take further action, it may do the following: - initiate an investigation into the practitioner - take immediate/interim action against the practitioner (as above) - caution the practitioner - impose conditions on the practitioner’s practise - require the practitioner to undergo a “health or performance assessment”, or - refer the practitioner to a panel or tribunal hearing “After deciding to investigate a practitioner, a Board will: - usually advise the practitioner in writing that they are being investigated; and - appoint an appropriate investigator to investigate the matter, ensuring that there is no conflict of interest between the investigator and the practitioner.” Role of victim-survivor in complaint resolution This is not clear for all stages/options of the process.	powers permitting the investigator to search places (such as practitioner’s residence, or place of practice) and seize objects or documents.” “A person who, without reasonable excuse, fails to comply with an investigator’s request may be liable to a penalty.” “A practitioner who fails to cooperate with an investigation or provides false or misleading information in the course of an investigation may be also subject to disciplinary action.” Are written reasons for decision provided? At the conclusion of an investigation, the investigator must provide the relevant Board with a written report (which includes the investigator’s findings and their recommendations about any action to be taken). Any appeal/review processes following outcome “Immediate action decisions may be appealable if they fall within the types of decisions set out in section 199 of the National Law.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				However, “if the matter being heard by a panel relates to a notification, the notifier may, with leave of the panel, make a submission to the panel about the matter.” It is unclear where (or whether at all) an individual victim-survivor’s interests are taken into account where a notification relates to ongoing practitioner conduct; although this may form part of a Board’s assessment on whether to take immediate action against a practitioner to protect the public, or to act in the public interest. Role of perpetrator (individual/service provider/government) in complaint resolution The alleged perpetrator is referred to as the “affected person” in the investigation process. AHPRA states: “The term ‘affected person’ is used...to describe a person whose interests are or may be affected by a decision or proposed decision.	“The following decisions by panels are appealable under the National Law: • a decision to impose a condition on a practitioner’s registration; • a decision by a health panel to suspend a practitioner’s registration; • a decision by a performance and professional standards panel to reprimand the practitioner.” Any incidental consequences of complaint resolution The process can have significant legal ramifications for the practitioner who is reported. Relationship to police and CJS “A hearing before a panel... is an inquisitorial process, rather than an adversarial one.” However, matters can be referred to police for further action. Also, breaching determination orders can be a criminal offence.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				This will normally be a practitioner who is the subject of regulatory action in respect of their registration status or as a result of a notification. The fair hearing rule requires a decision maker to afford a person an appropriate opportunity to be heard before making a decision which affects their interests... During any interim action, the alleged perpetrator may be directed by AHPRA to do a number of things (e.g. produce documents/information and/or undergo assessments), and they must oblige. However, "practitioners are provided the opportunity to respond to the Board's concerns." There is a focus in the guidelines on ensuring "procedural fairness" for the affected person. Roles of other independent persons/monitors in complaint resolution Not always clear. However, with respect to panel hearings: "Generally, witnesses or people other than the practitioner will not be required to attend, or be made available to attend, a panel hearing."	Any confidentiality or privacy rules (protective of or gagging complainant) Victim-survivors who make a notification about a practitioner are not publicly identified, and AHPRA will request their consent before providing their identifying details to the practitioner. They note that: "The practitioner must be provided with enough information about the conduct, health or performance concerns raised in the notification so as to enable them to respond. In many cases, it will not be possible to progress a matter without the notifier being a witness in any resulting panel, section 178 or tribunal proceedings. AHPRA therefore cannot guarantee anonymity or complete confidentiality." What information is publicly available from the complaint resolution? A panel hearing is not open to the public. However, final tribunal hearings (if the matter goes to a tribunal) are open to the public.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Qualifications/background of complaint resolution decision-maker AHPRA National Boards comprise both community members (open to anyone) and practitioner members (people registered in a relevant profession). They are appointed by a Ministerial Council. Health Panels comprise at least one member who is "a registered health practitioner in the same health profession as the practitioner who is the subject of the hearing; at least one member is a medical practitioner with relevant expertise about the matter that is the subject of the hearing; and at least one member is not, and has not been, a registered health practitioner in the same health profession as the practitioner who is the subject of the hearing." Performance Panels require that "at least half, but no more than two-thirds of the members must be people who are registered health practitioners in the same health profession as the practitioner who is the subject of the hearing; and at least one member must be a person who represents the community." Tribunals have "Members" who are similar to judicial officers.	Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The guidelines include the following statement: "The notification process is designed to be accessible, informative, responsive and independent. Ahpra will provide notifiers assistance in making a notification – for example, if access to an interpreter or translator is required, arrangements will be made through the Translating and Interpreting Service (TIS National)." AHPRA also accepts calls through the National Relay Service.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Social Services	<u>Aged Care Quality and Safety Commission</u>	Who can complain? Anyone can make a complaint, including: • “people receiving aged care • partners, family members, friends, representatives and carers of people receiving aged care • advocates • aged care staff and volunteers • health and medical professionals.” Complaints can be made about an aged care service funded by the Commonwealth Government, such as: • “residential care or residential respite care • Home Care Packages • Commonwealth Home Support Programme • flexible care, including Transition care, and the National Aboriginal and Torres Strait Islander Flexible Aged Care Programme.” Types of violence the complaint applies to/ excludes The following complaint categories are listed in the online complaints form:	Process to complain Complainants are required to lodge a complaint either online, by mail or by phone. The Commission will contact the complainant within 24-48 hours after receiving the complaint, if the complainant has provided their contact details. Form of complaint Complaints can take three different forms: <i>1. Open Complaint</i> • The complainant’s identity will be known by both the Commission and the service provider • The Commission will be able to keep the complainant informed throughout the complaints process • The Complainant will have review rights. <i>2. Confidential Complaint</i> • The complainant’s identity will only be known by the Commission • The Commission will “endeavour not to disclose” the complainant’s identity to the service provider throughout the complaints process	Any interim measures prompted Upon receiving a complaint, the Commission will: • Gather as much information about the complaint as possible • Explain the complaints resolution process to the complainant • Assess the complaint and “look at the safety, dignity, rights and wishes of the person receiving aged care the quality of care and services being delivered; and the service provider’s responsiveness to the complaint” This assessment will determine the urgency of the complaint and the best way to proceed to resolve it. The Commission may “also: • contact the consumer (or their representative) to confirm if they wish [the Commission] to examine the concern or complaint • review basic information about the consumer	Range of possible outcomes The Commission outlines the following possible outcomes: • Agreement: “The complainant and the service provider both agree that the concerns have been addressed and the issues resolved.” • Addressed: The Commission “is satisfied that the service provider has addressed the issue.” • Direction issued: The Commission “believe[s] the service provider is not meeting their responsibilities, [and] can direct them to make changes. A direction requires the service provider to demonstrate how they have met or will meet their responsibilities.” • Referred for compliance action: The Commission “can refer a matter to the Department of Health to consider compliance action. This may be where [the Commission is] concerned the service

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		- Physical environment - Personal property - Medication management - Health and personal care - Food and catering - Abuse - Consultation and communication - Choice and dignity - Falls and falls prevention - Personnel and staff conduct - Security of tenure - Financial - Other In addition, the Commission provides the following examples of common complaints it can assist with: "health care, for example wound care, medication and care assessment" - personal care assistance, for example showering, dispensing medication, feeding and mobility - communication, for example how information is shared with you and how your questions are responded to, including complaints	- The Commission will be able to keep the complainant informed throughout the complaints process - The complainant will have review rights. 3. Anonymous Complaint - Neither the Commission nor the service provider will know the complainant's identity - The Commission will not be able to keep the complainant informed throughout the complaints process - The complainant will not have rights to review the outcome of the complaint. Role of victim-survivor Anyone can make a complaint; they don't need to be the victim-survivor. Where the victim-survivor is not the complainant, the Commission may still take their interests into account by recognising them as an "other party" significantly impacted by the matter. In such cases the victim-survivor does not have to give consent, however the complainant is strongly encouraged to inform the victim-survivor that they are lodging a complaint that relates to the victim-survivor.	- undertake a more detailed review of the service provider's history - engage with relevant people, for example the laundry staff if the complaint is about laundry - review any other information that is necessary and relevant to the complaint." Any report to police prompted The Commission notes that under the <i>Aged Care Act 1997</i>, compulsory reporting provisions exist for people in residential aged care homes; requiring aged care staff or service providers to: "report suspicions or allegations of assaults within 24 hours to local police and the Department of Health. This may be unreasonable use of force or unlawful sexual contact. - report missing residents to local police and within 24 hours to the Department of Health in certain circumstances."	provider has not complied with, or is not complying with, its responsibilities or has failed to comply with directions." No further action: The Commission "may not take further action if the matter is subject to legal proceedings or a coronial inquiry, or if the person receiving care does not want the complaint to be examined, or if circumstances do not warrant further action." Roles of perpetrator (individual/service provider/ government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified on the website. However, see compliance framework from previous Guidelines. Any enforcement or monitoring of outcomes It is unclear whether matters concluding in agreement, or by being addressed by the service provider, are followed up.

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		• staff roles, for example how they do their job and provide care • living environment, for example safety, security, and cleaning • some fees and charges in care agreements • choice and preferences, for example showering and meal arrangements and tailored activities.” The Commission cannot do the following: • “examine concerns about an aged care service that isn’t funded by the Australian Government • examine concerns that are not related to a service provider’s responsibilities under the Aged Care Act 1997 or their funding agreement with the Australian Government • say who should make financial, legal or health decisions on behalf of someone receiving aged care • comment on the service provider’s employment arrangements such as wages or employment conditions	The Commission states that a person receiving aged care has the following rights: • to “complain without fear of retribution • your personal privacy – by making a complaint confidentially or anonymously • be involved in decisions that affect you • be treated with dignity and respect • be free from discrimination • good quality care that meets your needs • full and effective use of your personal, civil, legal and consumers rights and; advocacy support.” Role of lawyers/advocates The Commission refers complainants and/or people receiving aged care to the National Aged Care Advocacy service provided by the Australian Government. The Commission also offers to assist complainants to access advocacy support during the complaints process. It does not specify the role of lawyers.	The Commission’s online complaints form also states that where a matter “involves a serious issue affecting the safety, health or wellbeing of a person receiving aged care, or if it relates to the commission of a serious offence”, they “may be obliged to refer relevant material to the appropriate external agency, including appropriate health professional regulatory bodies and the police.” Relationship of complainant, perpetrator or context This is not specified on the Commission’s website. However, the previous Guidelines for the Aged Care Complaints Scheme (currently under review), stipulate that the relationship can vary from acting in a support role, to one of active investigation. Specifically, it stated: “The Scheme’s resolution approaches range from supporting the complainant to resolve their concerns with the service provider, through to officers investigating the complaint.	However, for matters where directions are issued or further compliance actions are taken, the Commission and/or the Commonwealth Department of Health “monitor the direction to ensure the service provider implements the actions they or [the Commission] have outlined.” If [the Commission] are concerned the service provider has not complied with or is not complying with its responsibilities, including where the service provider has failed to comply with directions, [the Commission] may give consideration to commencing compliance action.” Compliance action may involve publishing the name and details of the service provider on a non-compliance register which is publicly available for 1 month, before being moved to the archives. Powers of complaint body to investigate, monitor and take action Not specified. However, the previous Guidelines stated:

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		- provide legal advice - ask service providers to terminate someone's employment - investigate the cause of death; this is the role of the coroner - always determine whether or not a specific event occurred, especially if we receive conflicting accounts of the event - provide clinical advice about what treatment a person should receive." The Commission also notes that it may not be able to consider an issue that falls within its remit if, for example, it is the subject of legal proceedings or a coronial inquiry. It also states that they may not be able to take action in a matter where "the person receiving care does not want the complaint examined." Limitation periods Not specified. Evidentiary requirements No evidentiary requirements are explicitly stated, however the Commission states that it will accept and consider any evidence given to it by the complainant or service provider. This may		Where necessary, the Scheme has the power to direct a service provider to demonstrate that it is meeting its responsibilities under the Act or, if the concerns are particularly serious, to refer the information for compliance action." Nature of complaint resolution process A range of different approaches can be used, with the focus being "the best outcome for the person receiving aged care, as quickly as possible." These approaches include: - Early resolution: Where the Commission helps the complainant to manage the complaint. This may involve liaising with the relevant service provider on the complainant's behalf, advising both parties as to their respective rights and responsibilities, and arranging advocacy support for the complainant. - Service provider resolution: The Commission can request that the service provider "examine the concern within a set timeframe", with the aim of the complaint being resolved between the two parties as quickly as possible.	"Section 96-2(1) of the Act provides that the Secretary may, in writing, delegate to an officer of the department or to the Aged Care Commissioner (ACC) all or any of the powers of the Secretary under the Act, the regulations or any principles made under Section 96.1. Powers that authorised officers have include: - monitoring powers - the power to enter premises with an occupier's consent - the power to ask people to answer questions, and the power to ask the occupier of premises to assist." Are written reasons for decision provided? For all possible resolution options, the Commission provides written feedback to both parties, that "outlines the issues, process, information used to come to [their] decision, and the outcome." Any appeal/review processes following outcome "Once a complaint is finalised by the Commission,

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		include: "correspondence, documents, policies, nursing files and photographs." Any photos provided will need to be done so with the consent of the person in the photo. Role of legal capacity and substituted decision-making Not specified. However, the Commission states that where a complaint is made by someone other than the person in aged care, "the person receiving aged care has a right to know and a right to be involved." Does a specific individual perpetrator need to be identified? Not specified.		- Conciliation: The Commission takes a more active role in facilitating discussions between the complainant and service provider in an attempt to resolve any concerns. This could take the form of formal and informal discussions over the phone or in person. In this option, the Commission documents the process and both parties are provided with written feedback on the matter. - Investigation: The Commission actively investigates a complaint. Investigations may range from "simple" to "complex", for example involving the collection of documents/information through to conducting site visits, "analysing records and conducting interviews." Written feedback is provided to both parties throughout the investigation process and when the investigation has concluded to advise of the outcome.	complainants and service providers have review rights if they are not satisfied with the outcome. - Complainants can seek review by the Commissioner about a decision to take no further action or to end a resolution process - Service providers can seek review about a decision to end a resolution process" Decisions can only be reviewed after the initial complaints process has been finalised. A party seeking a review must submit an application within 42 days of receiving their letter outlining the initial decision, and must state the reasons they are seeking a review. The application can be made by phone, email or post. "A review officer who was not involved in handling the original complaint will consider [the] request. [The Commission] will initially review the original decision to see if it was right. If [the Commission] think[s] the decision may have been wrong,

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				Mediation: Where a “sustainable outcome” is not able to be achieved, the Commission may encourage the parties to engage in mediation. This incurs a cost, which must be discussed by the parties involved. The previous Guidelines for the Aged Care Complaints Scheme (currently under review), stated: “The Scheme focuses on resolution and promotion of quality improvement and enforcement where required. The complaints framework provides for the protection of care recipients through the resolution of complaints in a manner that is consistent with good practice complaints management. The framework aims to resolve the issue/s in a complaint in a manner that will achieve the most timely, proportionate and appropriate outcome for the care recipient. The Scheme will refer matters for compliance action where there are serious concerns regarding the safety, health and wellbeing of care recipients.”	[they] will work with both parties to the complaint to complete a new resolution process. If [they] think the decision was right, [they] will not re-open [the] complaint. [The complainant] will be advised of the outcome either way. [The Commission] can review a decision only once.” If a party is not satisfied after a review has been completed, they are encouraged to contact the Commonwealth Ombudsman. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS The Commission notes that under the <i>Aged Care Act 1997</i>, compulsory reporting provisions exist for people in residential aged care homes; requiring aged care staff or service providers to: “report suspicions or allegations of assaults within 24 hours to local police and the Department of Health. This may be unreasonable use of force or unlawful sexual contact.

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				Role of victim-survivor in complaint resolution "The complainant and approved provider have both internal and external examination and reconsideration rights." <i>Internal examination and reconsideration rights:</i> "At any time throughout the complaints management process, the complainant and approved provider can raise concerns about the process and these will be taken into account by the Scheme. In addition, once a decision has been made, the parties involved in the complaint can ask for an examination and reconsideration to be carried out." <i>External examination and reconsideration rights:</i> "If either the complainant or approved provider is dissatisfied with the Scheme's processes and/or decisions they can request that the ACC review these processes and/or decisions regarding complaints made about services covered under the Act." Role of perpetrator (individual/service provider/government) in complaint resolution As above.	report missing residents to local police and within 24 hours to the Department of Health in certain circumstances." The Commission's online complaints form also states that where a matter "involves a serious issue affecting the safety, health or wellbeing of a person receiving aged care, or if it relates to the commission of a serious offence", they "may be obliged to refer relevant material to the appropriate external agency, including appropriate health professional regulatory bodies and the police." Any confidentiality or privacy rules (protective of or gagging complainant) Complainants can choose to remain anonymous or use a pseudonym when lodging their complaint. However, in some cases this may not be possible or practical – for example, the Commission may "be legally required to deal with [the complainant] in an identified form," such as when a resolution is not possible without knowing a complainant's name.

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				Roles of other independent persons/monitors in complaint resolution The Commission refers to “other parties” as those parties other than the complainant and service provider, who may have an interest in a particular matter and who the Commission may “consult with and keep informed about the complaints process”. Examples may include: • “the person receiving aged care • an advocate nominated by the person receiving aged care • a legally appointed representative of the person receiving aged care • a person with a significant relationship to the person receiving aged care (such as a partner or close relative) • organisations such as police and hospitals.” “Other parties” do not have review rights, and are not entitled to receive feedback on the progress of the complaint.	The Commission may disclose a complainant’s personal information to third parties “for the purposes of carrying out one or more of our statutory functions or activities”, or for “referral to another organisation that monitors health and aged care quality and professional standards, such as the Australian Health Practitioner Regulation Agency, the Department of Health, state coroners and health complaints entities.” The Commission will “ensure that any request [the complainant] make[s] for confidentiality is complied with unless doing so will, or is likely to, place the safety, health or well-being of any person at risk.” What information is publicly available from the complaint resolution? It appears only if a non-compliance order arises out of a failed direction, that it would appear on the register. The previous Guidelines stated: “Information on the Scheme’s complaints activity can be found in the annual ‘Report on the

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				"However, the Commission has discretion to give feedback about the resolution process to any other person or organisation that has sufficient interest in the matter... Generally the person receiving aged care, or their nominated or legal representative (if not the person making the complaint), is not entitled to feedback or review rights. However the Commission would usually consult the person receiving aged care or their nominated or legal representative before a decision is made that would affect their interests and provide them with feedback about the decision after it is made." Qualifications/background of complaint resolution decision-maker Not specified on the Commission's website. However, the previous Guidelines for the Aged Care Complaints Scheme (currently under review), stated:	Operation of the Aged Care Act 1997 (ROACA). The department has made a commitment to report publicly about the work of the Scheme. This is achieved through monitoring and measuring the Scheme's performance against a set of performance indicators and satisfaction indices. Scheme performance will be reported in ROACA and the department's annual report and quarterly performance reports." Relationship of complaint process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. However the Commission notes that it can't consider a matter that is under investigation by the Coroners Court. Any specific provision for particular groups? The Commission can arrange interpreting assistance, including Aboriginal interpreter services, and assistance

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				"Officers come from a wide range of disciplines including registered nurses, allied health professionals, police officers, lawyers, counsellors, mediators and administrators. On joining the Scheme all officers must: • complete mandatory training • obtain a current police certificate, and • declare any conflicts of interests. Officers are public servants and are required to uphold the Australian Public Service (APS) values in accordance with the APS Code of Conduct."	through the National Relay Service for people who are hearing or speech impaired. The previous guidelines (currently under review) also stipulated expectations of staff to reduce access barriers for different groups. The Commission also states the following: "Please note that the aged care law seeks to protect vulnerable people receiving aged care, not to restrict their sexual freedoms. Residents have the right to select and maintain personal, intimate and sexual relationships with others without fear, criticism or restriction. This includes residents with a mental or cognitive impairment."

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	<u>Department of Social Services</u>	Who can complain? Clients off DSS or a DSS-funded service provider. Types of violence the complaint applies to/excludes Complaints may relate to: • “Unreasonable delay; • inadequate service, explanation or reasons; • legal error; • factual error in decision making process; • human error; • procedural deficiency; • discriminatory action or decision; • flawed administrative process; or • inadequate knowledge/training of staff. • unprofessional behaviour by an officer; • breach of duty/misconduct by an officer; • fraud and compliance issues” Complaints regarding Employment Services – where the complainant believes a service provider is not complying with the National Standards for Disability services –	Process to complain Complainants are encouraged to submit their complaint by phone, fax, email, mail or online using an online <u>complaints form</u>. A team member will: • discuss the complainant’s concerns with them, • advise the complainant about where in DSS their complaint will be assigned to, and will keep them informed of its progress, • formally register their complaint. Form of complaint Anonymous complaints are accepted, but DSS note it is difficult to assess these complaints comprehensively. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complaint body to victim, complainant, perpetrator or context The complaint body may be both the perpetrator and the investigator of the complaint. Nature of complaint resolution process Not clear. It appears that DSS investigates each complaint as it sees fit. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Range of possible outcomes A written response is provided to the complainant within 28 days. If the issue is complex, this timeframe may be extended, and the complainant will be advised accordingly. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Yes, within 28 days. Any appeal/review processes following outcome Complainants are referred to the Commonwealth Ombudsman if unsatisfied with the outcome.

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		are directed first to the provider, then to the National Customer Service Line (NCSL) or the Complaints Resolution Referral Service (CRRS). Limitation periods Not specified. Evidentiary requirements To consider a complaint, DSS require: • Details of the complaint, and • Details of any attempts the complainant has made to resolve the matter. Complainants are encouraged to include “the main facts, in a logical order” in their complaint. This includes their contact details, “relevant dates and times, description of the complaint” and any “relevant documentation” Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.			Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not clear. Any confidentiality or privacy rules (protective of or gagging complainant) DSS staff will seek the complainant's consent before disclosing/requesting any of their personal information. Online consent can be submitted when completing the Online Complaints or Feedback, Enquiry or Compliments Form. Complainants have the right to withdraw their personal information from the Complaints Management process at any time. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>Australian Human Rights Commission</u>	Who can complain? Any person living in Australia can make a complaint. Types of violence the complaint applies to/excludes: Complaints can relate to either: 1. Unlawful <i>discrimination, harassment and bullying</i> (on the basis of sex, disability, race or age; or in the area of employment based on criminal record, trade union activity, political opinion, religion or social origin) 2. Alleged <i>breaches of human rights</i> by the Commonwealth and its agencies. Limitation periods “The President of the Commission can decide not to investigate a complaint alleging unlawful discrimination where the complaint has been lodged more than 6 months after the alleged event(s) happened. If the alleged events fall outside of this timeframe, the complainant must explain the reasons for the delay in making a complaint to the Commission.”	Process to complain The AHRC only accepts written complaints – either online, or via hard copy sent through the post. They can also send complainants a complaint form and help them to fill out the complaint form. The following process applies: 1. Complainants must fill out a complaint form, either online through the AHRC website, or in hard copy format, sent to the AHRC by mail. 2. The AHRC contacts the complainant to seek further information about the complaint. 3. The AHRC contacts the respondent to notify them about the complaint, and provides them a copy of the complaint. 4. The Commission may then ask the respondent to formally respond to the complaint. Form of complaint Anonymous complaints are not accepted. Without a complainant’s identity, the AHRC states that it is “unable to effectively assess, investigate or conciliate [a] complaint.”	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The AHRC is an impartial third party that does not advocate for either the complainant or the respondent during the conciliation process. They state: “Our role is to assist the parties to consider different options to resolve the complaint and provide information about possible terms of settlement.” Nature of complaint resolution process The AHRC uses the process of <i>conciliation</i> to resolve complaints. It is considered “an informal, quick and cost effective way” to resolve complaints. Conciliation conferences may be facilitated through face to face meetings, via phone conferences or in some cases, through written communication (e.g. letters).	Range of possible outcomes Complaint outcomes depend on what the respective parties are willing to agree on. They may include, for example: “an apology, reinstatement to a job, compensation for lost wages, changes to a policy or developing and promoting anti-discrimination policies.” The AHRC also states: “Complaints are resolved in conciliation on a ‘without admission of liability’ basis.” If the parties cannot agree on a resolution, the AHRC may make a final decision. This may include: • Not continuing with a complaint (where the Commission is of the view that the complaint has been adequately dealt with, or is not satisfied that the complaint has substance) • Reporting the matter to the Federal Attorney-General, and recommending compensation be made to the complainant (where the complaint is either not resolved or discontinued, and the AHRC believes a breach of human rights or discrimination has occurred).

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		For complaints under the <i>Sex Discrimination Act 1984 (Cth)</i>, the relevant time frame is 24 months. For complaints alleging human rights breaches and discrimination in employment under the ILO Convention, the relevant time frame is 12 months." Evidentiary requirements <i>For unlawful discrimination:</i> According to the relevant legislation, the complaint must be about something that could be considered unlawful discrimination. The complainant is asked to provide as much detail as possible and explain why they believe the event(s) in question constitute unlawful discrimination. <i>For human rights breaches:</i> The complainant is asked to "provide any relevant information and documents" to the Commission to support the allegations being made.	Role of victim-survivor The victim-survivor is assumed to be the person making the complaint. However, there is provision for someone to lodge a complaint on someone else's behalf. Where this occurs, the victim-survivor must provide authorisation for someone else to act on their behalf by completing an 'Authority to Act' form. This form should be submitted along with the complaint form at the time of lodging the complaint. Role of lawyers/advocates Lawyers and advocates are not required, however are permitted. The AHRC can assist the parties to engage legal or advocacy services (e.g. Community Legal Centres), by providing the relevant contact details of such services.	The AHRC conciliator determines the parameters of each conciliation conference – for example, who will participate and how it will run. It can also arrange special assistance for the parties (e.g. interpreters) and allows support people to be present. The AHRC states: "The conciliation conference is not a public hearing, a court of law or a tribunal. That means parties do not have to prove or disprove the complaint. Instead conciliation allows people to state their point of view, discuss the issues in dispute and settle the matter on their own terms." Role of victim-survivor in complaint resolution The victim-survivor is considered the complainant (unless they have authorised someone else to act on their behalf). A support person can also be present however their role is restricted to moral support and are not usually expected to speak on the victim-survivor's behalf or play an active role in the process	Where a matter is not resolved or discontinued, complainants can also decide to take their complaint to the Federal Court of Australia or the Federal Circuit Court of Australia. However, the AHRC notes that in some cases this is only possible if the court grants a complainant leave to commence such legal action. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: <i>For unlawful discrimination:</i> No; referred to individual legal action. <i>For human rights breaches:</i> "If the President is of the opinion that there has been a breach of human rights, the President may report the matter to the Federal Attorney-General. This report may include recommendations, for example, the President may recommend the respondent change its policies or practices."

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		Role of legal capacity and substituted decision-making Not specified directly. An 'Authority to Act' form allows a victim-survivor to nominate someone else to act on their behalf. This includes agreeing that "officers of the Commission will deal directly with [their nominated person] in relation to this complaint", including sharing relevant information/documents, and discussing the complaint with the Commission. The victim-survivor can withdraw the authority to act at any time by contacting the Commission. Does a specific individual perpetrator need to be identified? No – can relate to an individual perpetrator or organisation.		Role of perpetrator (individual/service provider/government) in complaint resolution The respondent can be an individual or an organisation. Where they are an organisation, that organisation is expected to provide a representative to participate in the process who understands the purpose of conciliation and has the authority to act on behalf of the organisation. The AHRC will contact the respondent after a complaint has been made against them. They will provide the respondent with a copy of the complaint, seek the respondent's views on the complaint, and allow them to respond. They will then be invited to participate in the conciliation process if deemed appropriate (no mention of what is deemed appropriate). The AHRC can compel respondents to provide information relevant to the complaint, and compel them (individuals and organisations) to attend conciliation.	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action The AHRC states that "it is not a court and cannot determine that discrimination has happened." However, it does have the legal power to compel respondents to produce information and attend conciliation when a complaint has been lodged against them. Are written reasons for decision provided? <i>For matters where a resolution is agreed by the parties:</i> The AHRC states that the conciliator "provides information about the law and how the law may apply" in the circumstances, as well as how similar complaints have been resolved; and can assist the parties to "think about ways to resolve the complaint". This can culminate in a written conciliation agreement, which the AHRC can assist the parties to negotiate and write up. It then states: "Where a complaint is resolved, the Commission will finalise the complaint." It is not clear what the finalisation process entails (i.e. whether it is done in writing).

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				Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The AHRC states: "The majority of conciliators at the Commission are nationally accredited under the National Mediator Accreditation System. For more information, visit the Mediator Standards Board website at www.msb.org.au."	<i>For matters where a resolution is not agreed:</i> Where decisions are made by the Commission throughout the complaints/conciliation process, the AHRC states that it will "explain why". However it does not stipulate what format such explanations will take. Where the AHRC decides to refer a matter to the Federal Attorney General, this will be in the format of a report, with written recommendations. Any appeal/review processes following outcome <i>For potential unlawful discrimination:</i> The AHRC cannot determine whether a complaint actually constitutes unlawful discrimination. However complainants can take their matter to the Federal Court of Australia/Federal Circuit Court if their matter is not resolved through the AHRC conciliation process. This must be done within 60 days from when the AHRC finalises the complaint. The AHRC does not take the complaint to either court on behalf of the complainant.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					<i>For breaches of human rights:</i> Unclear. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS The AHRC is external to the CJS; however can make recommendations to the Federal Attorney General. Any confidentiality or privacy rules (protective of or gagging complainant) The conciliation process is considered confidential for both parties. Anything said or done during the conciliation process cannot be made public, and “generally” cannot be used in any future court action regarding the complaint. (There is apparently limited circumstances where information from the conciliation process may be considered by a court – but this is not stipulated).

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					What information is publicly available from the complaint resolution? Parties are asked not to make public what is said/done in the conciliation process. However the AHRC has a Conciliation Register that “provides summaries of a selection of complaints that have been resolved through the [Commission’s] conciliation process.” The complaints provided in the Register are de-identified and are “resolved on a ‘without admission of liability’ basis.” Complaint data is published in the AHRC’s annual reports. Relationship of complaints process and resolution to policy and law reform If the AHRC decides to refer a matter to the Federal Attorney General because it believes a breach of human rights has occurred, a report with recommendations to compensate complainants may be tabled in parliament.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified; although complaints related to sex discrimination, disability discrimination, race discrimination and age discrimination are considered in the context of their specific anti-discrimination legislation. Complainants may contact the Commission using the National Relay Service, however it is unclear whether complaints would be accepted in this manner, as all complaints are required to be received in writing.

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	Commonwealth Ombudsman	Who can complain? Anyone can make a complaint. Types of violence the complaint applies to/excludes: The complaint must be about one of the following organisations and agencies: • ASIC • Services Australia • NDIS • Australian Federal Police • Defence Force • Department of Home Affairs • Australian Border Force • The ACT Ombudsman • Other organisations: • Private education providers • The Postal Industry (e.g. Australia Post, StarTrack, FedEx, Cheque-Mates, D & D Mailing Services) • Private Health Insurance Funds • VET Student Loans The Ombudsman also has responsibility for: • oversight of the Commonwealth Public Interest Disclosure scheme	Process to complain Complainants can make their complaint: • by completing an <u>online complaint form</u>, • by phone • in writing • in person, or • by fax. The complaints handling process may vary considerably depending on the nature of the complaint, the agency/body it relates to, and the complexity of the matter in question. Ombudsman investigators have a large degree of discretion when deciding on how to process complaints. The time it takes to deal with each complaint can therefore vary; from being dealt with quickly to taking months to investigate. Form of complaint The Ombudsman accepts anonymous or 'whistle-blower' complaints. However, they state that they "will not normally investigate unless the complaint raises a serious matter and there is sufficient information in the complaint to enable us to conduct an investigation."	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Ombudsman performs a range of roles, including: • "handling complaints • conducting investigations • performing audits and inspections • encouraging good administration." The Ombudsman considers itself "the oversight body when it comes to [a person's] complaint." It aims to assist a complainant where they are making a complaint against an agency/service provider, and to investigate further if that agency/service provider does not provide a suitable response. Nature of complaint resolution process Where deemed necessary, the Ombudsman may conduct an investigation into a complaint.	Range of possible outcomes Where the Ombudsman finds that a complaint is substantiated, both the complainant and agency/service provider will be informed of that decision. In addition, the Ombudsman may make recommendations to the agency/service provider. "Recommendations are aimed at addressing actions or inaction which is: • Contrary to law • Unjust • Oppressive or improperly discriminatory • Unreasonable (including unreasonable delay, procedural deficiencies, flawed processes) • Based wholly or partly on a mistake of law or fact • Otherwise, in all the circumstances, wrong" Recommendations may include: • "that the agency should reconsider or change its action or decision" that led to the complaint • "that a law, rule or procedure should be changed" and/or • that the agency should take action to remedy the situation

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- inspection and monitoring of certain covert and intrusive powers by police and other law enforcement agencies. Within each of the above categories, there may be requirements as to who can lodge a complaint. The Ombudsman considers whether the actions of the above agencies were: - wrong - unjust - unlawful - discriminatory, or - unfair. There is no explicit mention of investigating different types of abuse, neglect, exploitation, violence. Limitation periods Limitation periods vary for each of the categories/agencies for which the Ombudsman has powers to investigate. Evidentiary requirements A complaint should include “copies of all relevant correspondence with the agency that [the complainant is] making a complaint about and any reference numbers.”	Role of victim-survivor The complaint can be made by the victim-survivor, or they can request that someone else makes a complaint on their behalf. They need to give consent if someone else is making a complaint on their behalf, who is not their legal guardian. Role of lawyers/advocates Not specified.	Steps in the investigation process include: - The relevant agency being notified that they will be investigated - The Ombudsman will request comments and information from the agency about the relevant complaint - Once the investigation has been conducted, the Ombudsman will advise the complainant of their decision and the reasons for it. - The complainant is then provided with the opportunity to respond and to “submit any further information or arguments” - The Ombudsman may then conduct further investigation if necessary. - Finally, the Ombudsman will close the investigation and will advise the relevant agency/service provider of their findings and recommendations. The Ombudsman also states: “If an investigation is undertaken, the Ombudsman Act provides a high degree of flexibility in deciding how the investigation will be	Potential remedies include: - Improved communication (explaining and giving reasons) - Actions and decisions - Reducing delay - suspending or postponing action - Reconsidering or changing a decision - Financial compensation - Apologies Importantly, the Ombudsman “cannot override the decisions of agencies, or compel them to comply with his or her recommendations.” However, if an agency/service provider fails to accept or follow the Ombudsman’s recommendations, the Ombudsman may decide to submit a formal report to the relevant minister, the Prime Minister, or the Parliament, where they believe it is in the public interest to do so. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a

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		"There should be enough information for the Ombudsman to understand the circumstances of [the] complaint and decide how to deal with it." This may include the following information: • What happened • Where the events took place • When (time and date) • Who was involved • Any witnesses to these events • Any medical evidence, photographs or documents which may be relevant • Any action already taken in relation to the complaint • What action or outcome the complainant is seeking Role of legal capacity and substituted decision-making: Regarding legal capacity/substituted decision-making, the Ombudsman states that the victim-survivor needs to provide consent for their representative to communicate with the CO by completing a <u>'Permission on my behalf' form</u> and <u>on another person to act</u> mailing or emailing it to the Ombudsman.		conducted. This enables the most relevant, practicable and efficient approach to be selected. Most investigations are conducted informally, and may entail telephone and/or email contact between the Ombudsman investigation officer and the agency contact officer. An investigation can be as simple as one or two telephone calls, or as complex as requiring review of many agency files and documents, formal interviews, and obtaining independent specialist advice." Role of victim-survivor in complaint resolution The victim-survivor (or the complainant, on their behalf), is: • required to provide as much information about their complaint as possible to the Ombudsman • informed about the decision of the Ombudsman after an investigation has been conducted • permitted to make further comments or provide further information in response to that decision informed about the Ombudsman's final decision on the matter.	systemic response: While the Ombudsman cannot compel agencies to comply with their recommendations, they make recommendations in an attempt to "influence systemic improvement in public administration." Through its investigation process, the Ombudsman attempts to put pressure on relevant agencies to: • Take responsibility • Act promptly • Be fair and proportionate • Look at all the circumstances Consider alternative dispute resolution Any enforcement or monitoring of outcomes The Ombudsman follows up on agencies/service providers for whom it has made recommendations, within the timeframe specified when the recommendations were initially made. It asks these agencies to provide evidence of having implemented the recommendations. The Ombudsman then publishes "summary reports" on the progress of relevant agencies in implementing the recommendations.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Does a specific individual perpetrator need to be identified? Not specified, although it appears as though complaints are assumed to be lodged against agencies/organisations.		Role of perpetrator (individual/service provider/government) in complaint resolution The agency/service provider is: - contacted by the Ombudsman and advised that a complaint has been made against them - required to provide any relevant information and comments in relation to the complaint, to the Ombudsman investigator - informed about the decision of the Ombudsman after an investigation has been conducted - permitted to make further comments or provide further information in response to that decision - informed about the Ombudsman's final decision on the matter. Roles of other independent persons/monitors in complaint resolution Not specified.	Powers of complaint body to investigate, monitor and take action Under the Ombudsman Act, the Ombudsman has "wide powers to obtain information for the investigation of complaints." These include the power to: "require a person or agency to provide documents or other written records relevant to an investigation (s 9 of the Ombudsman Act) - require a person to attend a specified place and answer questions (s 9) - examine witnesses on oath or affirmation (s 13)." Are written reasons for decision provided? Yes. Any appeal/review processes following outcome <i>During the investigation process</i> Where a complainant is not satisfied with the initial findings of the Ombudsman, they are given the opportunity to provide: "additional evidence - extra information or [their] view of the facts

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				Qualifications/background of complaint resolution decision-maker Commonwealth Ombudsmen are appointed officials, usually with legal and/or public service backgrounds. They are assisted by "Senior Assistants" with expertise in particular areas of investigation.	- the reasons [they] disagree with [the Ombudsman's] decision. The Officer will use this information to reconsider their decision." <i>Review of the final decision</i> Once a final decision has been made, the complainant can request that the Ombudsman reviews it. This request must be made in writing within 3 months of the decision being made. The review will be conducted by a senior officer not involved in the original investigation. The "request for review must clearly identify why [they] believe the original decision was wrong, and provide any relevant supporting information or evidence." Not every request for review will be granted. If granted, "the review will consider: - the process adopted by the investigating officer and whether it was fair and adequate to address all the complaint issues raised, - the merit of the officer's conclusions, and

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					- whether the investigating officer properly explained their decision. The review officer may: - uphold the decision of the original investigation officer - change the decision of the original investigation officer - send the matter back to the original investigation officer or another officer for further investigation or better explanation." Matters will only be reviewed once. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS The Ombudsman has some oversight powers of federal police agencies, including powers to audit and inspect various programs/sites. Any confidentiality or privacy rules (protective of or gagging complainant) Only the person who has made a complaint, or the person they have consented to act on their behalf, can access information about their complaint.

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					The types of information the Ombudsman can share include: • “correspondence to the Office received from the person making the complaint • correspondence to them from our Office. • records of telephone and personal discussions involving them, unless those records contain sensitive information. In this case, non-sensitive portions may be disclosed. • other documents—such as copies of correspondence between themselves and the agency, which relates to their complaint—where we are satisfied that the person would have already seen them. • some documents created when we have assessed a complaint of abuse in Defence.” Those seeking other information need to fill out a <u>formal Freedom of Information (FOI) request</u>. “The Ombudsman Act provides protection for an agency or person who gives the Ombudsman information when

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					requested, or because it reasonably appears relevant to an investigation. Information given to the Ombudsman's office: - cannot be used in evidence against the person (other than for giving false or misleading information) - does not breach the Privacy Act 1988 - does not affect a claim that may be made for legal professional privilege." What information is publicly available from the complaint resolution? This is unclear. The Ombudsman has an <u>Information Publication Scheme</u>, but this does not seem to cover information about individual complaints that have been resolved. Information may also be accessible through <u>Freedom of Information</u> requests. Relationship of complaints process and resolution to policy and law reform The Ombudsman can make recommendations to agencies within its remit, as well as the Australian Parliament, about potential policy and law reform opportunities. It also

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					makes submissions to government inquiries, and produces a range of issues papers/ assessments/better practice guides etc. aimed at improving public administration at the systemic level. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? See special provisions for the Indigenous community, and special provisions for <u>people with disability</u>. They also assist complainants who need assistance from translation and interpreting services, or who wish to complain using the National Relay Service.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability Specific	<u>NDIS Quality and Safeguards Commission</u>	Who can complain? NDIS participants. An NDIS participant is defined as person with disability who receives supports or services from an NDIS provider who is a participant in the National Disability Insurance. Refer to sections 28, 29 and 30 of the <i>National Disability Insurance Scheme Act 2013</i>. Complaints about non NDIS funded services are excluded. Types of violence the complaint applies to/excludes The complaint can apply to: • NDIS services and supports that were not provided in a safe or respectful way • NDIS services and supports that were not provided to an appropriate standard; • and how a NDIS provider has managed a complaint about services and support provided to a NDIS participant. Limitation periods None specified	Process to complain Complaints can be made directly to the Commission. Complainants can complain via the telephone or submitting an online complaints form. In order for NDIS providers to be registered they must have complaints management and resolution system in place. The Commission does not appear to provide detail on how it interacts with complaints to a local complaints body, apart from encouraging people to go there first. Form of complaint Complaints can be made over the phone, via the National Relay Service or online, using the complaint contact form. Role of victim-survivor The complaint does not appear to need to come from the victim-survivor. The NDIS Quality and Safeguards Commission Complaints Management and Resolution Guidance document indicates that the participant's family, friends, carers, guardians or advocate can make a complaint on their behalf.	Any interim measures prompted None specified. Any report to police prompted Unlawful conduct or criminal matters will be referred to state or territory police. In accordance with the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i>, NDIS providers' must refer any possible commitment of a criminal offence to the appropriate law enforcement. Relationship of complainant, perpetrator or context The NDIS Quality and Safeguards Commission • "responds to concerns, complaints and reportable incidents, including abuse and neglect of NDIS participants • promotes the NDIS principles of choice and control, and works to empower participants to exercise their rights to access quality services as informed, protected consumers	Range of possible outcomes The NDIS provider, for example, may be required to make changes to their complaints management systems, ensure all service user's behaviour support plans are up to date, ensure management take part in particular training or the Commission may decide to end the complaint. A service provider or worker may be deregistered. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: None specified. Any enforcement or monitoring of outcomes The NDIS provider may be required to report back to the Commission on any action they have been required to take. If the complaint raises serious compliance issues, the Commission has the power to take action.

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		Evidentiary requirements With the complainant's consent the Commission will ask the service provider to produce information and documents. The Complainant may also be asked to produce documents and information. Following the resolution of a complaint, in monitoring the service provider's response, the Commission may request further documentation, contact people involved in the complaint, visit the service or talk to other people affected by the issues including other people with disability and staff. Role of legal capacity and substituted decision-making A person can make a complaint on behalf of a person with disability. A guardian is listed as someone who is able to make a complaint to the Commission. However, the Commission does not appear to provide detail on how a complaint works where someone has a guardian. (see NDIS Quality and Safeguards Commission Complaints Management and Resolution Guidance Version 2.1 - September 2019)	Role of lawyers/advocates The person can seek support from family, friend or independent advocate.	- requires NDIS providers to uphold participants' rights to be free from harm - registers and regulates NDIS providers and oversees the new NDIS Code of Conduct and NDIS Practice Standards - provides guidance and best practice information to NDIS providers on how to comply with their registration responsibilities - monitors compliance against the NDIS Code of Conduct and NDIS Practice Standards, including undertaking investigations and taking enforcement action - monitors the use of restrictive practices within the NDIS with the aim of reducing and eliminating such practices - is working in collaboration with states and territories to design and implement nationally consistent NDIS worker screening - focuses on education, capacity building and development for people with disability, NDIS providers and workers	Powers of complaint body to investigate, monitor and take action The Commission has investigation powers. "The NDIS Commission may decide an issue raised in a complaint is better dealt with through compliance action, including an investigation. This may include issues where we identify serious concerns and risks to people with disability, such as allegations of abuse, assault or neglect. Unlawful conduct and criminal matters will be referred to the appropriate police authorities in each state, and we will continue to handle the non-criminal elements of the complaint. The NDIS will comply with its procedural fairness guidelines in any investigation it undertakes." (see How to make a complaint about a provider NDIS Quality and Safeguards Commission (ndiscommission.gov.au)) Section 29 of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i>, enable the Commissioner to bring own motion inquiries arising out of a complaint or series of complaints about supports or services by NDIS providers.

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		Does a specific individual perpetrator need to be identified? None specified		facilitates information sharing with the National Disability Insurance Agency (NDIA), state and territory authorities and other Commonwealth regulatory bodies.” (See <u>What we do</u> <u>NDIS Quality and Safeguards Commission</u> (ndis.gov.au/quality)) Note this highlights the dual role of the Commission as they are acting as complaints mechanism for individual participants of the NDIS whilst regulating NDIS providers and screening NDIS workers. Nature of complaint resolution process Complainants are encouraged to resolve their complaint with their provider at first instance. The Commission will speak to the complainant and the service provider to see if a quick resolution can be achieved. If this is not successful, a conciliation will take place. Alternatively, the Commission can decide to conduct an investigation, particularly if it involves violence, abuse or neglect. Procedural fairness guidelines will be complied with.	Further “(4) An inquiry may be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence. (5) Without limiting subsection (4), the Commissioner may: (a) consult with other persons, bodies and governments on matters relating to the inquiry; or (b) request information that is relevant to the inquiry from any person; or (c) provide opportunities for people with disability to participate in the inquiry. (6) The Commissioner may prepare and publish a report setting out his or her findings in relation to the inquiry.” Are written reasons for decision provided? Yes

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of victim-survivor in complaint resolution The victim-survivor plays a role in the complaint resolution. The Commission “works closely with people and their NDIS providers to ensure people are not disadvantaged in any way because they have made a complaint. If a complaint is a protected disclosure under the Act it is a serious offence to cause or threaten to cause a detriment to a person for making the disclosure.” (see NDIS Quality and Safeguards Commission <u>Complaints Management and Resolution Guidance Version 2.1 - September 2019</u>). Participation in conciliation is voluntary. Further, pursuant to s. 18 (4) (c) of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i>, in deciding whether to continue to deal with a complaint once a complainant has withdrawn the complaint one of the factors that the Commissioner needs to take into account is whether the complaint has been withdrawn on the basis of victimisation, coercion or duress.	Any appeal/review processes following outcome Complainants can ask for the decision to be reviewed. This is called a reconsideration. Applications for reconsideration must be made within 42 days. If complainants are not satisfied with how the complaint was handled they can raise it with the Commonwealth Ombudsman but they cannot change the Commission’s decision. On the complaints section of the website it states “if you are not satisfied with our response, you can raise your concerns with the Office of the Commonwealth Ombudsman. They can look at how we handled your complaint, but they cannot change our decision.” Alternatively s. 26 1 (a) of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i> “A complainant, or a person with disability affected by an issue raised by a complaint, may apply

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				Role of perpetrator (individual/service provider/government) in complaint resolution NDIS service providers play a role in conciliation. Participation in conciliation is voluntary. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	to the Commissioner for reconsideration of a decision by the Commissioner under paragraph 16(3)(a) to take no further action on the complaint or an issue raised in the complaint.” The Commissioner may review a decision either by application or on their own motion as per sections 27 and 28 of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i>. Any incidental consequences of complaint resolution None specified. Relationship to police and CJS Unlawful conduct or criminal matters will be referred to state or territory police.

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					Section 31 of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i> state that “(1) Nothing in this instrument prevents the Commissioner from referring an issue raised in a complaint to the Minister, the Agency, or any other person or body. (2) The Commissioner may continue to deal with an issue raised in a complaint even if the Commissioner has referred the issue under subsection (1).” Any confidentiality or privacy rules (protective of or gagging complainant) Members of the public will generally have the right to remain anonymous or use a pseudonym. However, this is not always possible. According to the privacy policy “The NDIS Commission understands that anonymity is an important element of privacy and some members of the public may wish to be anonymous when interacting with the NDIS Commission.”

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					The NDIS Commission also understands some members of the public may wish to use a pseudonym. Generally, members of the public will have the right to remain anonymous or adopt a pseudonym when dealing with the NDIS Commission. However, it is not always possible to remain anonymous or adopt a pseudonym and the NDIS Commission will inform you when this is the case.” Further, s. 19 of the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules</i> 2018 states “(1) The Commissioner must take reasonable steps to ensure that a request for confidentiality under subsection 15(3) is complied with.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					(2) However, the Commissioner may decide not to comply with the confidentiality request if the Commissioner considers that doing so will, or is likely to, place at risk the safety, health or wellbeing of any of the following persons: (a) the complainant; (b) a person with disability affected by an issue raised in the complaint; (c) any other person. (3) The Commissioner must take all reasonable steps to notify the complainant before deciding not to keep information confidential that the complainant has requested be kept confidential." What information is publicly available from the complaint resolution? None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					The website and the <i>National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018</i> do not mention any public reporting on complaint resolution. Relationship of complaints process and resolution to policy and law reform None specified. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? Complaints information is available in multiple languages and translators are available. Information is being translated into a range of languages over the coming months. Information is currently available in eleven languages, including information about making a complaint. The complaint's fact sheet provides the number for the Translating and Interpreter Service.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>The Complaints Resolution and Referral Service</u>	Who can complain? Clients of Disability Employment Services, Australian Disability Enterprises and Commonwealth funded advocacy services or their advocate or nominee. Types of violence the complaint applies to/excludes Breaches of the National Standards for Disability Services, for example exploitation – not getting the right pay, unsafe and poor work conditions, abuse and neglect, lack of support, being unfairly exited from a service. Limitation periods 2 years Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Directly to the Complaints Resolution and Referral Service. Form of complaint Telephone, National Relay Service, Translating and Interpreting Service and online complaint form Role of victim-survivor Not specified Role of lawyers/advocates Not specified.	Any interim measures prompted None specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Independent third party. Nature of complaint resolution process CRRS-directed local resolution - assist the complainant and the service to resolve the complaint together. Investigation –CRRS will contact the service and find out what happened and may make recommendations to address the complaint. Self-directed local resolution – assist the complainant by providing suggestions and confidence to resolve the complaint with the service themselves. Role of victim-survivor in complaint resolution Not specified.	Range of possible outcomes None specified. Roles of perpetrator (individual/service provider/ government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: None specified. Any enforcement or monitoring of outcomes None specified. Powers of complaint body to investigate, monitor and take action CRRS has investigation powers Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome None specified. Any incidental consequences of complaint resolution None specified. Relationship to police and CJS None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of perpetrator (individual/service provider/government) in complaint resolution None specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	What information is publicly available from the complaint resolution? None specified. Relationship of complaints process and resolution to policy and law reform None specified. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? Translating and interpreting service

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	The National Disability Abuse and Neglect Hotline Note- this is a referral pathway to complaint mechanisms: "The National Disability Abuse and Neglect Hotline (the 'Hotline') has a vision of a socially just, accessible and inclusive community in which the human rights, citizenship, contribution and potential of people with disability are respected. To this end, the Hotline provides national access for the reporting of abuse and neglect of people with disability and works to promote fair and just treatment of people with disability; to achieve social justice, equality and the same rights, responsibilities, opportunities, access and participation as other people in Australian society."	Who can complain? "Anyone can contact the Hotline, including family members, friends, service providers or a person with disability." Types of violence the complaint applies to/ excludes "Abuse is the 'violation of an individual's human or civil rights, through the act or actions of another person or persons.' Neglect is a 'failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care.' Types of abuse may include: - Physical abuse - such as punching, hitting, slapping, burning etc. - Sexual abuse - forcing someone to take part in sexual activity against their will - Psychological or emotional abuse - threatening, harassing or intimidating a person - Constraints and restrictive practices - restraining or isolating people other than for medical necessity or to prevent immediate self-harm	Process to complain The Hotline is available Monday to Friday 9am to 7pm (AEST). Form of complaint "To make a report, contact the Hotline on 1800 880 052 or send an email to: hotline@workfocus.com.: "When you call the hotline you will be asked for permission to report: - Your name, address and age - Some information about the service or situation where the abuse or neglect is happening, or has happened - The name of the person or persons responsible for the abuse or neglect - The name, age and address of the person being abused or neglected. You will also need to give permission for the Hotline to pass information on to other organisations who can investigate your report." Role of victim-survivor Not applicable – referral service.	Any interim measures prompted. Any report to police prompted Not applicable. Relationship of complainant, perpetrator or context The Hotline is funded By the Department of Social Services. Nature of complaint resolution process Not applicable – referral service. Role of victim-survivor in complaint resolution Not applicable – referral service. Role of perpetrator (individual/service provider/government) in complaint resolution Not applicable – referral service. Roles of other independent persons/monitors in complaint resolution "The National Disability Abuse and Neglect Hotline (The Hotline), is a free, independent and confidential service for reporting abuse and neglect of people with disability."	Range of possible outcomes "If a caller reports abuse or neglect in a government-funded service, the Hotline will refer the report to the government body that funds the service. The funding body will investigate the report. Types of government-funded services used by people with disability include open or supported employment, accommodation, community services, and respite care services. If a caller reports abuse or neglect in any other situation, the Hotline will refer the report to an agency able to investigate or address the report e.g. an ombudsman or complaints-handling body." The Hotline will refer to the NDIS Quality and Safeguards Commission regarding any NDIS related complaints The Hotline will refer to the NSW Ageing and Disability Commissioner regarding any domestic complaints within New South Wales.

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		- Financial abuse - the wrongful use of another person's assets or denying a person the use of their own assets - Legal or civil abuse - denial of access to justice or legal systems that are available to other citizens - Systemic abuse - failure to recognise, provide or attempt to provide adequate or appropriate services, including services that are appropriate to that person's age, gender, culture, needs or preferences. Types of neglect may include: - Physical neglect - failure to provide adequate food, shelter, clothing and protection. Supervision medical or dental care that places people at undue risk through unsafe environments or practices - Passive neglect - withholding or failure to provide the necessities of life - Willful deprivation - wilfully denying a person assistance and thereby exposing that person to the risk of physical, mental or emotional harm	Role of lawyers/advocates The Hotline will encourage the notifier to seek advocacy support if needed.	Qualifications/background of complaint resolution decision-maker Not applicable – referral service.	Roles of perpetrator (individual/service provider/ government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not applicable – referral service. Any enforcement or monitoring of outcomes Not applicable – referral service. Powers of complaint body to investigate, monitor and take action Not applicable – referral service. Are written reasons for decision provided? Not applicable – referral service. Any appeal/review processes following outcome Not applicable – referral service. Any incidental consequences of complaint resolution Not applicable – referral service. Relationship to police and CJS Not applicable – referral service. Any confidentiality or privacy rules (protective of or gagging complainant) Not applicable – referral service.

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		Emotional neglect - restricting the social, intellectual and emotional growth or well-being of a person." The Hotline cannot assist with NDIS complaints. Limitation periods Not applicable – referral service. Evidentiary requirements Not applicable – referral service. Role of legal capacity and substituted decision-making Not applicable – referral service. Does a specific individual perpetrator need to be identified? Not applicable – referral service.			What information is publicly available from the complaint resolution? Not applicable – referral service. Relationship of complaints process and resolution to policy and law reform Not applicable – referral service. Any specific differences in process and resolution where victim-survivor is deceased? Not applicable – referral service. Any specific provision for particular groups? People who are deaf, hearing or speech impaired can use the National Relay Service. People who speak a language other than English can use the Translating and Interpreting Service.

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Education	ACT Education Directorate	Who can complain? “Anybody – parent, student, carer, or member of the community.” Types of violence the complaint applies to/excludes Not specified. Limitation periods Not specified. Evidentiary requirements Complainants are asked to “provide information that is timely, accurate and complete.” Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified; however it appears complaints can relate to a school as a whole, or a school's response to an issue.	Process to complain Complainants are encouraged to raise their concerns with the relevant school in the first instance. Where a resolution is not reached, or the complainant is unhappy with the outcome, they can then complain to the Directorate. They can do so using the online Education Directorate contact form. Written complaints can also be made. This complaint is then referred to the “relevant business area” in the Directorate for action. Once complaints have been escalated, the Directorate will: - advise complainants within 30 days of having received the complaint - assist complainants to document the complaint if required - ask complainants what outcome or resolution they are looking for - keep them informed throughout the process, including advising them about the outcome of the complaint and, where appropriate, any actions taken.	Any interim measures prompted Not specified. Any report to police prompted Not specified; though complainants are encouraged to take their complaint to police if a child is in danger. Relationship of complainant, perpetrator or context The complaint body may be both the perpetrator (either directly, or through funded services) and the investigator of the complaint. Nature of complaint resolution process It takes the form of an “investigation.” When a written complaint is lodged, the Directorate will: develop a plan about how to fairly progress the management of and/or investigate a written complaint and will inform the complainant about the plan	Range of possible outcomes Not specified. Part of the complaints process involves asking the complainant what resolution they are looking for. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: With complainants’ permission, feedback arising from complaints is shared with “relevant areas” of the Directorate “to inform service improvement” and “improvements to policy, procedure and practice.” Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action “Section 22 of the Education Act 2004 requires the Director-General to implement a complaints policy for public schools [and] investigate complaints about the administration, management and operation of ACT public schools that are not frivolous or vexatious...”

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			Form of complaint Complaints can be confidential, and can also be made anonymously. In case of the latter, this can affect the ability of the Directorate to investigate, resolve and respond to the complaint effectively. It also affects the Directorate's ability to provide the complainant with feedback on the outcome of the complaint. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	• tell people who are the subject of the complaint what the complaint is about and the identity of the person who has made the complaint • apply procedural fairness principles • decide, case by case, whether to investigate anonymous complaints • maintain a complaint register including date received, complaint details and outcome. Role of victim-survivor in complaint resolution Not specified; they may be the complainant or may not be. It is not clear whether they would be informed about the complaint if they were not the complainant. Role of perpetrator (individual/service provider/government) in complaint resolution They are the subject of investigation. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any appeal/review processes following outcome Complainants who are unsatisfied with the outcome can pursue the complaint with the ACT Ombudsman or ACT Human Rights Commission. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Complaints are handled "confidentially and impartially." "The Directorate may not provide information to complainants where it impacts on the privacy of others." What information is publicly available from the complaint resolution? Section 22 of the Education Act 2004 requires the Director-General to implement a complaints policy for public schools; investigate complaints about the administration, management and operation of ACT public schools that are not frivolous or vexatious; and report in an annual

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					report the details about the number of complaints that were investigated. Relationship of complaints process and resolution to policy and law reform Complaint data is used “to improve school services or clarify policies and procedures.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Directorate states that it provides “interpreting and translation services” as well as “communication support for people who are deaf or hard of hearing and those with a speech impairment.” However it does not stipulate separate access options for people with these needs.

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Health	ACT Health Services Commissioner	Who can complain? "A person accessing or using a service", or "a person's carer, advocate or legal representative on their behalf." The Commissioner can also undertake a Commission Initiated Complaint. Types of violence the complaint applies to/excludes "The Health Services Commissioner can deal with complaints about all health services provided in the ACT – public and private, services provided in a hospital, a general practice and all individual registered practitioners." This may include, for example, cases where: • "A health provider refuses access or transfer of medical records • A health provider inappropriately shares health information • A health record includes incorrect information or a health provider has incorrectly interpreted the information in a health record."	Process to complain Complainants are required to fill in an online form (and can also contact the Commission by phone for assistance in doing so). Once a complaint has been lodged, the Commission will: • Contact the person or organisation that is the subject of the complaint, and provide them with a copy of the complaint • Ask that individual/organisation to provide a response to the complaint • Advise the complainant about that response • In some cases, inform other parties "mentioned in [the] complaint" about the complaint. The Commission will then decide whether to continue with the matter or not; and may decide to recommend resolving the matter through conciliation. Form of complaint Complaints are kept confidential and in some cases can be made anonymously, or be handled "by keeping the complainant/notifier anonymous." Role of victim-survivor May be the complainant, or may have someone complain on their behalf.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Commission is an independent agency, and is impartial to the parties involved in conciliation. Nature of complaint resolution process The Commission generally tries to resolve health related complaints through conciliation with the health service or with the health practitioner. "Conciliation is similar to mediation, and not like a Tribunal or Court hearing." "The conciliator can provide information to assist the parties to reach a resolution" and help the parties "to explore ways of resolving the complaint, and also aid negotiation to increase the chance of getting an agreement." "The conciliator can also provide information about how other complaints have been resolved."	Range of possible outcomes "The kinds of actions that are agreed upon to resolve a complaint depends on what the parties are open to, and what the complaint is about. Examples of actions which may lead to resolution are: • An apology, statement of regret, or acknowledgement of distress; • Improved communication pathways; • An agreement to introduce changes to practices or policies; • A commitment to train relevant staff; • Re-instatement to a job, or an offer of employment; • Re-instatement of a service, or change to how it is provided, or by whom; • Financial compensation for monetary loss or injury to feelings, or in recognition of a service leading to a poor outcome." If the parties cannot resolve the complaint at conciliation, the Commission may request further information before making a final decision.

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		"The Commissioner may initiate a complaint where: - the complainant has withdrawn the complaint for any reason but the commission is satisfied that it is in the public interest to consider the complaint - The complaint appears to reveal a systemic problem about an activity or a service - the complaint, if substantiated, raises a significant issue for the ACT, or an issue of public safety. - It may be possible for action in relation to the complaint to be taken under another Act if the complaint is substantiated by, for example, reporting a health professional to a health profession board or making an application for an occupation discipline order in relation to the health professional to the ACAT	Role of lawyers/advocates Lawyers and advocates may be allowed in the conciliation process, with the Commissioner's permission. The Commissioner considers this on a case-by-case basis. The Commission states: "Advocates and lawyers can help their clients prepare for conciliation by: - giving advice about the law including speaking frankly about the strengths and weaknesses of their client's case; - providing information about what could happen if the complaint is not resolved at conciliation; - helping their client weigh up the benefits and risks of taking legal (or other) action on the complaint if it is not resolved; - supporting and encouraging their client to take an active role in the conciliation where appropriate; - assisting the client to think about all of the different options for resolution; - having their client rank how important each option is to them, and also carefully consider how they might compromise so as to reach a resolution of the complaint;	Role of victim-survivor in complaint resolution "The complainant and the respondent are the main people involved in a conciliation process." Role of perpetrator (individual/service provider/government) in complaint resolution As above. In addition, "any representative of a company or organisation needs to be aware that conciliation is focused on resolution, and must have authority to make decisions to achieve this end." Roles of other independent persons/monitors in complaint resolution Support people are welcome to accompany the parties to the conciliation. There is no mention of independent monitors. Qualifications/background of complaint resolution decision-maker Commissioners are appointed officials who have legal and/or industry experience relevant to the complaints area.	"The Commissioner can also finalise complaints for other reasons. For example, where the Commissioner is satisfied that a reasonable explanation has been provided by the respondent, where the complaint does not have merit or has already been dealt with by another agency." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not clear. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action The ACT Human Rights Commission handles complaints about the provision of health services in the ACT and complaints about access to and integrity of health records in the ACT under the ACT Health Records (Privacy and Access) Act 1997.

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		- If the complaint raises systemic issues, or may significantly affect an individual; - If the complaint raises serious public safety or other public interest issues; - The detriment potentially suffered by a complainant or respondent if the Commission elected to take such action; - The group affected is particularly vulnerable eg children, detainees or persons with severe disability." Limitation periods Not specified. Evidentiary requirements Complainants are encouraged to "provide as much detail as possible about what happened, when the events occurred and who was involved." Role of legal capacity and substituted decision-making A person's carer, advocate or legal representative can make a complaint on their behalf.	deciding with their client what the conciliation agreement will look like, and what it will contain."		Also, "Section 48 of the HRC Act provides the Commission with the power to on its own initiative consider: - an act or service that appears to the commission to be an act or service about which a person could make, but has not made, a complaint under this Act; or - a children and young people service complaint - a disability service complaint - a complaint about services for older people - a health services complaint - any other matter related to the commission's functions." However, "the Commission is not a court and does not have the power to decide if what [the complaint is] about is discrimination or a breach of...rights." Powers to compel parties to provide information, and/or to monitor outcomes are not clear.

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		Does a specific individual perpetrator need to be identified? Can be an individual or organisation.			Are written reasons for decision provided? "If an agreement can be reached by the complainant and respondent, the conciliator is required to write up a conciliation agreement, and helps the parties to negotiate mutually agreeable wording." "For discrimination complaints, the Commission is required to register a conciliation agreement with the ACT Civil and Administrative Tribunal." Any appeal/review processes following outcome "When the Commission closes a discrimination complaint where conciliation has not led to agreement, the complainant gets 60 days to ask the Commission to refer the complaint to the ACAT, unless the complaint is withdrawn. The ACAT can decide whether unlawful discrimination has occurred, and if so what orders it should make." Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. However, the Commission has a close working relationship with AHPRA.

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					Any confidentiality or privacy rules (protective of or gagging complainant) "Conciliation is confidential. This means that the Commission cannot give information about what happens at conciliation to the ACT Civil and Administrative Tribunal (ACAT) or a Court if any further legal action occurs." "There is also a legal obligation on both parties to maintain the confidentiality of any conciliation as set out in section 99 of the <i>Human Rights Commission Act 2005</i>." What information is publicly available from the complaint resolution? Complaint data, and de-identified examples of complaints are provided in the Commission's annual reports. Relationship of complaints process and resolution to policy and law reform The role of the Health Service Commissioner also includes: • "supporting improvements in the provision of health services"

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					• promoting awareness of the rights of users of health services • raising awareness of the responsibilities of providers of health services." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified for the Health Services Commissioner specifically, but yes for the broader Human Rights Commission.

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	ACT Health	The Department collects "consumer feedback" in the form of compliments, comments or complaints. Complainants are directed to provide feedback about: - a private health service, to the ACT Health Services Commissioner, or AHPRA; or - a public health service, to the department's internal consumer feedback mechanism. Other people can provide feedback on behalf of a consumer of a public health service if they complete a "release of information form."	For complaints about a public health service, complainants are directed to an online form with questions including: "What would you like to tell us?" "What would you like to happen?" There does not appear to be any public information about how the complaints process operates.	The department refers to the Australian Charter of Healthcare Rights, developed by the Australian Commission on Safety and Quality in Healthcare as guiding its response to complaints.	The outcomes of the complaints management process are not specified.

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Social Services	ACT Department of <u>Community Services</u>	Who can complain? Anyone can complain about a service provided. Types of violence the complaint applies to/excludes Can relate to any dissatisfaction with a service provided by the Community Services Directorate or agencies/providers that it funds. The examples it provides "include: • unreasonable delay; • inadequate advice; • failure to apply policy and procedures; • human or factual error, legal error, unprofessional behaviour/attitude of an officer; • unreasonable, harsh or discriminatory action; and • access to services and resources." Its complaints policy categorises complaints into the following groups: • Responsiveness • Objectivity and fairness • Access to services and resources	Process to complain "A complaint can be submitted by email, phone, mail or in person by contacting": • The person in the relevant service they have been dealing with; • The Complaint Unit from the area providing the service; • The Quality, Complaints and Regulation Branch; or • The Directorate's main contact point." Level 1: Frontline staff "The service provider should be given the first opportunity to resolve the complaint. This is often the quickest and easiest way to address [the] concerns. Making a complaint should be done in writing and [the Complainant] should receive an acknowledgement that [their] complaint has been received within 48 hours. [Their] complaint will be resolved by staff within seven (7) days where possible." Level 2: Complaints Manager in Relevant Business Unit "Should [the Complainant] remain dissatisfied with the response to [their] complaint, [they should] contact the Manager of the service area where [their] complaint has originated. The Manager will liaise with the Complaints Unit of the area before contacting [the Complainant]."	Any interim measures prompted "When determining how a complaint will be managed, [the Directorate will] first consider the risk to all parties and seek to understand: • how serious, complicated or urgent the complaint is; • whether the complaint raises concerns about a person's health and safety; • how the person making the complaint is being affected; • the consequences if resolution of the complaint is delayed; • whether a resolution requires the involvement of other organisations; and • what CSD reporting category the complaint falls into" Any report to police prompted Not specified. Relationship of complainant, perpetrator or context If a complaint is being investigated at Level 1 or 2, then the complaint handler may also be the perpetrator or the direct funder of the perpetrator.	Range of possible outcomes Possible outcomes are unclear. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Directorate notes that as a result of investigating complaints, it may be able to make recommendations for action or improvement of service delivery. For example, it states that complaints allow the Directorate to: • "identify knowledge gaps • recognise opportunities for improvement • fix systemic issues, and • build better relationships." Any enforcement or monitoring of outcomes The Directorate states that they "monitor the implementation of agreed recommendations to ensure the continuous improvement of services", however does not provide details as to what this specifically entails.

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		• Privacy and disclosure • Communication • Failure to apply policy and procedure • Unprofessional behaviour/attitude of an officer • Complaints involving third parties Limitation periods Not specified. Evidentiary requirements Complainants are expected to provide as much information as possible about their concerns. Failure to do so may impact the investigation process. Role of legal capacity and substituted decision-making “A complaint can be made by one person, jointly with somebody else, or can be lodged on another person’s behalf.” Complainants are expected to let the Directorate know if they require assistance to access their service. Their complaints policy further states:	<i>Level 3: Quality, Complaints and Regulation Branch</i> This level handles complex complaints and independent internal reviews of complaints from levels 1 and 2. If [a level 1 or 2] complaint remains unresolved, the service area may contact QCR to escalate [the] complaint or [the Complainant] will be directed to contact the CSD Complaints Senior Investigator directly.” “All areas of the Directorate respond to complaints in line with the Directorate’s Complaint Handling and Management Policy. The Policy sets out the requirement that complaints are acknowledged within 2 days of being received by the relevant area and that complaints requiring a response are replied to within 30 days.” Form of complaint Complaints are preferred in writing. They can be made anonymously if desired. Role of victim-survivor According to the Complaints Policy, the person making a complaint will be: • “provided with information about [the] complaint handling process; • provided with multiple ways to make complaints;	Where a complaint begins or is referred to Level 3 (the Quality, Complaints and Regulation (QCR) Branch of the Directorate), the relationship is more independent – the QCR branch “operates independently of any program, funding or policy stream within the Community Services Directorate (CSD). It provides a complaints resolution and internal review function for the Director-General and aims to deliver and maintain high quality services. QCR also undertakes complex investigations at the request of the Director-General or other Executive within CSD.” Nature of complaint resolution process The Complaint Management system comprises 6 steps: 1. Receive 2. Acknowledge 3. Address & investigate 4. Provide reasons for decision 5. Closing the complaint, recording keeping and review 6. Analyse and report data for continuous improvement.	Powers of complaint body to investigate, monitor and take action “The Senior Investigator does not have the power to change a decision, however, can undertake an investigation to examine how a decision was made.” Are written reasons for decision provided? Yes. Complainants receive a written response that comprises: • “the outcome of the complaint investigation and any action taken; • the reason (s) for [the] decisions; • any remedy or resolution (s) ...proposed to be put in place; • options for review available to the complainant, such as internal review, external review or appeal; and • [complainants’] rights to access information in accordance with the Freedom of Information Act 2016.”

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	"If a complainant prefers another person or organisation to assist or represent them in the making and/or resolution of their complaint, we will communicate with them through their representative if that is their wish. Anyone may represent a person wishing to make a complaint with their written consent (eg an advocate, family member, legal or community representative, member of Parliament, or a representative from another organisation)" Does a specific individual perpetrator need to be identified? Can be an individual, service provider, or multiple service providers.	• listened to, treated with respect by staff and actively involved in the complaint process where possible and appropriate; and • provided with reasons for [the Directorate's] decision(s) and any options for redress or review" In turn, Complainants are responsible for: • "treating staff...with courtesy and respect • clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of CSD to assist them in doing so • providing to the best of their ability all the relevant information available to them at the time of making the complaint • being honest in all communications... • informing...staff of any other action they have taken in relation to their complaint • cooperating with the staff who are assigned to assess/ investigate/resolve / determine or otherwise deal with their complaint. Role of lawyers/advocates The Directorate can advise complainants about how to access the support of external advocacy organisations.	• "The QCR branch provides the services of a Senior Investigator who can examine complex complaints, review the complaints handling process, and review the outcome of administrative decisions. The Senior Investigator does not have the power to change a decision, however, can undertake an investigation to examine how a decision was made. The Senior Investigator can also make recommendations to business areas in relation to how their systems and processes may be improved based on the outcomes of an investigation." Role of victim-survivor in complaint resolution Complainants will be informed about: • "who is handling their complaint and how to contact them; • how the complaint will be handled; • what issues are being considered; • the expected timeframes for our actions; • the progress of the complaint and reasons for any delay; • their likely involvement in the process;	"The QCR branch provides the services of a Senior Investigator who can examine complex complaints, review the complaints handling process, and review the outcome of administrative decisions. The Senior Investigator does not have the power to change a decision, however, can undertake an investigation to examine how a decision was made. The Senior Investigator can also make recommendations to business areas in relation to how their systems and processes may be improved based on the outcomes of an investigation." Any incidental consequences of complaint resolution The Complaints Policy states that the Directorate "will ensure that people making complaints are not adversely affected because a complaint has been made by them or on their behalf." Relationship to police and CJS The Complaints Policy states: "The Reportable Conduct Scheme is allegation based. Employers (designated entities) covered by the Scheme must report allegations, offences or convictions relating to child-related misconduct by an employee to the Ombudsman.	

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				- the possible or likely outcome of their complaint; and - their review rights and what to do next if not satisfied with the outcome." However, it is not clear what the role of a victim-survivor is in this process, if they are not also the complainant. Role of perpetrator (individual/service provider/government) in complaint resolution People who are the subject of a complaint are "responsible for: - cooperating with the staff of CSD who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction - providing all relevant information in their possession to CSD or its authorised staff when required to do so by a properly authorised direction or notice - being honest in all communications with CSD staff - treating the staff CSD with courtesy and respect at all times and in all circumstances	It does not matter whether the employee engaged in the conduct in the course of employment or whether a child consents to the conduct. The Reportable Conduct Scheme does not interfere with reporting obligations to ACT Policing or Child, Youth and Families, or any other relevant professional bodies. If employees suspect criminal conduct has occurred, they should report to ACT Policing in the first instance. Reportable Conduct Contact Officers have been appointed for the Directorate and if a complaint is considered a potential breach under the Reportable Conduct Scheme, it will be referred to CSDs People Management (HR) and a report will be made to the ACT Ombudsman." Any confidentiality or privacy rules (protective of or gagging complainant) "All complaints are treated with confidentiality and personal information is collected, managed, used and disclosed in strict compliance with the requirements of the <i>Information Privacy Act 2014 and the Health Records (Privacy and Access) Act 1997.</i>"

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				- refraining from taking any detrimental action against the complainant in reprisal for them making the complaint.” “If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.” Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker This is dependent on the level of complaint. At Level 1 the complaint resolution decision-maker is a service provider. Level 2 is a department official responsible for overseeing that service provider. Level 3 is an independent investigator who is suitably qualified in complaints management.	Complaints are “dealt with in a confidential manner and will only be discussed with the people directly involved in managing and responding to the complaint. As part of an investigation into a complaint, allegations may be discussed with the relevant staff where appropriate in line with natural justice principles.” In addition, the Complaints Policy notes that: “Due to privacy and confidentiality considerations it may not be possible to advise the complainant of a specific outcome of a complaint investigation where it relates to a staff member.” What information is publicly available from the complaint resolution? Not clear. However, “The <i>Public Interest Disclosure Act 2012</i> applies in respect of disclosures/complaints which suggest serious or systemic concerns that may bring harm directly or indirectly to the general public, now, or in the future.” Public interest disclosures may concern matters relating to corrupt conduct, fraud or theft, official misconduct or maladministration, harassment, intimidation or discrimination, or practices endangering the health or safety of staff, the community or environment.

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					Relationship of complaints process and resolution to policy and law reform “CSD complaints handling staff will analyse complaints data and feedback on a quarterly basis. This will be undertaken at Level Two complaints and above to ensure standard performance measures have been developed and implemented to inform quarterly reports to the Director-General. The data provided by the Business Units is compiled by QCR and analysed to identify trends, and develop recommendations about how to improve services.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Directorate seeks to make its information and services accessible by providing alternative reading formats and translation/interpretation assistance (e.g. the National Relay Service and interpreter services for languages other than English).

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>ACT Justice and Community Safety Directorate</u>	Who can complain? Any clients or stakeholders of the Directorate. Types of violence the complaint applies to/excludes Complaints are considered that relate to the “performance, quality, or responsiveness” of the Directorates’ services. Complaints will not be investigated if any of the following apply: • “There is insufficient information to investigate the complaint. • The Directorate is not responsible for the legislation governing the complaint. • The complaint is more appropriately investigated by another body such as ACT Policing, Transport Canberra and City Services Directorate or the Chief Minister, Treasury and Economic Development Directorate. • There is legislation that provides an appropriate or specific handling mechanism.	Process to complain Complaints can be made through the Access Canberra website; or lodged by mail, email, phone or in person. Form of complaint Complaints can be anonymous, though this may impact the ability of the Directorate to provide the complainant with a written outcome. Role of victim-survivor Complainants are expected to “cooperate fully during the complaint management process” after lodging a complaint, including “promptly providing any additional information that may relate to the matter.” Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context The Directorate may have perpetrated the behaviour being investigated, or may fund services being investigated. Nature of complaint resolution process The Directorate adopts an investigative process: • They acknowledge receipt of the complaint within 5 working days. • The complaint is assessed to decide whether an investigation is warranted. This process may be performed by the relevant business unit, or “another impartial area” of the Directorate, where a perceived conflict of interest exists. • If the complaint can be resolved quickly, an apology or explanation may be provided at this early stage.	Range of possible outcomes Complainants are asked to advise the Directorate of the outcome they are seeking. Options include “an apology, a different decision, or expedited action.” “If the complaint is substantiated, the Directorate may undertake a range of actions, including but not limited to: • resolution of any issues raised in the complaint • revision of a policy, practice or procedure where the complaint reveals systemic or procedural weaknesses • staff training • staff debriefing/counselling.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Directorate recognises that “the resolution of a complaint is not the last step in effective complaint handling.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- The matter is currently before a Court, Tribunal, Board or Committee. - There is no way of resolving the complaint." Staff misconduct is said to be investigated "in accordance with the relevant administrative policy". This could include the <i>Public Interest Disclosure Act 2012</i>. Limitation periods Not specified. Evidentiary requirements Not clear – however a complaint may not be investigated if there is not enough evidence to substantiate it. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		- If it is determined that an investigation is not needed, the Directorate will inform the complainant and suggest other avenues for complaint resolution. - If the complaint cannot be resolved quickly, an investigation will then be conducted. - Once an investigation has completed, the Directorate will inform the complainant of the outcome within 21 days, and outline their rights to a review. Different agencies within the Directorate have their own further, detailed complaints handling policies. Role of victim-survivor in complaint resolution Provides information to the Directorate about the complaint as well as the outcome they are seeking, and is then informed about the findings of the investigation once completed. Role of perpetrator (individual/service provider/government) in complaint resolution Not clear.	A complaint may point to a systemic administrative problem in the directorate – a defect in administration that may have occurred in other cases and could occur again in the future." Thus following a complaint, the Directorate may seek to undertake: "revision of a policy, practice or procedure where the complaint reveals systemic or procedural weaknesses." Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Yes. Any appeal/review processes following outcome If the complaint cannot be resolved, the complainant will be advised of alternative review mechanisms, such as the ACT Ombudsman, ACT Human Rights Commission, Office of the Information Commissioner, or Public Interest Disclosure Officers.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS “The directorate is also unable to investigate complaints in some circumstances, including where... the complaint is more appropriately investigated by another body such as ACT Policing or the Chief Minister, Treasury and Economic Development Directorate.” Any confidentiality or privacy rules (protective of or gagging complainant) The Directorate states the following: “All parties involved in a complaint have the right to expect appropriate confidentiality. It is possible; however, that maintaining confidentiality may compromise the effectiveness of the investigation into the complaint. This usually occurs because of the requirements of procedural fairness to the subject of the complaint. If you request that we maintain your confidentiality at all times, we will advise you of any limitations this may place on the investigation and possible outcomes.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? It appears none, apart from de-identified data that would appear in annual reports; unless the complaint is sufficiently serious to warrant public interest disclosure. Relationship of complaints process and resolution to policy and law reform The Directorate uses complaint data and trending analysis to improve service delivery across the department. It also reports on complaints and complaint resolution to the Director-General of the ACT. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>ACT Ombudsman</u>	Who can complain? Anyone can complain. Types of violence the complaint applies to/excludes Complaints are assessed to determine whether an ACT government agency has acted in an "unfair, discriminatory or unjust" manner – termed "maladministration." Some examples provided include: • "taking an unreasonable amount of time • not following procedures • providing misleading or inadequate advice • refusing to answer reasonable questions." The ACT Ombudsman also has "specialist functions" including being responsible for the ACT Reportable Conduct Scheme (for child abuse), Freedom of Information scheme, oversight of ACT Policing, Inspector for the ACT Integrity Commission, and overseeing the Public Interest Disclosure scheme.	Process to complain Complaints can be made in writing, by phone or via an online form. The Ombudsman offers "tips" to lodge effective complaints. Form of complaint Complaints can be made anonymously, however this may affect whether a complaint is able to be investigated fully. Role of victim-survivor Provides information about a complaint; is informed of the outcome after an investigation. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process Complaints are handled according to their seriousness and complexity. Approximately 60% of cases are able to be resolved quickly; these result in a complainant being given advice, or referred to a more appropriate avenue, within 7 days. A further 30% of cases require the Ombudsman to make further inquiries – such as further research, request for more information from the complainant and relevant agency – before resolving the complaint; usually finalised within 30 days. Complex complaints may lead to a more detailed investigation, which usually takes up to 90 days. However, the nature of such investigation is not clear.	Range of possible outcomes The Ombudsman will usually recommend: • "the agency to reconsider or change its action or decision • the law, rule or procedure be changed • the agency take another action." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Ombudsman can make a range of recommendations not just to individual agencies, but to government more broadly. It also produces guidelines for broader sectors to improve their complaints handling processes. Any enforcement or monitoring of outcomes The Ombudsman cannot compel agencies to adopt its recommendations, however can report on their willingness or otherwise to do so. Powers of complaint body to investigate, monitor and take action Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		It cannot investigate complaints about the following: - Commonwealth government agencies such as Centrelink - ACT government ministers or politicians - private individuals - environmental issues - decisions of courts and tribunals - public service employment - disability services - health services - services for children and young people - services for older people. Limitation periods 12 months. Evidentiary requirements Complainants are expected to include the following information with their complaint: - a description of the issue/incident - dates of events - prior contact with the relevant agency - details of who was involved		"Overall, 95 per cent of complaints should be finalised within 90 days, and 99 per cent within 12 months." Role of victim-survivor in complaint resolution If they are the complainant, they provide information/evidence to substantiate the complaint; they may be approached for further information throughout an investigation, and kept informed of its progress; and will then be advised of the outcome at the conclusion of the process. Role of perpetrator (individual/service provider/government) in complaint resolution The perpetrator may be approached by the Ombudsman and requested to answer questions, or provide evidence/information in relation to a complaint. At the conclusion of the investigation, the Ombudsman may make recommendations that the perpetrator/service provider take steps to resolve an issue with the complainant and/or make systemic changes to its service delivery.	Are written reasons for decision provided? Yes. Any appeal/review processes following outcome If they are unsatisfied with the outcome, a complainant can request an internal review. This request should: - be requested in writing within three months - explain why they believe the wrong decision was made, and include any relevant supporting information. If the request to review is accepted, a review will be conducted by an officer not previously involved with the complaint. This officer may either agree with the original decision, change the original decision, or send the matter back to the original investigator for further investigation. Complainants can also seek an external review from the ACT Supreme Court under the <i>Administrative Decisions (Judicial Review) Act 1989</i>. Any incidental consequences of complaint resolution None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		• details of any phone conversations or meetings • any relevant reference numbers provided by the agency in question • any relevant photographs or records • an outline of the steps the complainant has already taken to address the issue • what outcome they are seeking. Role of legal capacity and substituted decision-making Not specified in detail. A “relative, friend, advocate, solicitor or welfare worker” is permitted to lodge a complaint on behalf of the victim-survivor; however “in some situations [the victim-survivor] may need to give consent.” Does a specific individual perpetrator need to be identified? Not specified.		Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	Relationship to police and CJS Not specified in detail. However, it notes that it may not take action on a complaint if the matter is before a court or tribunal. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Information on individual matters does not appear to be available; however there is FOI and public interest disclosure schemes. Complaint data is provided to government in its annual reports. Relationship of complaints process and resolution to policy and law reform “In some cases, if the Ombudsman considers it is in the public interest, a formal report can be made to the relevant Minister, the Chief Minister, or the Legislative Assembly.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>ACT Human Rights Commission</u>	Who can complain? “A person accessing or using a service”, or “a person’s carer, advocate or legal representative on their behalf.” The Commissioner can also undertake a Commission Initiated Complaint. Types of violence the complaint applies to/excludes The ACT Human Rights Commission investigates and conciliates complaints about discrimination, including that relating to: • Discrimination and vilification • Sexual harassment • Health services including health records • Veterinary services • Disability services including abuse, neglect or exploitation of a person with a disability • Services for older people • Services for children and young people • Retirement villages	Process to complain: Complainants are required to fill in an online form (and can also contact the commission by phone for assistance in doing so). Once a complaint has been lodged, the Commission will: • Contact the person or organisation that is the subject of the complaint, and provide them with a copy of the complaint • Ask that individual/organisation to provide a response to the complaint • Advise the complainant about that response • In some cases, inform other parties “mentioned in [the] complaint” about the complaint. The Commission will then decide whether to continue with the matter or not; and may decide to recommend resolving the matter through conciliation. Form of complaint Complaints are kept confidential and in some cases can be made anonymously, or be handled “by keeping the complainant/notifier anonymous.” Role of victim-survivor The complainant.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Commission is an independent agency, and is impartial to the parties involved in conciliation. Nature of complaint resolution process The Commission generally tries to resolve complaints through conciliation with the relevant service provider. “Conciliation is similar to mediation, and not like a Tribunal or Court hearing.” “The conciliator can provide information to assist the parties to reach a resolution” and help the parties “to explore ways of resolving the complaint, and also aid negotiation to increase the chance of getting an agreement.” “The conciliator can also provide information about how other complaints have been resolved.”	Range of possible outcomes “The kinds of actions that are agreed upon to resolve a complaint depends on what the parties are open to, and what the complaint is about. Examples of actions which may lead to resolution are: • An apology, statement of regret, or acknowledgement of distress; • Improved communication pathways; • An agreement to introduce changes to practices or policies; • A commitment to train relevant staff; • Re-instatement to a job, or an offer of employment; • Re-instatement of a service, or change to how it is provided, or by whom; • Financial compensation for monetary loss or injury to feelings, or in recognition of a service leading to a poor outcome.” If the parties cannot resolve the complaint at conciliation, the Commission may request further information before making a final decision.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- Elder abuse – abuse, neglect or exploitation of vulnerable people over 60 - Abuse, neglect or exploitation of a person with a disability - Services for victims of crime - An occupancy dispute - Sexuality and gender identity conversion practices Limitation periods Not specified. Evidentiary requirements Complainants are encouraged to “provide as much detail as possible about what happened, when the events occurred and who was involved.” Role of legal capacity and substituted decision-making A person’s carer, advocate or legal representative can make a complaint on their behalf.	Role of lawyers/advocates Lawyers and advocates may be allowed in the conciliation process, with the Commissioner’s permission. The Commissioner considers this on a case-by-case basis. The Commission states: “Advocates and lawyers can help their clients prepare for conciliation by: - giving advice about the law including speaking frankly about the strengths and weaknesses of their client’s case; - providing information about what could happen if the complaint is not resolved at conciliation; - helping their client weigh up the benefits and risks of taking legal (or other) action on the complaint if it is not resolved; - supporting and encouraging their client to take an active role in the conciliation where appropriate; - assisting the client to think about all of the different options for resolution; - having their client rank how important each option is to them, and also carefully consider how they might compromise so as to reach a resolution of the complaint;	Role of victim-survivor in complaint resolution “The complainant and the respondent are the main people involved in a conciliation process.” Role of perpetrator (individual/service provider/government) in complaint resolution As above. In addition, “Any representative of a company or organisation needs to be aware that conciliation is focused on resolution, and must have authority to make decisions to achieve this end.” Roles of other independent persons/monitors in complaint resolution Support people are welcome to accompany the parties to the conciliation; there is no mention of independent monitors. Qualifications/background of complaint resolution decision-maker Commissioners are appointed officials who have legal and/or industry experience relevant to the complaints area.	“The Commissioner can also finalise complaints for other reasons. For example, where the Commissioner is satisfied that a reasonable explanation has been provided by the respondent, where the complaint does not have merit or has already been dealt with by another agency.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not clear. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action “The ACT Human Rights Commission can only investigate individual complaints about unlawful discrimination, health services, services for older people, disability services and services for children and young people. The Human Rights Commissioner does not investigate individual complaints about breaches of the Human Rights Act,

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Does a specific individual perpetrator need to be identified? Can be an individual or organisation.	deciding with their client what the conciliation agreement will look like, and what it will contain."		although [they] can provide general information about human rights." Also, "Section 48 of the HRC Act provides the Commission with the power to on its own initiative consider: - an act or service that appears to the commission to be an act or service about which a person could make, but has not made, a complaint under this Act; or - a children and young people service complaint - a disability service complaint - a complaint about services for older people - a health services complaint - any other matter related to the commission's functions." However, "the Commission is not a court and does not have the power to decide if what [the complaint is] about is discrimination or a breach of...rights." Powers to compel parties to provide information, and/or to monitor outcomes is not clear.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Are written reasons for decision provided? "If an agreement can be reached by the complainant and respondent, the conciliator is required to write up a conciliation agreement, and helps the parties to negotiate mutually agreeable wording." "For discrimination complaints, the Commission is required to register a conciliation agreement with the ACT Civil and Administrative Tribunal." Any appeal/review processes following outcome "When the Commission closes a discrimination complaint where conciliation has not led to agreement, the complainant gets 60 days to ask the Commission to refer the complaint to the ACAT, unless the complaint is withdrawn. The ACAT can decide whether unlawful discrimination has occurred, and if so what orders it should make." Any incidental consequences of complaint resolution Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Relationship to police and CJS The Human Rights Commission also has the power to hear complaints about victims' rights. People can make a complaint to the ACT Human Rights Commission if they believe that their rights as victims may not have been respected by a justice agency. The Commission also has a close working relationship with the regulator AHPRA. Any confidentiality or privacy rules (protective of or gagging complainant) "Conciliation is confidential. This means that the Commission cannot give information about what happens at conciliation to the ACT Civil and Administrative Tribunal (ACAT) or a Court if any further legal action occurs." "There is also a legal obligation on both parties to maintain the confidentiality of any conciliation as set out in section 99 of the <i>Human Rights Commission Act 2005</i>."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Complaint data, and de-identified examples of complaints are provided in the Commission's annual reports. Relationship of complaints process and resolution to policy and law reform "Another aspect of the Human Rights Commissioner's role is to review the effect of Territory laws on human rights and to report in writing to the Attorney-General. The Commissioner has conducted Human Rights Audits of Government facilities using this power. The Commissioner also advises the Attorney-General on anything relevant to the operation of the Human Rights Act." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Human Rights Commission has separate avenues for handling discrimination based on gender, sex, race, age, disability and other statuses.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	<u>Disability and Community Services Commissioner</u> <u>ACT Human Rights Commission</u>	Who can complain? Any vulnerable person (including adults with disability), carer, friend, family member, service provider or other person concerned about the vulnerable person. Types of violence the complaint applies to/excludes Any form of abuse, neglect or exploitation: "A complaint can be made about any person or service provider who is putting the vulnerable person at risk of, or causing the vulnerable person abuse, neglect or exploitation." Limitation periods None specified. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Directly to the Disability and Community Services Commissioner. Form of complaint Telephone, TTY, email, online complaints form Role of victim-survivor Anyone can make a complaint. It is not specified whether the victim-survivor needs to give consent: "Anyone who has reasonable grounds to believe that an adult with disability or older adult is subject to, or at risk of, abuse, neglect or exploitation can make an enquiry or report to the Commission." Role of lawyers/advocates Lawyers and advocates may attend conciliations but the Commission needs to be consulted first.	Any interim measures prompted None specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Independent third party. "The role of the Commissioner is to: - handle individual complaints and initiate own motion considerations of systemic issues - promote improvements in the provision of services, - promote the rights of users of services, - promote an awareness of the rights and responsibilities of users and providers of services." Nature of complaint resolution process Conciliation, investigation and resolution or publishing a report. The Commission tries to resolve complaints informally if necessary by conciliation:	Range of possible outcomes Report may be published and directions given to service providers. Information may be shared with the ACT Ombudsman, Aged Care Quality and Safeguards Commission, NDIS Quality and Safeguards Commission, and the Senior Practitioner. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: None specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action None specified. Are written reasons for decision provided? Only when there is a report published. Any appeal/review processes following outcome None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				"We may investigate the issues raised and try to resolve the complaint through conciliation, or where we cannot resolve a complaint we might publish a report and make recommendations to improve service provision. Our intention is always to improve the safety of the adult and uphold their rights." Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	Any incidental consequences of complaint resolution None specified. Relationship to police and CJS None specified. Any confidentiality or privacy rules (protective of or gagging complainant) Complaints can be made anonymously. Conciliations are confidential. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Commissions makes submissions to Inquiries. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? None specified.
Other relevant non-complaint bodies					

JURISDICTION: NSW

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	<u>NSW Department of Education</u>	Who can complain? Anyone can complain, who receives/uses the services of the Department of Education. Complainants seeking to complain about independent schools should do so to the NESA (below). Types of violence the complaint applies to/excludes Complaints can be made about: - the services provided by the Department - any decision of the Department - any practice, policy or procedure, or - staff behaviour or conduct. Limitation periods There is no set limitation period, however the Department notes the longer it takes for an issue/concern to be raised, the more difficult it is to address. It also states:	Process to complain Complaints can be lodged online, by mail, in person or by phone. Form of complaint Anonymous complaints are accepted, however this may affect the ability of the Department to resolve a complaint effectively. Role of victim-survivor If they are the complainant, they are required to provide as much information as possible for the complaint to be assessed and acted upon. Role of lawyers/advocates "Complainants may ask a representative to make a complaint on their behalf, for example, via an advocate, family member, legal or community representative, Member of Parliament or another organisation. Wherever possible, the complainant should confirm in writing their consent to have a representative."	Any interim measures prompted Upon receipt of a complaint, the receiving staff member should do the following: - Assess whether there are any immediate risks to the "immediate health, safety or security" of a person involved; - Assess whether the matter should be escalated or referred to another body for investigation (for example in cases of corruption, criminal conduct or child protection concerns); - Keep the relevant parties updated about these assessments and how their complaint will be handled moving forward. Any report to police prompted "Allegations of criminal conduct must be referred to NSW Police." Relationship of complainant, perpetrator or context The Department may be the perpetrator or fund the school that is the subject of a complaint.	Range of possible outcomes This is at the discretion of complaint managers. Complaint managers are required to "consider any reasonable outcomes suggested by the complainant and any staff member complained about. However, ultimately the complainant manager determines how a complaint is to be resolved." Such actions could include, for example: "tak[ing] action to fix the matter or improve the situation - apologise - provide an explanation - acknowledge that the situation could have been handled better or differently - undertak[ing] to review policies as a result of the complaint." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response:

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		"We may be limited in the action we can take about situations that occurred some time ago, as staff may no longer work for the department, potential witnesses may not be able to be contacted, and people's recollection of events may be affected over time. We cannot investigate or take action against a person who is no longer an employee or a student at one of our schools." Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making The Department has a factsheet on <i>Information for support persons and advocates</i>, which details the role of advocates in the complaint resolution process: "An advocate is someone 18 years or older who is authorised to speak for the person making the complaint, to reach a resolution. In most cases this will be when the person making the complaint does not have the capacity to speak effectively or fully understand the actions arising from the meeting."		In most cases, the Department encourages complainants to resolve matters with the perpetrator directly, or another staff member in the relevant school. It states: "In many cases, staff can manage a complaint made directly to them, even if the complaint relates to their actions. For example: where a parent complains to the classroom teacher about their programming or student behaviour management, the teacher may be able to respond to the complaint. This often also best meets the parent's needs." Some complaints are escalated to the principal, workplace manager or executive staff member. "Few" complaints are expected to be escalated to the director/executive level of the Department. Nature of complaint resolution process Complainants are encouraged to raise their concerns with the local school or service first. The principal or workplace manager will appoint a "complaint manager" who is responsible for managing the complaint. Details about how this process occurs is lacking.	"Where the outcomes relate to whole of school or work area processes, the principal or other workplace manager should oversee progress and / or delegate responsibility to a specific member of staff with relevant responsibilities." Any enforcement or monitoring of outcomes The complaint manager and/or the principal or workplace manager is expected to "take all reasonable steps to implement and monitor the outcomes of the complaint," however details around how this will be done is lacking. Powers of complaint body to investigate, monitor and take action Limited. For example, the department "cannot investigate or take action against a person who is no longer an employee or a student at one of [its] schools." Are written reasons for decision provided? The Department states that this should occur. Complaint managers are expected to provide clear information to the complainant about the outcome of their complaint, either in person, by phone or in writing (e.g. email). If this information is conveyed in person or by phone, then it should also be confirmed in writing.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		In addition to providing the same assistance as a support person, an advocate can also: Provide any input into the discussions relating to the complaint, and Agree to action being taken or not taken. “ Does a specific individual perpetrator need to be identified? Not specified.		There are 5 key stages of managing/resolving a complaint: 1. Acknowledge receipt of the complaint 2. Assess/gather information (including policies/procedures, departmental documents/records, relevant correspondence, and accounts from each party in the complaint), and resolve complaint 3. Provide reasons for the decision 4. Implement outcome actions 5. Close complaint and keep records “Complaints should be finalised within 20 working days and all parties will be kept informed of the progress of the complaint, the reasons for any decisions and the outcomes that will be implemented.” Role of victim-survivor in complaint resolution If the victim-survivor is the complainant, they are expected to provide additional information to the complaint manager if needed, and will be kept up to date on the progress of the complaint as it is considered.	Any appeal/review processes following outcome Complainants can request an internal review of a complaint outcome if they can demonstrate that: • the complaint outcome was incorrect and/or • the complaint handling process was unfair. Such requests are required to be addressed to the initial complaint manager, or their supervisor, usually within 10 working days from the initial complaint decision. “The review must be conducted by a more senior officer than or at least an equivalent level to the person who handled the complaint. The reviewing officer must not be the subject of the complaint in any way or have been involved in managing the complaint. The review should be completed within 20 days of the receipt of the request, wherever possible.” For external reviews, complainants are encouraged to contact the NSW Ombudsman.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of perpetrator (individual/service provider/government) in complaint resolution “All staff should assist the complaint manager and respond promptly and co-operatively when a complaint manager makes reasonable requests for information.” Roles of other independent persons/monitors in complaint resolution Complainants are permitted to bring support people, lawyers or advocates to any relevant meetings relating to the complaint. Qualifications/background of complaint resolution decision-maker “Any employee who has sufficient knowledge and authority about the complaint issue, may manage the complaint.”	Any incidental consequences of complaint resolution The Department’s complaint policy states that “all staff and managers have ongoing responsibilities to take reasonable steps to prevent people making complaints being treated unfairly because a complaint has been made by them or on their behalf.” It also states that “to the extent possible, the complaint managers should monitor the well-being of all parties involved in or impacted by the complaint and arrange support where available.” Relationship to police and CJS “Where there is a risk of significant harm to a student, the matter must be referred to the Child Protection Helpline as advised by the Mandatory Reporter Guide. Allegations of criminal conduct must be referred to NSW Police.” Any confidentiality or privacy rules (protective of or gagging complainant) “Personal information about the person making the complaint will not be disclosed to any third party without their consent, except where required or authorised by law.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The Secretary of the Department "reports publicly on the department's complaint management program in accordance with the department's Customer Service Improvement Plan." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Department refers complainants to the National Relay Service, and/or interpreting or translation services where required. It also offers additional support to Aboriginal and Torres Strait Islander people seeking to make a complaint, through: Aboriginal Education Officers at some schools (if they have one)

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					- A staff member in the local Aboriginal Education and Wellbeing Team, such as the Aboriginal Community Liaison Officer (ACLO) at the school's local network office; or - An Independent Person through the NSW Aboriginal Education Consultative Group (AECG) who can assist complainants throughout the complaint process.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	NSW Education Standards Authority	Who can complain? Not clearly specified. Types of violence the complaint applies to/excludes “While NESA may investigate complaints regarding the requirements for registration, it does not investigate: • allegations of criminal behaviour, such as alleged fraud or child abuse; • matters relating to the statutory functions of other government agencies, such as alleged breaches of funding conditions; • matters where common law remedies may be available to the complainant, such as alleged breaches of contractual obligations.” Limitation periods Not specified. Evidentiary requirements Complaints must include the following details: • “the name, address and contact details of the individual(s) or organisation making the complaint;	Process to complain Complaints must be made in writing. Complainants are expected to provide “clear evidence that options for pursuing the complaint at the school have [first] been pursued without resolution” or “a compelling reason” why this would be inappropriate. Form of complaint “As a line of inquiry regarding a non-government school’s compliance is based on specific details that can be put to the school for response, typically an investigation requires identifying the person making the complaint to the school. If requested, NESA will not provide the identity of a complainant to a school. However, by not identifying the complainant, possible lines of inquiry may be limited or closed.” Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted “When complaints about a non-government school are raised with NESA in writing, they are assessed by an Inspector. The Inspector will determine whether there is a line of inquiry for NESA to pursue in relation to the school’s compliance with the requirements of the Act for registration.” Any report to police prompted Not specified. Relationship of complainant, perpetrator or context “Under the <i>Education Act 1990</i> (‘the Act’), the NSW Education Standards Authority (NESAs) is responsible for monitoring the compliance of non-government schools with the requirements of the Act for registration.” “The regulatory role of NESAs does not involve ownership, governance or management of non-government schools.” Nature of complaint resolution process Complainants are expected to first attempt to resolve the complaint with the non-government school in question.	Range of possible outcomes NESAs states that “if an investigation finds that a school does not have or did not implement the required curriculum, policies and/or procedures, the school is required to address the compliance concerns.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified directly; although if an investigation is conducted, one of the issues considered is whether the non-compliance in question may point to a more systemic pattern. Any enforcement or monitoring of outcomes This is unclear; NESAs states that “where relevant, [it] monitors a school that is required to address compliance concerns to ensure that the concerns are addressed.” Powers of complaint body to investigate, monitor and take action

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- the individual(s) or organisation against whom the complaint is being made; - the issue or matter to which the complaint relates; - how the complaint relates to the requirements as detailed in the NESAs registration manuals; - evidence that options for pursuing the complaint at the school have been pursued without resolution, or an outline of the compelling reason(s) why this would not be appropriate; - any evidentiary material to substantiate the complaint, including copies of correspondence and any other relevant documents; - an account of any other action already taken in relation to the complaint.		An investigation may then proceed if the NESAs Investigator believes there is “sufficient evidence” to form “a line of inquiry” into whether the school has complied with its registration requirements. An investigation would consider whether: “the policies and procedures of the school comply with the requirements for registration; - the school has followed its policy and procedure in the context of the concerns raised; - any non-compliance is an isolated instance or part of a systemic pattern.” Role of victim-survivor in complaint resolution “Complainants are advised in writing about the outcome of the Inspector’s initial assessment, and the outcome following investigation.” Role of perpetrator (individual/service provider/government) in complaint resolution Not specified.	“Under the <i>Education Act 1990</i> (‘the Act’), the NSW Education Standards Authority (NESA) is responsible for monitoring the compliance of non-government schools with the requirements of the Act for registration.” Are written reasons for decision provided? Yes. Any appeal/review processes following outcome This is unclear. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. However, NESAs states that it does not investigate matter regarding allegations of criminal conduct or matters where common law remedies may be available to the complainant. It is not clear whether this means they actively refer complaints of this nature on to other relevant bodies, or simply refuse to investigate them.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any confidentiality or privacy rules (protective of or gagging complainant) “As a line of inquiry regarding a non-government school's compliance is based on specific details that can be put to the school for response, typically an investigation requires identifying the person making the complaint to the school. If requested, NESA will not provide the identity of a complainant to a school. However, by not identifying the complainant, possible lines of inquiry may be limited or closed.” What information is publicly available from the complaint resolution? Not clear. Relationship of complaints process and resolution to policy and law reform The NESA also performs regulatory actions separate to the complaints process (e.g. randomly selecting schools for short notice inspections to assess compliance with regulations; and “cyclical system monitoring”). However the relationship between this process and complaints management is unclear.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.
Health	NSW Health Note - Does not appear to have a centralised complaints management process.	NSW Health directs anyone who has concerns about their treatment within a NSW public hospital or community health service to make a complaint: 1. To the service provider directly, 2. To the service provider's complaints officer, 3. To the Director of Clinical Governance of their local health district, or 4. To the NSW Health Care Complaints Commission. It appears that the central department, NSW Health, does not handle complaints itself.	N/A	N/A	N/A

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	NSW Health Care Complaints Commission	Who can complain? “Any person can make a complaint, including: - the person who experienced the problem. - a parent or guardian of the person or child concerned. - a relative, friend or representative chosen by the person concerned for the purpose of making the complaint. - a health service provider or other concerned person. - the Commission, who can initiate an “own motion” complaint if it becomes aware of significant risks to public health and safety or significant concerns about a health service provider.” Types of violence the complaint applies to/excludes Considers complaints about the quality of care and treatment provided to a patient by service providers, or about the ethical or professional conduct of an individual health practitioner.	Process to complain Complaints must be lodged in writing, either by mail or online. Form of complaint Anonymous complaints are permitted; however, this may impede the ability of the Commission to adequately assess or investigate the complaint. Role of victim-survivor If they are the complainant, they are required to fill out a detailed complaint form. Role of lawyers/advocates Not specified.	Any interim measures prompted Complaints are first assigned to an Assessment Officer, who acknowledges its receipt and assigns the complaint a reference number. Complaints are usually assessed with 60 days, but may take longer. The assessment may involve gathering further information from the complainant and the service provider/practitioner. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Commission is an independent body established under its own legislation. “It has a central role in maintaining the integrity of the NSW health system, with the overarching aim of protecting the health and safety of individuals and the community.” Nature of complaint resolution process There are a number of different options available to the Commission, when assessing how to proceed with a complaint. These include:	Range of possible outcomes “An investigation into a <i>registered practitioner</i> may result in: - the matter being referred to the Director of Proceedings to determine whether to prosecute the practitioner where there is evidence of ‘unsatisfactory professional conduct’. - referring the practitioner to the relevant Health Professional Council for their action where the issues are considered to require intervention of a non-disciplinary nature. - comments made to the practitioner to improve future practice or treatment. - no further action being taken. “An investigation into an <i>unregistered health practitioner</i> may result in the Commission: - issuing and publishing a prohibition order or public warning, where findings show the practitioner has breached the Code of Conduct and poses a risk to the health or safety of members of the public.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods Not specified. Evidentiary requirements Not specified directly. However, the Commission states: "The Commission usually seeks a response from the health service provider and is required to notify them of the nature of the complaint and who made it. If the Commission is not able to clarify any information...provided or ask for further information that it needs to assess the complaint it may have to discontinue the complaint." Role of legal capacity and substituted decision-making Not clear. The Commission accepts complaints made behalf of another person, if written authority from that person is provided. Does a specific individual perpetrator need to be identified? No, the complaint can relate to either an individual practitioner or a service provider.		- Discontinue the complaint - Discontinue with comments - Refer the complaint to another body (e.g. Aged Care Commission) - Resolve the complaint during the assessment process. This may involve "speaking with both the complainant and provider about the concerns" which may "bring the matter to a satisfactory conclusion for all parties." - Refer the complaint for local resolution, where "someone from the local health service or the private health facility will contact the complainant directly to determine the most appropriate way to resolve the issues. The Commission is not involved in the local resolution process, although on completion of the process the health service provides a summary of the outcome to the Commission."	- making comments to the practitioner to improve future practice or treatment. - taking no further action. "An investigation into a <i>health organisation</i> may result in the Commission: - making comments where the care has been inadequate but measures have been implemented to address the issues. - making recommendations where systems can be improved for better care in future. The Commission will monitor the implementation of all recommendations. - making prohibition orders or public statements in relation to relevant health organisations." Of note, "the Commission is not able to order providers to pay compensation, to issue a refund or to reduce fees." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not clear, however the Commission can instigate own-motion complaints.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- Refer the complaint for assisted resolution: "The Resolution Service provides an option of independent facilitation to help complainants and providers reach understanding and to agree on action. Assisted Resolution can provide opportunities for important learnings and improvements in health service delivery." - Refer the complaint to a relevant health professional council, for matters that require "intervention of a non-disciplinary nature". "The aim of these pathways is to improve a practitioner's ability to perform their work."	Any enforcement or monitoring of outcomes This is unclear, and would likely vary according to the different complaint resolution avenues adopted by the Commission (e.g. there may be more stringent monitoring of outcomes in relation to complaints that led to an investigation, compared with complaints that were returned for local resolution). Powers of complaint body to investigate, monitor and take action "The Commission was established under the Health Care Complaints Act 1993. The Act defines the scope of the Commission's work The following legislation is also essential to the Commission's work: - Health Practitioner Regulation National Law (NSW) <u>Public Health Regulation, Schedule 3</u> (includes the Code of conduct for unregistered health practitioners)" Are written reasons for decision provided? Yes.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Investigate the complaint: "The Commission investigates complaints that raise serious issues of public health or safety, or could lead to disciplinary action against a practitioner. During an investigation, the Commission obtains evidence from complainants and other relevant witnesses, such as statements, information and medical records. An expert may give advice on the quality of clinical care or conduct. Before deciding upon the outcome of an investigation, the Commission seeks submissions from the affected health provider. At the end of an investigation, a report is prepared that sets out the Commission's findings." Role of victim-survivor in complaint resolution It appears that this would vary depending on the complaint resolution avenue. For avenues such as local or assisted resolution, which appear to adopt a more conciliatory approach, the victim-survivor may have greater involvement than, for example, a formal investigation.	Any appeal/review processes following outcome An internal review of the Commission's assessment decision can be requested within 28 days of receiving the decision. An external review can be requested from the NSW Ombudsman's Office, the NSW Information and Privacy Commission or the NSW Anti-Discrimination Board. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS "Where there is evidence of possible criminal conduct, the complaint can be referred to the Director of Public Prosecutions to consider possible criminal charge(s)." Any confidentiality or privacy rules (protective of or gagging complainant) Not clear, and this may vary depending on the conflict resolution avenue adopted. What information is publicly available from the complaint resolution? "In general, the Commission's decisions in relation to individual complaints are confidential and not made public."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of perpetrator (individual/service provider/government) in complaint resolution As above. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Commissioners have legal, public service and/or industry experience relevant to the complaints area. It is unclear exactly what qualifications individual staff conducting complaints assessments/investigations hold, however the Commission has a dedicated "Complaints Operations" Division, where staff likely have relevant expertise.	The persons and bodies involved in a particular complaint are notified of the Commission's decision in writing. However, where an investigation of a matter substantiates significant issues in relation to a registered health practitioner, the Commission may consider disciplinary proceedings. Practitioners may be prosecuted before the NSW Civil and Administrative Tribunal or a Professional Standards Committee. The outcomes of disciplinary proceedings before both disciplinary bodies are publicly available." Relationship of complaints process and resolution to policy and law reform The Commission's annual reports are presented to the NSW Parliament. It also states that "even when the Commission decides not to take further action, complaints can provide an opportunity for practitioner reflection and health system learnings."

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					However, where an investigation of a matter substantiates significant issues in relation to a registered health practitioner, the Commission may consider disciplinary proceedings. Practitioners may be prosecuted before the NSW Civil and Administrative Tribunal or a Professional Standards Committee. The outcomes of disciplinary proceedings before both disciplinary bodies are publicly available." Relationship of complaints process and resolution to policy and law reform The Commission's annual reports are presented to the NSW Parliament. It also states that "even when the Commission decides not to take further action, complaints can provide an opportunity for practitioner reflection and health system learnings." Any specific differences in process and resolution where victim-survivor is deceased? A person making a complaint on behalf of someone who is deceased does not have to present written authority.

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					Any specific provision for particular groups? Complainants can request information about the Commission in languages other than English. The Commission also has a resources page that directs people to various support bodies: https://www.hccc.nsw.gov.au/health-consumers/resources-for-health-consumers

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	<u>NSW Health</u> <u>Professionals Councils</u> <u>Authority</u>	Who can complain? "Anyone can make a complaint, including: - the patient who received the health service - the patient's parent or guardian - a relative, friend or representative chosen by the person - a health service provider - another health practitioner - an employer, or - any other concerned person" Types of violence the complaint applies to/ excludes Complaints relating to "the clinical care and treatment, professional behaviour or health of a registered health practitioner in NSW." This body does not handle complaints about health service providers such as hospitals or community health centres (this responsibility lies with the HCCC); registered health practitioners (this responsibility lies with AHPRA); unregistered health practitioners (HCCC) or consumer requests for refunds (NSW Fair Trading is responsible).	Process to complain Complaints can be lodged online, by email or over the phone, but ultimately must be made in writing. Form of complaint Accepts anonymous complaints, however this will impede the ability of the Authority to investigate the complaint thoroughly and may limit the action it is able to take. Role of victim-survivor Complaints will be kept informed throughout the process, including on: - who will be managing their complaint - the progress of the complaint - actions taken against the practitioner in question - the outcome of the complaint. Complainants may also be requested to provide additional information to assist the assessment/investigation process. Role of lawyers/advocates Not specified.	Any interim measures prompted The Health Professional Councils Authority receives a complaint on behalf of the professional councils. Together with the HCCC, they determine which agency is best placed to handle the complaint. As a first step, the relevant council assesses the complaint to determine whether any urgent immediate action is necessary. After considering all information, a council may decide that immediate action is not appropriate, or a council may: - suspend the practitioner's registration - impose conditions on the practitioner's registration - alter existing conditions Any conditions or suspension will stay in place until the complaint is resolved or the Council removes them because they believe the public is no longer at risk or it is not in the public interest." Any report to police prompted Not clear; however it would seem that if criminal offences have been committed, it would refer the matter for prosecution.	Range of possible outcomes "Possible outcomes include: - no further action - counselling - education about specific aspects of practice - supervision/mentoring - conditions placed on a practitioner's registration - prescribed treatment for a health condition - a requirement to have ongoing testing for drug or alcohol use - suspension of a practitioner's registration while a complaint is further investigated." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not clear; it seems the Authority is primarily concerned with responding to individual practitioner conduct rather than systemic change. Any enforcement or monitoring of outcomes

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods Not specified. Evidentiary requirements Not specified; although complainants are encouraged to "include as much information as possible" and "attach copies of supporting documents or information." Role of legal capacity and substituted decision-making Not clear; however requests a signed consent form if a person is complaining on behalf of someone else. Does a specific individual perpetrator need to be identified? Yes.		Relationship of complainant, perpetrator or context The agency works "with the NSW Health Care Complaints Commission (HCCC), in a partnership called co-regulation to manage complaints about health practitioners and students in NSW." Nature of complaint resolution process Serious complaints may be referred to the HCCC for investigation. Complaints that are referred to the professional councils are managed through either the health, performance or conduct pathway, depending on the issue: - Professional conduct (a disciplinary process) - Health (when a practitioner's help may place others at risk; is constructive and non-disciplinary) - Professional performance (focused on education and retraining) - Statutory offences (referral to AHPRA)	"Councils always monitor a practitioner's compliance with any restrictions that have been imposed on their registration." Powers of complaint body to investigate, monitor and take action "Councils can act quickly to restrict a practitioner's registration or suspend them while a matter is being dealt with...Section 150 of the Health Practitioner Regulation National Law (NSW) gives a council the power to suspend or impose conditions on the practitioner's registration as a temporary measure. A council must take immediate action if they decide that it is appropriate to protect the health and safety of any person or it is in the public interest." Are written reasons for decision provided? Yes. Any appeal/review processes following outcome Provides information about how practitioners can appeal decisions, but not complainants:

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				“Depending on the pathway, the councils may: • collect information from relevant parties, in writing or via an interview • require the health practitioner to attend a health and/or performance assessment • hold a panel or committee meeting to decide whether or not we need to restrict the health practitioner’s practice to protect the safety of the public • direct the health practitioner to attend counselling about professional standards.” “When a council assesses a complaint, they consider: • what happened • practitioner’s response to the complaint, and any other relevant information (including information from other parties and previous complaints) • the seriousness of the incident • the practitioner’s ability to reflect on what happened and show that they understand expected standards	“A practitioner will be notified of the outcome of a complaint following a decision of: • a council - including on the recommendations of an Impaired Registrant’s Panel and immediate, interim action decisions under section 150 or 150A of the National Law • a Performance Review Panel • a Professional Standards Committee (medical, nursing and midwifery only) • the NSW Civil and Administrative Tribunal. At that time practitioners can exercise review and appeal rights under the Health Practitioner Regulation National Law (NSW). They are provided with the relevant fact sheet at that time.” Any incidental consequences of complaint resolution None specified. Relationship to police and CJS Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- what the practitioner has done to ensure that a similar incident does not recur - the impact of the practitioner's health on their practice." Role of victim-survivor in complaint resolution "The complainant will be kept informed at key points of the process." Role of perpetrator (individual/service provider/government) in complaint resolution The practitioner who is the subject of an investigation is provided an opportunity to respond to the complaint during the course of an assessment or investigation. Roles of other independent persons/monitors in complaint resolution Not clear. Qualifications/background of complaint resolution decision-maker "The councils in NSW are made up of practitioner, legal and community members. Most members are nominated by the NSW Minister for Health and appointed by the Governor of NSW."	Any confidentiality or privacy rules (protective of or gagging complainant) While general confidentiality is assured, the Authority notes that the identity of the complainant is in most cases provided to the practitioner being complained about, as it is necessary for them to provide a response to the complaint. What information is publicly available from the complaint resolution? Not clear; however if a complaint results in disciplinary action such as suspension or cancellation of registration then it is likely that such action would be made public on the HCCC website. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Social Services	<u>NSW Department of Family & Community Services</u> NOW CALLED: <u>NSW Department of Communities & Justice</u> Note – has separate complaints contacts for each service sector (e.g. Youth Justice, Child Protection, Boarding Houses etc.), as well as a more general complaints process. The information in this table relates to the general complaints process.	Who can complain? Not specified; but appears to be aimed at anyone receiving a service from FACS or an organisation funded by FACS. Types of violence the complaint applies to/excludes Does not mention violence. Complaints are assumed to be about: - the quality of a service received - the conduct of staff - a decision made by the Department - a Department policy or procedure The Department does not handle complaints that involve reviewing a decision of a court or tribunal. Limitation periods Not specified. Evidentiary requirements Complainants are expected to include the following information in their complaint: “which person, agency or area of the Department has caused [them] concern	Process to complain Complaints can be lodged via phone, mail, email, in person or online. Complaints are encouraged to be submitted to the relevant frontline staff member in the first instance; followed by the relevant business area within FACS. Each business area has its own complaints handling policy. If a complainant remains unsatisfied with the business area's decision, they can escalate the complaint to FACS. Form of complaint Confidential complaints are permitted, however this may impact the Department's ability to examine or resolve the complaint fully. Role of victim-survivor If also the complainant, they provide information to FACS and are kept up to date of any progress. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context FACS may be the perpetrator or fund the service who has perpetrated violence that is the subject of the complaint. Nature of complaint resolution process This is unclear. It appears to be an investigative process but there are no details provided as to how this is conducted. The Department acknowledges receipt of the complaint within 3 business days, and provides a response within 21 business days, unless the matter is complex and requires a longer period of investigation. Role of victim-survivor in complaint resolution Not specified.	Range of possible outcomes If the complaint is justified, the Department may: - rectify the mistake - provide an apology - provide further explanation of a decision that has been made - promise to improve its policies, procedures or systems. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not clear. Any appeal/review processes following outcome If a complainant is unsatisfied with the response

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- the relevant date, location and case reference number, if [they] have them - what [they] would like [FACS] to do to resolve [their] complaint [their] contact details; name, postal address and contact telephone numbers - if [they] would like [their] complaint to be handled confidentially." Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? No.		Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	they receive, they can request an internal review in writing, directed to the relevant business area that handled their complaint. A more senior staff member will consider their complaint and decide if it was handled fairly and reasonably. If a complainant remains unsatisfied after this process, they may take their complaint to the NSW Ombudsman for an external review. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS The Department notes that it cannot review a decision made by a court or tribunal. Any confidentiality or privacy rules (protective of or gagging complainant) The Department is bound by relevant Privacy laws when handling complaints. It states that it may be necessary to seek information from relevant staff members within FACS in the course of their investigation of the complaint; however complainants can request their complaint is handled confidentially instead.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The FACS complaints policy states that: “The Central Complaints Management Reporting function within FACS aims to: • analyse all complaints data across the cluster • ensure compliance with this Policy, • look for opportunities to learn from complaints, and • provide reports on complaints and feedback trends and insights that will help inform improvements in services and business processes.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Department’s website states that people with disability, or those who do not understand English well, can request assistance when making their complaint.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Ombudsman NSW</u>	Who can complain? Anyone can complain. Types of violence the complaint applies to/excludes Handle complaints about NSW government agencies, statutory bodies, state-owned corporations, universities, local councils, custodial services, community service providers and public interest disclosures. The following conduct is excluded from Ombudsman investigations: • “the governor, parliament, ministers and Members of Parliament • NSW Police Force or a member of the NSW Police Force • individual employment related issues • courts or court like bodies • trusts and investment funds • legal advisors acting for public authorities	Process to complain Complaints can be lodged using an online complaint form; or complainants can call the Ombudsman’s phone line for assistance. Complainants are encouraged to provide the following information: • their contact details • an explanation of their complaint and their proposed resolution • any correspondence between the complainant and the relevant agency which is the subject of the complaint • any other evidence the complainant believes is relevant in support of their complaint. Form of complaint Complaints can be anonymous, but this may impede the investigation. Role of victim-survivor Provides information about a complaint; is informed of the outcome after an investigation. Role of lawyers/advocates Lawyers and advocates can lodge a complaint on behalf of a victim-survivor.	Any interim measures prompted An initial assessment of the complaint is conducted, to decide what action, if any, is required. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The Ombudsman may make preliminary inquiries with the agency subject to the complaint, and attempt to seek a solution from them. If this is unsuccessful, they may issue feedback to the agency to take certain action that will – in the Ombudsman’s view – resolve the complaint. In some cases, they may choose to launch an investigation. An Ombudsman investigation consists of the following steps: • Notice of investigation given (sets out what is being investigated; provides details of contact officer)	Range of possible outcomes If a complaint does not proceed to an investigation, the complaint may be resolved by the relevant agency agreeing to take certain action as requested by either the complainant or the Ombudsman (or both). If an investigation is conducted, the Ombudsman may make a report recommending that: • “the agency should reconsider or change their action or decision • a law, rule or procedure should be changed • the agency should take appropriate action such as pay compensation for financial loss or, in serious cases, initiate criminal proceedings.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: See above. Also, the Ombudsman strategically prioritises complaints where they believe the resolution process can lead to systemic change.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
			- ICAC, Law Enforcement Conduct Commission, Casino Control Authority, Legal Services Commissioner - royal commissions" The Ombudsman also has specific functions relating to: "the causes and patterns of deaths of children and people with disabilities in care - decisions made by public sector agencies - public interest disclosures - monitoring and assessing designated Aboriginal programs" Limitation periods None. Evidentiary requirements Complainants are encouraged to provide details about their complaint to assist the assessment process, including: "What happened? Where did the events take place? When (time and date)? Who was involved? - Were there any witnesses to these events? Have you included their details? - Do you have any correspondence or documents (e.g. medical evidence, photographs) that may be relevant? If so, you should send a copy with your complaint.	- Evidence gathering (agency required to provide information and documents; staff may be interviewed; ombudsman may visit agency premises and inspect documents; may conduct formal hearings using Royal Commission powers) - Analysis, consultation and reporting (analyse evidence; provide provisional findings and recommendations given to agency for comment; may meet to discuss these; a draft report of the investigation is prepared and sent to agency's Minister for consultation; final report prepared and given to Minister, agency and complainant; Ombudsman may make report public by tabling in Parliament). Role of victim-survivor in complaint resolution If they are the complainant, it appears that they provide initial information/evidence to the Ombudsman who then negotiates a resolution. While the complainant may suggest a preferred resolution, the Ombudsman ultimately decides whether the agency's actions, are satisfactory "in their view" to address the complaint.	See its Complaints Assessment Criteria. Any enforcement or monitoring of outcomes The Ombudsman monitors compliance with their recommendations. Agencies are required to provide evidence of any action taken towards implementing the recommendations, and the Ombudsman can make a report to parliament if they do not follow through on this commitment. Powers of complaint body to investigate, monitor and take action Has Royal Commission powers to investigate complaints. It cannot force any agency to comply with its recommendations, but states that "most agencies do." They can make a report to parliament where it is in the public interest to do so. Are written reasons for decision provided? Yes. See its Complaints Assessment Criteria. Any enforcement or monitoring of outcomes The Ombudsman monitors compliance with their recommendations.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
			- Have you already taken any action to try to resolve your complaint? - What do you think would resolve your complaint?" Role of legal capacity and substituted decision-making Complainants can have another person – such as a relative, friend, advocate, solicitor or welfare worker – complain on their behalf. Written consent for this is preferable, and required "in certain circumstances" (which are not specified). Does a specific individual perpetrator need to be identified? No.	Role of perpetrator (individual/service provider/government) in complaint resolution Responds to the initial complaint and receives feedback as to how they should resolve it. May be the subject of an investigation. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	Are written reasons for decision provided? Yes. Any appeal/review processes following outcome A complainant can request an internal review of the decision, by submitting a request for a review to their original case officer or that officer's supervisor. The review will be conducted by someone other than the original decision maker. After a review, the Ombudsman may do the following: "take action to fix the matter or improve the situation - apologise - give the person making a complaint further information or an explanation - gathering information from the staff member or area that the complaint is about - undertake to review a practice, policy or procedure as a result of a complaint - investigate the complaint."

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					Any incidental consequences of complaint resolution The Ombudsman states: "It is illegal to take action against someone for making a complaint to the Ombudsman. If you believe you have been victimised for making a complaint, tell us. We take such allegations very seriously." Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The Ombudsman states: "Our work is subject to strict privacy and secrecy provisions found in the Ombudsman Act (s 17, s 31AC, s 34 and s 35). The Act requires us not to disclose any information obtained by our staff in the course of our work, unless the disclosure is made in certain specific and limited circumstances." Any incidental consequences of complaint resolution The Ombudsman states: "It is illegal to take action against someone for making a complaint to the Ombudsman. If you believe you have been victimised for making a complaint, tell

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					Information (Public Access) Act 2009 (GIPA Act). This kind of information is referred to as excluded information by the GIPA Act." Relationship of complaints process and resolution to policy and law reform The Ombudsman can make reports to the NSW Parliament on issues it believes policy and law reform is required. It also uses these <u>Complaints Assessment Criteria</u> to strategically investigate complaints that may uncover systemic issues which require broader policy/law reform. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Offers translation and interpreting services, and the National Relay Service for people who are deaf or have hearing or speech impairments.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	Anti-Discrimination NSW	Who can complain? The following people can complain: - An individual, or group of people, who have been discriminated against, sexually harassed, vilified or victimised. - A lawyer of organisation (e.g. a union) on behalf of a person who has experienced discrimination, sexual harassment, vilification or victimisation. - In certain circumstances, a person can complain on behalf of a child or person with a disability if they can't do this themselves. Types of violence the complaint applies to/excludes Handles complaints related to discrimination, sexual harassment, vilification or victimisation, covered by the <i>Anti-Discrimination Act 1977</i>. Limitation periods Not specified.	Process to complain Complaints can be made in writing via email or mail, or made in person at their office. Form of complaint Complaints are kept confidential, but it is not clear if they accept anonymous complaints. Role of victim-survivor May be the complainant, or may have a representative complain on their behalf. Role of lawyers/advocates Lawyers and advocates may lodge a complaint on behalf of a victim-survivor, but generally, complainants must seek permission from the Commission to have lawyers participate in the complaints process – specifically, the conciliation process.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Commission is an independent body; it cannot take sides or provide legal advice to either party. Nature of complaint resolution process The Commission seeks to help resolve complaints between the complainants and respondents. If the allegations made by the complainant appear to be covered by the relevant Act, they will "conduct an impartial and confidential investigation." The main avenue for resolving complaints is through a conciliation conference, where the two parties talk about the issue and aim to resolve it with the assistance of a Conciliation Officer. "The aims of a conciliation conference are: to allow both sides to discuss the alleged discrimination and the issues around it	Range of possible outcomes Not specified; will depend on the individual circumstances of each complaint. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response. Not specified. Any enforcement or monitoring of outcomes The Commission does not make determinations about whether discrimination has occurred; it rather tries to facilitate a resolution between the two parties involved, where discrimination may have occurred. It cannot compel parties to conciliate, however parties who refuse to participate can be fined by the courts. Powers of complaint body to investigate, monitor and take action The Commission does not have any powers to impose penalties or make orders to resolve a complaint.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making They accept complaints from a parent, guardian or carer, or organisations such as unions and other representative bodies, on behalf of a victim-survivor. A person with a disability is encouraged to contact Anti-Discrimination NSW via phone or email to discuss somebody else making a complaint on their behalf. Does a specific individual perpetrator need to be identified? Not specified, but it appears not.		- to attempt to resolve the complaint - to educate both sides about their rights and responsibilities under anti-discrimination law - to raise awareness so that respondents know how to prevent discrimination in the future." Role of victim-survivor in complaint resolution If they are the complainant, they are expected to participate in the conciliation process. Role of perpetrator (individual/service provider/government) in complaint resolution They are referred to as the "respondent", are sent a copy of the complaint and given a chance to respond to the allegations. They are also expected to participate in the conciliation process. Roles of other independent persons/monitors in complaint resolution The role of the conciliation officer who leads the conciliation process, is to: "help everyone remain calm and polite - be fair to both parties – the Conciliation Officer is not allowed to take sides	If a resolution cannot be reached, it may suggest that complainants take their complaint to the NSW Civil and Administrative Tribunal. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome If a resolution cannot be reached, it may suggest that complainants take their complaint to the NSW Civil and Administrative Tribunal. Any incidental consequences of complaint resolution They state: "It is against the law for anyone to treat you unfairly because you have made (or plan to make) a complaint of discrimination or because you have provided information or evidence about a complaint. This is called victimisation. If you feel like you are being victimised, you should immediately talk to one of our officers." Relationship to police and CJS Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- ensure that each side can put forward their point of view without being interrupted - make sure the conference deals with the main issues and not irrelevant matters - assist the complainant and respondent(s) to resolve the complaint in a way that is satisfactory for everyone." Qualifications/background of complaint resolution decision-maker Anti-Discrimination Board of NSW board has a president and four board members who are appointed. It is unclear the backgrounds/ qualifications of conciliation officers.	Any confidentiality or privacy rules (protective of or gagging complainant) Any personal information provided is protected under privacy legislation, including the <i>Privacy and Personal Information Protection Act 1998 (NSW)</i> and the <i>Health Records and Information Privacy Act 2002 (NSW)</i>. What information is publicly available from the complaint resolution? A number of de-identified examples are made available on their website. Their annual reports also provide data on their complaints handling. Relationship of complaints process and resolution to policy and law reform Not clear. The Anti-Discrimination Board makes submissions to various legal inquiries and draft Parliamentary Bills. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? People with disabilities are encouraged to contact the Board to discuss assistance options. Translation and interpreting services are also offered.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	NSW Ageing & Disability Commission	Who can complain? Any adult with a disability or older person or anyone associated with them. Allegations of abuse and neglect by paid service providers are excluded. Types of violence the complaint applies to/excludes Any form of abuse, neglect or exploitation: "Receive and respond to reports or allegations of abuse, neglect and exploitation of an older person or adult with disability" Limitation periods None specified. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? None specified.	Process to complain Contact the NSW Ageing and Disability Abuse Helpline. The helpline is available Monday to Friday between 9am and 5pm. It does not specify that it can respond in an emergency. Form of complaint Complaints can be made through the NSW Ageing and Disability Abuse Helpline via telephone, email, post, online complaint form, or in person. Role of victim-survivor The complaint does not need to come from the victim if the Commission decides to conduct an investigation, they will seek consent from the victim-survivor if appropriate. Role of lawyers/advocates Not specified.	Any interim measures prompted None specified. Any report to police prompted The Commission can share information, particularly criminal allegations, with NSW Police. Relationship of complainant, perpetrator or context Independent third party: "The Ageing and Disability Commission has a clear purpose to: • Raise community awareness to reduce and prevent abuse, neglect and exploitation toward older people and adults with disability • Receive and respond to reports or allegations of abuse, neglect and exploitation of an older person or adult with disability • Provide support and information to those at need • Run an investigation (if required) • Report and advise the government on related systemic issues."	Range of possible outcomes The complaint may be referred to the NDIS Quality and Safeguards Commission. The NSW Ageing and Disability Commission can also make applications to courts or tribunals. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Commission may conduct a public inquiry Any enforcement or monitoring of outcomes None specified Powers of complaint body to investigate, monitor and take action The Commission can request information from a person or body, apply for and execute search warrants to collect evidence as part of an investigation, request compulsory attendance at meetings and the production of relevant documentation and conduct an inquiry if it is in the public interest.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Nature of complaint resolution process As outlined: “Provide Information & Support: The Helpline may provide information and support on the call. The report may also be assigned to the Community Support & Investigation Team, who can explore the matter further. This will help to better understand what actions are needed, and how best to respond. Engage Other Professionals: Depending on the report, we may share information, or part of it, to another body. This may include the NSW Police, the NDIS Quality and Safeguards Commission, or the Aged Care Quality and Safety Commission. Investigate: We may conduct an investigation. If this occurs, the Commission will seek consent of the adult at the heart of the report (if appropriate). Following an investigation, further action may be taken. This could be making an application to a court or tribunal. The intention is always to improve the safety of the adult, and uphold their rights.”	Are written reasons for decision provided? Not specified. Any appeals/review processes following outcome None specified. Any incidental consequences of complaint resolution None specified. Relationship to police and CJS The Commission may notify NSW Police where there are criminal allegations: “The Ageing and Disability Commission is also required to report certain matters to NSW Police. Where we identify that information in a report may provide evidence of a criminal offence, we are required to refer that information to NSW Police.” Any confidentiality or privacy rules (protective of or gagging complainant) Reporters can be anonymous and are protected under law. What information is publicly available from the complaint resolution? None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	Relationship of complaints process and resolution to policy and law reform None specified. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? Information on how to complain is available in 21 different languages. It is also available in simplified English, easy English and English with symbols . The number for the Translating and Interpreter Service is provided.
Other relevant non-complaint bodies	<u>Mental Health Commission of New South Wales</u> – Note - does not handle complaints but 'monitors, reviews and advocates' for the MH system as a whole				

Jurisdiction: Northern Territory

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	<u>NT Department of Education</u>	The NT Department of Education directs anyone with concerns about their treatment within a NSW public school to complain to that school directly. If the complainant is unhappy with the result, they are encouraged to contact their local regional office by phone or email. If a complainant contacts the Department before attempting to resolve it at the school level, the department will de-escalate the complaint to be handled by the school first.	There is limited information on the department's website about the complaints process above the school level, except in some PDF guidelines, which are relatively vague.	There is limited information on how complaints are resolved, and the PDF guidelines are somewhat vague on this point. For example, if a complaint escalates to the regional or chief executive level, and is referred for formal investigation, "the investigator will determine the procedures for investigation, subject to any direction or terms of reference provided by the Chief Executive or delegate, and in accordance with procedural fairness."	The range of outcomes is unclear. Complainants are referred to the Ombudsman NT if they remain unsatisfied with the Department's response.

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Health	<u>NT Department of Health</u>	NT Health provides a number of different ways that service users can provide feedback, include complaints, about their services: • A privacy complaint form, if the complaint relates to a privacy breach • Speak with a staff member or manager of the relevant funded service provider • Speak with a Consumer Services Team member (for people who are in hospital) • Submit a "patient complaint and compliment form" to the Department, or • Contact the NT Health Complaints Coordinator via phone or email. Interpreter services are provided.	Confirmation of receipt of a complaint will be provided within 5 days; and NT Health aim to respond within 35 days. All information is treated confidentially, and anonymous complaints are accepted.	There is no specific information provided about the complaint management or resolution process.	There is no information provided about the range of outcomes available. Complainants are encouraged to contact the Community Visitor Program or the Health and Community Services Complaints Commission if they remain unsatisfied with the Department's response.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Social Services	<u>Department of Territory Families, Housing and Communities</u>	Anyone with a complaint about the Department can complain.	Complainants are directed to complete an online complaint form, or send feedback via mail, phone or email. While no information is provided on the Department's website about the complaints management or resolution process, the Department's website does include a link to their Complaints Management Procedure, and Complaint Investigation Policy & Procedure.	The Complaints Management Procedure provides a basic overview of a 3-Level Complaint Handling process. Essentially, it adopts a simple investigative process with the following elements: Complainants are encouraged to first resolve their complaint at the local level • If escalated, the Department will record and acknowledge receipt of the complaint • The Department will then conduct an initial assessment of the complaint and consider how to manage it (which may include an investigation) • It will then provide the complainant reasons for its decisions • It will then close the complaint	According to these guidelines, the range of outcomes is unclear. The Department will permit one internal review of the management of a complaint, and it will encourage complainants to seek any external reviews from the NT Children's Commissioner, the NT Ombudsman, the NT Anti-discrimination Commissioner or the Information Commissioner.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>The Children's Commissioner of the Northern Territory</u>	Who can complain? Anyone. Types of violence the complaint applies to/excludes "When the Children's Commissioner receives an approach (any contact e.g. phone call, email, visit to the office, etc), a determination is made as to whether or not the approach constitutes a complaint as set out in Children's Commissioner Act (the Act). A complaint must relate to a vulnerable child [section 7 of the Act] and relate to services provided by a service provider [section 21 of the Act]." Limitation periods Not specified. Evidentiary requirements "A complaint is an approach that meets the grounds for a complaint [section 23 of the Act]." Role of legal capacity and substituted decision-making Not specified.	Process to complain Complaints can be lodged by phone, email, in person or in writing. At that time, a determination is made as to whether the complaint meets the evidentiary requirements set out in the <i>Children's Commissioner Act</i>. Form of complaint Not clear if it accepts anonymous complaints. The website also states that it is possible to discuss "concerns" about vulnerable children with the Commission, without necessarily submitting a formal complaint. The Commissioner can also initiate own-motion investigations. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted "The Children's Commissioner may make preliminary inquiries [section 23(2) of the Act] to further assess any issues of complaint. Preliminary inquiries may involve; the review of relevant documentation, Close Circuit Television (CCTV), site inspections or speaking with staff and/or the child." Any report to police prompted Not specified; however, may refer the complaint to a more relevant authority, which is likely to include the police. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process There are 4 options available to the Commissioner when dealing with a complaint: 1. <i>Investigate a complaint</i> "The Children's Commissioner may determine to investigate the matter herself. In this circumstance the Children's Commissioner must notify the relevant service provider/s."	Range of possible outcomes This information is unclear. The Commission states: "The Children's Commissioner will inform the person who made the complaint of how she intends to deal with the complaint, and when she considers a matter to be finalised she will provide the person who made the complaint information relating to the outcome of complaint." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Commissioner can initiate "own-initiative" investigations into systems/sectors on the basis of concerns arising from individual complaints. Any enforcement or monitoring of outcomes The Commissioner can monitor what actions service providers/government takes in relation to its recommendations; but it is not clear whether it has powers of enforcement. Powers of complaint body to investigate, monitor and take action

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Does a specific individual perpetrator need to be identified? No, the complaint must relate to services provided by a service provider (though this could be by an individual staff member within a service provider). Complaints related to vulnerable children who are at risk of violence/abuse/neglect/exploitation within their own home should be referred to child protection.		of her decision to conduct an investigation; details of the matter to which the complaint relates; and that the service provider may make a written submission about the matter. The Children's Commissioner must complete an investigation report at the completion of her investigation. The report must be provided to the service provider. The Children's Commissioner can recommend within the report that the service provider take specified actions within a specified timeframe in relation to the matter. The person who made the complaint will not be provided with a copy of the report, however will be given information regarding the findings and any recommendations that are made if the Children's Commissioner considers it appropriate to do so." 2. <i>Resolve a complaint</i> "The Children's Commissioner may determine that the matter can be resolved without an investigation. In this circumstance the Commissioner will identify and propose certain actions that she feels will resolve the matter in collaboration with the service provider."	Has powers to investigate and monitor any service providers or government decisions in relation to the care and protection of vulnerable children, but is not specific about what those powers entail. Also is not clear about what action can be taken when responses from service providers/government are unsatisfactory. Are written reasons for decision provided? Yes, but only provided to the service provider/government agency that is the subject of the complaint. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Any matter relating to the immediate safety or wellbeing of a child is referred to the police or child protection. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				3. <i>Decline to deal with a complaint</i> “The Children’s Commissioner may determine not to deal with the complaint. [Section 24 of the Act] sets out circumstances that the Children’s Commissioner may make this determination.” 4. <i>Refer the complaint to another body</i> “The Children’s Commissioner may refer the complaint to another person who has an established mechanism to deal with similar complaints for investigation and resolution. In this circumstance, the Children’s Commissioner will need to determine if the referred authority accepts to investigate and resolve the complaint. If so, the referred authority must provide the Children’s Commissioner with the result of the investigation and resolution.” The Commissioner must make a decision on how to deal with a complaint within 28 days, or within 28 days of obtaining further information. Role of victim-survivor in complaint resolution Not clear, but also depends on how the complaint is dealt with.	What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform “The Commissioner is also called upon to respond from a Northern Territory perspective to a range of national policy issues, either independently or in collaboration with the Children’s Commissioners and Guardians from other Australian jurisdictions. The Commissioner also provides information and advice to Government and Ministers in matters pertaining to vulnerable children. The Commissioner provides an annual report on her activities to the NT Legislative Assembly through the Attorney-General and Minister for Justice. The Commission must also review the <i>Care and Protection of Children Act</i> at least every 3 years.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				If the complaint is investigated, for example, they will not receive a copy of the investigation report, and may only be provided with information about the findings/recommendations of the Commissioner's investigation if the Commissioner deems it appropriate. Role of perpetrator (individual/service provider/government) in complaint resolution If a complaint is investigated, the service provider/government is provided with information about the complaint and an opportunity to make a written submission. They will receive recommendations for action from the Commissioner upon completion of their investigation. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The current Commissioner, Ms Colleen Gwynne has a background in public service and the criminal justice system.	Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>Department of the Attorney-General and Justice</u>	The Department's website contains only a simple feedback form, and no specific details on its complaints handling policies and procedures.	N/A	N/A	N/A
	<u>Ombudsman NT</u>	Who can complain? Anyone can complain. Types of violence the complaint applies to/excludes "A complaint may be made about any decision, recommendation, action or inaction by a department, agency or local government council within the Ombudsman's jurisdiction." "There are certain matters about which the Ombudsman cannot consider complaints. Among these are decisions of courts or tribunals, complaints about employment matters and actions of Ministers of the Crown. However for an agency within jurisdiction, virtually any action taken by the agency may be within the Ombudsman's jurisdiction." Limitation periods Normally 12 months.	Process to complain Complaints can be lodged online, in person, in writing, by phone, fax or email. Form of complaint Not specified. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted A Case Officer undertakes a preliminary assessment of the complaint, to consider: • Whether the complaint is within the Ombudsman's jurisdiction • Whether the complainant has already attempted to resolve the issue directly • Whether the complaint relates to a matter they became aware of within the past 12 months • Whether the complaint is more appropriately handled by another body. Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body.	Range of possible outcomes Not specified; although the website states that over 90% of complaints received are resolved by informal interaction with the agency complained about. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action They have powers to investigate and monitor outcomes of complaints, but not to take action. Are written reasons for decision provided? Not clear.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Evidentiary requirements Complaints “should include: • Your name, address and telephone number • A concise summary of your complaint – who was involved, what, when and where it happened, and why the situation is unfair or wrong • What you have done to try and resolve your complaint and the result • Copies of relevant letters or other documents • The result you are seeking.” Role of legal capacity and substituted decision-making None specified. Does a specific individual perpetrator need to be identified? No.		Nature of complaint resolution process These details are unclear. It states that investigating a matter can take some time, depending on its complexity, but that the assigned Case Officer will be in regular contact with the complainant throughout the investigation. Role of victim-survivor in complaint resolution They are kept informed of the investigation. Their role is not specified. Role of perpetrator (individual/service provider/government) in complaint resolution As above. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Part of their function is to investigate complaints against the police. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The Ombudsman also works closely with public authorities and stakeholders to improve administrative practices across government; participates in the Northern Territory Law Reform Committee which advises the Attorney-General on law reform issues; and makes submissions on policy and legislative reform relating to public administration in the NT.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? States that it provides assistance to people with a disability or who need assistance with writing/ language, and/or people who need translation or interpreting services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>NT Anti-Discrimination Commission</u>	Who can complain? Anyone who has been unlawfully discriminated against. Types of violence the complaint applies to/excludes “Unlawful discrimination and unfair treatment based on the following attributes: • race • sex • sexuality • age • pregnancy • parenthood • impairment • religious belief or activity • irrelevant medical record • marital status • breast feeding • trade union or employer association activity • political opinion, affiliation or activity • irrelevant criminal record • your details being published under section 66M of the Fines and Penalties (Recovery) Act 2001	Process to complain Complaints must be lodged in writing and submitted via email, fax, online or in person. Form of complaint It is not clear if the Commission accepts anonymous complaints. Role of victim-survivor If they are the complainant, they are required to provide details about the complaint at the time of lodging it. Role of lawyers/advocates The parties can bring lawyers or support people with them, but must seek the Commission's permission first.	Any interim measures prompted The complaint is assessed, and the Commission “makes a decision whether to accept or decline it” within 10 days. The Commission usually conducts this assessment using the information provided by the complainant, but may also seek additional information from the body/individual who is the subject of the complaint. Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The Commission primarily uses Compulsory Conciliation to attempt to resolve complaints between parties. This is usually done within 6 weeks of receiving the complaint. If the complaint is unable to be resolved in this manner, the complainant can request that the Commission evaluate the complaint.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action The parties are required by law to attend the compulsory conciliation. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Victimisation as result of complaining, is itself grounds for a complaint. Relationship to police and CJS Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		association with a person who has, or is believed to have one of these attributes." Complaints can only be made "if the discrimination has occurred in the workplace, when accessing goods, services and facilities, accommodation, education, insurance and superannuation or at registered clubs that serve alcohol." Limitation periods 12 months, unless there is a good reason for a longer period. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		When evaluating a complaint, the Commission gathers information/evidence from the two parties and decides whether there is "a reasonable prospect of success if the complaint is heard by the Northern Territory Civil and Administrative Tribunal"; at which time it may refer the matter to that tribunal. Role of victim-survivor in complaint resolution Takes part in compulsory conciliation. Role of perpetrator (individual/service provider/government) in complaint resolution Takes part in compulsory conciliation. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified; does not appear to be any publicly available. Relationship of complaint to process and resolution to policy and law reform The other roles of the Commission include public education and training, and community engagement. It is unclear if or how these other processes relate to its complaints handling. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	<u>Health and Community Services Complaints Commission NT</u>	Who can complain? People living in supported accommodation, recipients of in home care and allied health services, their nominated representatives, advocate, service provider or concerned member of the community if the issue is deemed to be in the public interest. Types of violence the complaint applies to/excludes None specified. Limitation periods None specified. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making None specified. Does a specific individual perpetrator need to be identified? None specified.	Process to complain Directly to the Commission. Form of complaint Telephone, in writing, online or in person. Role of victim-survivor None specified. Role of lawyers/advocates None specified.	Any interim measures prompted None specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Independent third party Nature of complaint resolution process Complaints initially are attempted to be resolved at the service level. The Commission will then attempt to achieve resolution of the complaint by providing information, organising meetings, facilitating/mediating meetings and providing advice and options. If complaints cannot be resolved then complaints will be registered, inquired into and assessed by the Commission. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified.	Range of possible outcomes Take no further action, conciliate, investigate or refer to other body. If the complaint is conciliated a possible outcome is an enforceable agreement. Outcome of an investigation is the provision of a notice of investigation findings to the complainant and provider to implement actions. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: None specified. Any enforcement or monitoring of outcomes None specified. Powers of complaint body to investigate, monitor and take action The Commission does have the power to investigate. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified	Any incidental consequences of complaint resolution None specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Documents provided to the Commission are prohibited from used in court proceedings. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Support is given to First Nations people and people from CALD backgrounds. The website provides a link to the Interpreting and Translating Service NT.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Other relevant non-complaint bodies					

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	QLD Department of Education	Who can complain? Anyone who is directly affected by a decision or action of the department. Types of violence the complaint applies to/excludes Complaints may relate to: • “a decision made, or a failure to make a decision, by a public service employee of the department • an act, or failure to act, by the department • the formulation of a proposal or intention by the department • the making of a recommendation by the department • the customer service provided by a public service employee of the department.” Complaints considered outside the scope of the complaints framework and to be “managed through different processes” include: • “complaints under the Education and Care Services Act 2013 and the Education and Care Services National Law	Process to complain Complaints can be lodged by phone, email, in person, online or in writing – either to the relevant school in the first instance, or to the Department. Form of complaint Complaints can be anonymous, but this may limit how the department can handle the complaint. Role of victim-survivor • “Customers making a complaint are responsible for: • cooperating respectfully and understanding that unreasonable conduct will not be tolerated, including abusive, aggressive or disrespectful behaviour • providing a clear idea of the problem and the desired solution • providing all relevant information when the complaint is made • understanding that some decisions cannot be overturned or changed under the framework approach	Any interim measures prompted The complaint is assessed to check that it falls under the Department’s complaint management framework; considers whether there are any human rights implications or if it needs to be referred to a specialist area in the department. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or fund a school that is the subject of the complaint. Nature of complaint resolution process Takes a three-step process to resolving the complaint: • Trying to resolve it quickly at the local/ frontline level (the “Early Resolution” phase) • An internal review if the complainant is unsatisfied with the outcome arising from the previous phase (the “Internal Review” phase)	Range of possible outcomes “Options for resolving the customer complaint that may apply include: • providing an explanation to the complainant about the decision, action, etc. and reasons if not previously provided • dismissing the customer complaint (for example, if the decision complies with legislation, or policies or procedures of the government or department) • concluding that the customer complaint has been substantially resolved • reaching a compromise solution • upholding the customer complaint and implementing specific action, such as overturning a decision, giving an apology or providing a service not previously provided or addressing or referring the issue for system improvement.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- complaints about certain decisions made under legislation - complaints about decisions made under a contract - employee complaints about their employment (Public Service Act 2008 and Public Service Commission Directives) - complaints involving corrupt conduct (Crime and Corruption Act 2001) - public interest disclosures (Public Interest Disclosure Act 2010) Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified directly; however complainants can be supported by a friend, advocate, interpreter or community elder, and can request other reasonable assistance to lodge their complaint.	informing the department of changes affecting the complaint including if help is no longer required." Role of lawyers/advocates Complainants can be supported by a friend, advocate, interpreter or community elder.	- Encouraging complainants to seek an external review if they remain unsatisfied with the Department's decisions (the "External Review" phase). At the "early resolution" phase, there are four steps: receive and record the complaint; assess and resolve the complaint; communicate the outcome; and close the complaint. The department's Customer Complaints Management Procedure sets out further detail, however is still relatively vague on exactly how investigations are conducted. The department offers the following timelines: - Simple complaints may take up to 20 working days - Complaints requiring some inquiry may take up to 45 days - Complaints requiring investigation and escalation may take up to 90 days or longer - Complaints involving human rights issues will take up to 45 business days	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? "The complaints officer must advise the complainant of the outcome of the assessment and resolution process. This should include: - a clear explanation of the final decision - any recommendations - any review options available to the complainant, including internal or external review."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Does a specific individual perpetrator need to be identified? Not specified.		Role of victim-survivor in complaint resolution Complainants have the following responsibilities: - cooperate respectfully and understand that unreasonable, abusive, or disrespectful conduct will not be tolerated - give the Department a clear idea of the issue or concern and their desired solution - provide all the relevant information when making the complaint - understand that addressing a complaint can take time - let the Department know if something changes, including if help is no longer needed. Role of perpetrator (individual/service provider/government) in complaint resolution Not clear. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any appeal/review processes following outcome “If the complainant is dissatisfied with the outcome of their customer complaint and/or the way the customer complaint was handled by the department, the complainant can request an internal review.” “This request should: - be in writing using the request for internal review form (DOCX, 410KB) or provided over the phone - be lodged within 28 days of receiving your complaint outcome - explain why a review is appropriate and provide all relevant information - detail the action you would like taken to resolve the complaint.” The Department aims to complete internal reviews within 45 working days. It then refers complainants to the Queensland Ombudsman or Queensland Human Rights Commission if they wish to pursue an external review.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) “Information is only used for the purpose of responding to the complaint. Information will not be distributed to any third parties unless authorised or required by law.” What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The department categorises complaints to identify issues and trends that may help it improve its services. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Complainants can request all reasonable assistance, such as translation services or text telephone services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Health	<u>Queensland Health</u>	Who can complain? Anyone can make a complaint about a (public or private) health service in Queensland. Types of violence the complaint applies to/excludes Relates to incidents where the complainant felt the services received were not of the standard expected. Complaints relating to corrupt conduct and public interest disclosure are excluded, as they are dealt with by separate processes (complainants are directed to the Department's ethical standards unit). Limitation periods No strict periods are specified, however the Department encourages complainants to "talk to someone as soon as possible" as the longer time passes, the "less clear the facts become, which can make it harder to find a solution." Evidentiary requirements Not specified. However, complainants are encouraged to provide supporting	Process to complain Complaints can be made in person, by phone, in writing, or using an online feedback form. They may also email the Department Liaison office who will direct their complaint to the appropriate area. Complainants are encouraged to "go local first" by speaking with the relevant departmental business area, facility or service that is the subject of the complaint. This may include speaking with the staff member in question, or their manager or the executive of the service/business area. Form of complaint The Department distinguishes between "standard" complaints which relate to a dissatisfaction with a service/action, and a "human rights" complaint where the complainant believes "that an act or decision was made that is not compatible with human rights or when making a decision, there was a failure to consider human rights relevant to the decision." The same method of complaining is used for both forms of complaint. Role of victim-survivor "The Department of Health encourages [the complainant] to play an active part in resolving [their] complaint by:	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund a service which is the subject of a complaint. Nature of complaint resolution process The formal complaint process depends on whether the complaint relates to a private or public health service, or the Department of Health itself. <i>For complaints about the Department of Health</i> Complaints will be handled by "an employee who manages complaints on behalf of the Department." This person will acknowledge the complaint, may contact the complainant for further information, and consider the complaint. The complainant will then be "notified of the outcome, including reasons for the department's decisions."	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Complainants may request an internal review by the manager of the relevant health service or business area of the Department. If they remain unsatisfied, they may contact the Queensland Ombudsman or the Office of the Health Ombudsman for an external review.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		documentation/evidence along with their complaint if possible. Role of legal capacity and substituted decision-making The Department states that "in some circumstances, a relative, carer or friend may raise concerns or make a complaint on [the victim-survivor's] behalf. A consumer group or advocate can also complain on [the victim-survivor's] behalf." In relation to broader health services in Queensland (i.e. not necessarily Department of Health services), the website states that: "Children can make complaints if they are assessed by the health service as having a sufficient level of maturity and understanding. If the child is considered to lack the capacity to make a complaint, a parent or legal guardian can make the complaint on the child's behalf." Does a specific individual perpetrator need to be identified? Not specified.	• outlining [their] complaint as clearly and accurately as possible • providing any supporting documentation that may help the department resolve [their] complaint • treating staff with courtesy and respect." Role of lawyers/advocates The Department recognises that advocates may complain on behalf of a victim-survivor.	<i>For complaints about public health services</i> Complaints are directed to the local public hospital or health service in question, as a first step. If the complaint cannot be resolved, they are directed to ask to be referred to the Hospital and Health Service complaints coordinator of their Queensland Health area. This complaints coordinator will then review the complaint and contact the complainant "with possible options to resolve [their] complaint" and "explain what will happen next." <i>For complaints about private health services</i> Complaints are directed to the hospital or health service in question, as a first step. If the complaint cannot be resolved at this level, complainants are encouraged to contact the Office of the Health Ombudsman. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified.	Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The Department states that complaints are "dealt with in a confidential manner and will only be discussed with the people directly involved." It also states that complaints will not be kept on any medical record. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	
	<u>Office of the Chief Psychiatrist</u>	The Office of the Chief Psychiatrist can investigate serious matters concerning the administration of the Mental Health Act which may impact the rights of patients. A patient or someone on the patient's behalf, such as a nominated support person, family, carer or other support person can make a complaint. Complaints may concern "any aspect of the patient's treatment or care. This may include a complaint about the quality or standard of mental health treatment or care, or an alleged failure to provide appropriate treatment and care by an AMHS or particular staff member."	The process by which patients or 'interested persons' can lodge a formal complaint is unclear. Mental health services administrators "must notify the Chief Psychiatrist of complaints relating to significant non-compliance with the Act and for specified critical incidents."	Information about the complaint resolution process is not specified. Independent Patient Rights Advisers (IPRAs) and staff of a mental health service must provide assistance to patients and their support persons in making a complaint, if requested.	The Chief Psychiatrist has powers under the relevant Mental Health Act to investigate complaints about mental health services. Investigative powers also exist under the Hospital and Health Boards Act 2011 and Private Health Facilities Act 1999. "The Act [also] provides patients and 'interested persons' a right to request a second opinion about a patient's treatment and care..." The right to request a second opinion applies where a [mental health service] has been unable to resolve a complaint made by a patient or an 'interested person' for the patient, about the patient's treatment and care." "The patient, or 'interested person' for the patient, must be kept informed of steps taken to arrange a second opinion."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Information about the complaint resolution process is not specified. Independent Patient Rights Advisers (IPRAs) and staff of a mental health service must provide assistance to patients and their support persons in making a complaint, if requested.	"If provision of a second opinion and the AMHS response to it does not resolve the patient's or interested person's concerns, the matter may be escalated to the Chief Psychiatrist for consideration." Escalation to the Chief Psychiatrist can only occur with endorsement of the relevant clinical director and where all other avenues for resolution are exhausted. "Where a patient requires specific help to make a complaint, such as with the assistance of an interpreter, personal guardian, support person or community visitor, every reasonable effort must be made by the AMHS to organise the appropriate support."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Office of the Health Ombudsman</u>	Who can complain? Anyone, including a patient of a health service, their parent/ guardian/relative/friend or representative, a health service provider or any other concerned person. The OHO can also initiate own-motion investigations. Types of violence the complaint applies to/ excludes Complaints can be about any health service received, or health service provider, in Queensland. Limitation periods Not specified. Evidentiary requirements Any complaint should include the following information: • Who was involved? • Where did the incident occur? • What happened and when? • What are you concerned about? • Have you done anything else to address this matter? • What do you want to happen now?	Process to complain Complaints can be lodged in writing, online or by phone. Complainants are first encouraged to raise their complaint with the relevant health service provider, and to contact the OHO if the complaint is unable to be resolved at that level. Form of complaint Anonymous complaints are accepted; however this may make it difficult to investigate the matter and respond to the specifics of the complaint. Complainants can also request that their identity be withheld, instead of remaining anonymous. Role of victim-survivor It is unclear whether a victim-survivor would be notified or engaged if a complaint was made in respect of care/ treatment provided to them, by another person. Role of lawyers/advocates Complaints can also be lodged by a parent/guardian/relative/ friend or representative, a health service provider or any other concerned person.	Any interim measures prompted The OHO can take “immediate action” which involves imposing “restrictions and bans on individual health service providers who are a risk to public health and safety or for reasons of public interest.” It also works closely with AHPRA who may take similar action. Any report to police prompted Complaints may be referred to other agencies, including the police, if appropriate. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body. Nature of complaint resolution process There are a number of options the OHO may take in relation to resolving a complaint. These include: • Making a formal assessment • Referring the complaint to a more appropriate organisation for resolution • Direct resolution between the complainant and the health service that is the subject of the complaint	Range of possible outcomes Depending on the approach taken to resolving the complaint, any of the following outcomes are possible: • Explanation • Changes in practice, policy or procedure • Apology • Compensation • No further action • Referral of the matter to another body (e.g. AHPRA) • Legal action taken by the OHO against the service provider in the Queensland Civil and Administrative Tribunal. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The OHO records all complaints in order “to identify systemic issues and patterns of behaviour.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Any supporting documentation (where available) Role of legal capacity and substituted decision-making People who are an appointed guardian, have authority to make medical decisions on behalf of another person, or who have Enduring Power of Attorney (Medical) for an individual or who are a Statutory Health Attorney may be required to provide additional documentation to the OHO when lodging a complaint. Does a specific individual perpetrator need to be identified? Not specified.		- Conciliation between the complainant and the health service that is the subject of the complaint - Taking immediate action against the health service provider - Conducting an investigation into the complaint - Referring the matter to the Director of Proceedings for potential legal action - Taking no further action Role of victim-survivor in complaint resolution This will depend on the complaint resolution process adopted. Direct resolution and conciliation both involve the parties in a complaint coming together to resolve it with the assistance of the OHO. If more serious avenues are taken – such as immediate action, conducting an investigation or referring the matter for prosecution – the victim-survivor may be less involved in directly resolving the problem. Role of perpetrator (individual/service provider/government) in complaint resolution As above.	Any enforcement or monitoring of outcomes If any action is taken against a service provider, the OHO will monitor compliance with any conditions/restrictions imposed on them. "Monitoring will continue until the Health Ombudsman revokes the immediate action or the Queensland Civil and Administrative Tribunal sets the decision aside." Powers of complaint body to investigate, monitor and take action The OHO states: "Most monitoring requirements are included in the immediate action conditions/restrictions imposed by the Health Ombudsman, however monitoring officers also have legislative powers to require individuals to give information about a health practitioner's compliance with immediate action taken against a practitioner..." The Health Ombudsman Act 2013 also provides legislative powers to require stated information for monitoring purposes." The OHO can also initiate own-motion investigations. Are written reasons for decision provided? Yes.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The Ombudsman is an appointed person with significant experience in the public sector/ public administration.	Any appeal/review processes following outcome Complainants can request an internal review of the following types of decisions: • "A decision that the complaint is not within the jurisdiction of the Health Ombudsman. • A decision not to accept a complaint. • A decision to take no further action, at any stage of the complaint management process, under section 44 of the Health Ombudsman Act 2013 (the Act). • A decision to not facilitate local resolution under section 43A, following receipt of a mandatory report from a state entity under section 93 of the Act." Requests must be made in writing within 28 calendar days of the date the decision was made. They must include an outline of the reasons why the complainant believes the decision is incorrect, and whether there is any new information that has come to light that would warrant reconsidering the decision.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					A new review officer will conduct the internal review. External reviews can be requested from the Queensland Ombudsman. Any incidental consequences of complaint resolution The OHO assures complainants that “the <i>Health Ombudsman Act 2013</i> anti-reprisal legislation provides protection for the complainant.” Relationship to police and CJS The OHO may refer complaints to a more appropriate agency or body – including AHPRA, the police, or the Crime and Corruption Commission. Any confidentiality or privacy rules (protective of or gagging complainant) The OHO states: “The OHO is required to carefully consider how the consumer’s privacy could be affected by information that is provided to the complainant... This means specific details of the consumer’s treatment and health information may not be provided to the complainant in the notice of decision, however this information will have been

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					carefully reviewed and considered by the OHO when making the decision.” Complainants can also request that their identity be withheld, instead of remaining anonymous. However in these cases it may still be possible for the service provider to identify who the complainant is. What information is publicly available from the complaint resolution? If the complaint results in disciplinary action, such as the imposition of conditions/restrictions on a service provider's practice, this is listed on the OHO's website. The OHO also publishes performance reports and complaints data on a monthly basis, which are also reported on in their annual reports. Relationship of complaints process and resolution to policy and law reform Not clear. The OHO states that it identifies and analyses systemic issues in the health sector, and monitors the complaints management landscape, however it is not clear if it regularly

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					participates in policy/law reform activities such as through inquiry submissions or reports to parliament. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Offers translation and interpreter support, as well as assistance through the National Relay Service.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Social Services	QLD Department of Children, Youth Justice and Multicultural Affairs	Who can complain? Anyone, including departmental staff and funded NGO service providers. Types of violence the complaint applies to/excludes Complaints can apply to: - a decision made or not made - a decision made that breaches or restricts an individual's human rights - the service provided or not provided - a service that is funded by the Department - the behaviour of Department employees - one of the Department's acts or practices in relation to the individual's personal information that may be a breach of the department's obligation under the Information Privacy Act 2009. "Complaints in relation to human rights will only be able to be made about alleged human rights breaches which occur after 1 January 2020."	Process to complain Complainants are encouraged to resolve their complaint with the service provider in question, or their local departmental service centre in the first instance. If they remain unsatisfied with their response, they can formally complain to the Department's Complaint Unit – by phone, email, online or in writing. Form of complaint Anonymous complaints are accepted, however the Department notes it may not always be possible to handle complaints effectively if this is the case. Role of victim-survivor If they are the complainant, they are expected to provide as much information about their complaint at the time of lodging it. Role of lawyers/advocates The department's complaints procedure states that the department should "ensure complainants have the opportunity to be supported by a friend, an advocate, an interpreter, a community Elder or Independent Entity."	Any interim measures prompted "Information relating to suspected harm or risk of harm to a child must be immediately referred to the appropriate Regional Intake Service for assessment." Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund the service provider that is the subject of the complaint. Nature of complaint resolution process According to the department's complaints procedure, the process could include: Direct/informal response options. This "might be a facilitated discussion, a face-to-face meeting, an informal discussion over the phone between the departmental officer and the complainant or an explanation of departmental legislation/policy/procedure that results in a resolution to the complaint. A written response is required, and a right of reply to preliminary findings / decision and outcome advice must be afforded prior to making a final determination."	Range of possible outcomes Not specified directly. However, the department does note that "at the conclusion of an investigation, if the department have identified systemic or practice issues, system improvement recommendations will be made to the relevant area for appropriate action." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The department notes the complaints management process should consider "whether the complaint / decision-making process raises systemic factors and or concerns." Any enforcement or monitoring of outcomes The department's complaints procedures states that complaints management staff should "ensure that outcomes and follow up actions are completed." Powers of complaint body to investigate, monitor and take action Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Complaints deemed out of scope include those relating to allegations of suspected harm or risk of harm to a child; matters currently being dealt with by the courts or an external complaints agency; matters relating to staffing issues within funded NGO service providers (unless these are having an impact on client services); privacy complaints; matters concerning the outcome of the National Redress Scheme for Institutional Child Sexual Abuse applications; allegations involving suspected misconduct, including corrupt conduct and maladministration. All of the above have separate complaints/notification schemes. Limitation periods 12 months, unless the Department "considers that exceptional circumstances warrant consideration of the out-of-time complaint."		- Formal Investigation "An investigation is a process whereby the department investigates complaints made by complainants. The complaint allegations need to be tested and assessed against legislation, relevant policies, procedures, standards, and service agreements. A written response is required, and a right of reply to preliminary findings / decision and outcome advice must be afforded prior to making a final determination." - Senior Practitioner Review "A senior practitioner review can be conducted as part of a response to a complaint regarding a practice decision or a practice that led to a decision... A senior practitioner review may also be conducted to inform an internal review of a complaint where appropriate. The review will make findings to assist the decision-maker determine the outcome of the complaint. The review may also make recommendations to respond to opportunities identified in the review to strengthen practice."	Are written reasons for decision provided? Yes, "including complaint decisions, reasons for decisions, review options and any other action taken." Any appeal/review processes following outcome If the complainant remains unsatisfied with the process or outcome of their complaint, they can request an internal review. "A request for an internal review should: - state clearly the details of what specific aspects of the complaint management process or outcomes the complainant disagrees with and why the complaint should be reviewed, and - be lodged within 12 months of receipt of the complaint outcomes." If still unsatisfied, the complainant is referred to the Queensland Ombudsman to seek an external review, or the Queensland Human Rights Commission who may offer a conciliation process. Any incidental consequences of complaint resolution Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Evidentiary requirements Complainants are asked to provide all information "relevant to the matter in the order in which it happened." This may include "a description of what happened, dates, phone calls, letters and meetings" and the outcome the complainant is seeking. Role of legal capacity and substituted decision-making Not specified directly. A complaint may be lodged by a complainant's representative/advocate. Does a specific individual perpetrator need to be identified? Not specified.		- Taking no further action "The department may decide to take no further action where dealing with the complaint would be an unjustifiable use of resources or where the complaint: • is frivolous or vexatious • lacks substance or credibility • is not made in good faith • is made recklessly or maliciously, or primarily for a mischievous purpose • has already been managed and exhausted under the Complaints Management System." The Department also distinguishes between low, medium and high complexity complaints: "Low complexity complaints generally require no investigation and can be easily addressed through the provision of information, or through negotiating a desired outcome, perhaps through a face-to-face meeting or over the phone. Low complexity complaints should take no more than 30 business days to manage."	Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The department may disclose "personal information to other agencies or third parties for the purpose of responding to or managing [a] complaint, or for evaluation purposes. [P]ersonal information will be handled in accordance with the <i>Information Privacy Act 2009 (Qld)</i>." What information is publicly available from the complaint resolution? "A report detailing the performance of the complaints management system is made available through the department's Annual Report which is published by 30 September each year. This is aligned with the reporting requirements set out in the Public Service Act 2008, and the Australian/New Zealand Standard AS/NZS 10002-2014 - Guidelines for complaint management in organizations."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				• "Medium complexity complaints may require some investigation, senior practitioner review, negotiation or facilitated discussion with the complainants or consultation with other areas of the department. These complaints should take no more than 60 business days to manage." • "High complexity complaints are matters where there are possibly a large number of complaint allegations, or where the complaint allegations may refer to possible systemic concerns. These matters will typically involve complainants providing detailed or lengthy background information that requires considerable time to address. Formal investigation is typically required, sometimes involving a number of units in the department, and may involve interviews or discussions with staff and other relevant persons, including external persons of interest and jurisdictions. These matters may also require a senior-practitioner review. These complaints may take up to six months to complete."	Relationship of complaints process and resolution to policy and law reform "Regular de-identified complaints reports will also be made available to departmental staff for analysis to identify trends, systemic issues and potential improvements." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The department provides access to interpreter and translation services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of victim-survivor in complaint resolution This will vary depending on the complexity of their complaint and the process adopted (see above). Role of perpetrator (individual/service provider/government) in complaint resolution This will vary depending on the complexity of their complaint and the process adopted (see above). Roles of other independent persons/monitors in complaint resolution The department's complaints procedures states that the department should "ensure complainants have the opportunity to be supported by a friend, an advocate, an interpreter, a community Elder or Independent Entity." Qualifications/background of complaint resolution decision-maker The department's complaints procedures states that "every complaint will be assigned an employee to perform the roles of complaint administrator/investigator, and complaint decision-maker. These roles may be undertaken by a single employee, or two different employees. The decision-maker must be appropriately authorised as outlined in the complaints management procedure."	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	QLD Department of <u>Communities, Housing and Digital Economy</u>	Who can complain? Not specified. Types of violence the complaint applies to/excludes Complaints can be made about "any aspect of the services or actions of the department or [their] staff, including privacy breaches." Complaints about matters that are already being dealt with by this or another department/agency, matters before the courts, matters "that are impractical to investigate" or which "appear to concern frivolous matters or appear to have been made vexatiously" are excluded. Limitation periods Not specified directly. Complainants are encouraged to report their complaint "as soon as possible." Evidentiary requirements Complainants are asked to provide "as much information as possible including details of the issue, dates, phone calls	Process to complain According to the department's complaint policy, "a complaint may be submitted through any mode of communication including online, in person, by phone, by email, by SMS and by letter. A complaint may be received by any employee of the department." Form of complaint Anonymous complaints are accepted. However, this may impact the department's ability to assess the complaint and keep the complainant updated as to its progress. Role of victim-survivor "Complainants are responsible for: - providing clear information of the issue/s about which they are complaining - providing all information relevant to the complaint - being clear at the start about their desired outcome or solution - cooperating with the department in a respectful way and understanding that unreasonable conduct will not be tolerated - informing the department if they no longer require assistance including choosing to withdraw their complaint."	Any interim measures prompted Complaints are assessed by "Divisional Complaints Management Officers" (DCMO) to decide whether they are in or out of the department's complaints management policy. If a complaint is out of scope (e.g. should be handled under a more appropriate policy, agency or body), the DCMO advises the complainant on how to contact the appropriate area, and "consideration should be given as to whether the complainant requires assistance" to do so. The DCMO is also required to assess whether a complaint involves corrupt conduct, public interest disclosure, or human rights issues; in which case they must refer the complaint to dedicated areas of the department for further action and/or advice. Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context May be the perpetrator, or fund the service provider that is the subject of the complaint.	Range of possible outcomes "Possible outcomes include but are not limited to: - an explanation of the original action or decision - change of the original decision - correction of incorrect or misleading records - formal or informal dispute resolution - a statement of apology - policy, procedure or practice review - improved implementation (change management practices) - program review - monitoring compliance - improved communication – e.g. regular team meetings - staff training or other professional development activity." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Complaints are assessed for whether they indicate systemic issues, and potential outcomes may include changes to system-wide policies and procedures.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		and any other supporting information." They are also asked what outcome they are seeking and any actions they wish the department to take. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Role of lawyers/advocates Not specified.	Nature of complaint resolution process Complaints are first assessed and allocated a level of complexity. "The nature of the complaint will determine resolution approaches which may include working directly with the complainant to resolve the issues, document review, informal inquiries or a formal investigation." Level 1 "Level 1 complaints are generally straightforward with minimal potential to impact on a division. Such complaints are generally able to be resolved at the point of service or may require some enquiries and/or investigation..." Level 1 complaints may be resolved by supervisors or managers with regard to any actual or perceived conflicts of interest." Level 2 "Level 2 complaints are generally of a more complex or serious nature and have the potential to impact negatively on a division. Such complaints will require enquiries and/or investigation..." Level 2 complaints may be resolved at the Director or above level with regard to actual or perceived conflicts of interest."	Any enforcement or monitoring of outcomes Decision makers are "required to determine what actions may be required to address the complaint...and ensure an implementation plan is devised to address any identified actions." In addition, the "DCMO is to provide the Divisional Head with quarterly reports to monitor progress of implementation of the recorded business improvements." Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Yes. "The complainant is to be provided with outcome advice which uses clear and simple language to explain the decision. The advice at a minimum should include the following: • the issues which were reviewed • the process used to review the complaint • the information which was assessed in the review • the findings which were reached against each issue/allegation

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Level 3 "Level 3 complaints are generally complex and significant and have the potential to impact negatively on the department and/or cause lasting detriment or significant consequences. Such complaints will usually require comprehensive assessment and/or investigation...Level 3 complaints should be resolved by the Office of the Director-General or the Integrity Services Unit with regard to actual or perceived conflicts of interest." Role of victim-survivor in complaint resolution This will depend on the approach taken to resolving the dispute (see above). In matters involving investigation, the department's complaint management procedure states that complainants should be given the opportunity to comment on any preliminary findings before a final decision is made. Role of perpetrator (individual/service provider/government) in complaint resolution This will depend on the approach taken to resolving the dispute (see above).	• advice on the outcomes the complainant sought • advice on any business improvement recommendations • the review rights available to the complainant (internal or external)." Any appeal/review processes following outcome "Any request for internal review must be submitted within three months from the date of the decision made in relation to the complaint. The request for a review should include: • the department's complaint reference number (if known) • the decision/s which the complainant is seeking to be reviewed • the reason/s why the complainant considers the decision/s to be wrong • the outcome the complainant is seeking." "The review is to be conducted by a person who is independent of and senior to the original decision maker." However, "internal review rights are not applicable to privacy complaints or human rights components of a complaint."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				In matters involving investigation, the department's complaint management procedure states that staff subject to a complaint should be given the opportunity to comment on any preliminary findings before a final decision is made. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Divisional Complaints Management Officers (DCMO) handle formal complaints.	If unsatisfied with the process or outcome of their complaint, the complainant may seek an external review by the Queensland Ombudsman, the Queensland Human Rights Commission or Office of the Information Commissioner. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The department manages privacy in accordance with "the 11 Information Privacy Principles in the <i>Information Privacy Act 2009 (Qld)</i>" What information is publicly available from the complaint resolution? The Department reports its complaints data in its annual reports. Relationship of complaints process and resolution to policy and law reform The department has a range of internal reporting requirements where complaints data is used to inform improvements in service delivery.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? “Where the complainant indicates they require assistance with lodging their complaint such as an interpreter or translator or an advocate, all reasonable assistance should be provided to the complainant.” In addition, “if the complainant indicates they are a victim of crime they should be provided with information about available assistance to recover from the impacts resulting from the crime.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>Department of Justice & Attorney-General</u>	Who can complain? A person apparently directly affected by the service or action of DJAG being complained about Types of violence the complaint applies to/excludes General complaints relate to "the service or action of a department, or its staff, by a person who is apparently directly affected by the service or action." Complaints can also be made against breaches of Human Rights under the <i>Human Rights Act 2019</i>, however these can only relate to alleged breaches that occurred after 1 January 2020. Complaints can also be made about breaches of client privacy by DJAG. Complaints that are out of scope include: "Decisions made by courts or tribunals, inspectors, commissioners, or denied requests for information," as well as "corruption, fraud, or complaints by public servants..." Complaints regarding these decisions are investigated through other processes and/or legislative requirements."	Process to complain Complaints can be lodged through an online portal, or by filling in a complaint form and lodging in person or mailing it to the relevant DJAG business area. Form of complaint "Anonymous complaints are treated like any other complaint." Role of victim-survivor DJAG encourages victim-survivors to play an active part in resolving their complaint by: - outlining their complaint as clearly and accurately as possible - providing any supporting documentation that may help DJAG resolve the complaint - treating DJAG staff with courtesy and respect. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator of the behaviour which is the subject of the complaint. Nature of complaint resolution process Takes an investigative approach. The resolution process involves - Receiving a complaint and forwarding it to the relevant business area for action - Acknowledging receipt of the complaint - Investigating the complaint - Notifying the complainant of the outcome - Undertaking an internal review if requested - Referring complainants to an external review body if they remain unsatisfied with the outcome. DJAG categorises complaints as follows:	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes DJAG states that they "monitor and review complaints and their outcomes to improve our service." Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Complainants can request an internal review by the relevant DJAG business area. If they remain unsatisfied, they may seek an external review by the Queensland Ombudsman or the Queensland Human Rights Commission.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods Not specified for general complaints. Complaints under the <i>Human Rights Act 2019</i> (Human Rights Act) can only be made about alleged breaches which occur after 1 January 2020. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		- Simple – complaint resolved at point of service (resolved at point of service) - Standard – complaint usually has only one single issue or concern (resolved within 30 days) - Complex – complaint has multiple issues and/or is serious in nature and requires extensive investigation (resolved within 70 days) - Privacy complaint – complaint relates to an act or practice of DJAG in relation to the individual's personal information (resolved within 45 days) - Human rights complaint – complaint is about an alleged contravention of the Human Rights Act 2019 (resolved within 45 days) Role of victim-survivor in complaint resolution Victim-survivors (who are assumed to be the complainant) may be contacted initially to discuss their complaint, and are then notified of an outcome once an investigation has completed.	Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) DJAG states: "Your personal information may be forwarded to the business unit or region relevant to your complaint so your complaint can be addressed. Your personal information will not be provided to any person you are complaining about, unless it is specifically required to ensure your complaint is appropriately dealt with. Any use of your personal information (DOCX, 503.5 KB) will be limited to that necessary to investigate and respond to the issues raised in your complaint." What information is publicly available from the complaint resolution? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? "Reasonable assistance is provided to anyone wishing to make a complaint." Access to language assistance, translating and interpreter services are also provided.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	Office of the Queensland Ombudsman	Who can complain? A person who is directly affected by the service or action of a Queensland state government department or agency. Types of violence the complaint applies to/excludes The Ombudsman has the "power to investigate the decisions and actions of Queensland state government departments and agencies (including state schools and TAFE), local councils, and public universities" such as "complaints about: - a decision to refuse a service or subsidy - the way a complainant's application has been handled - a decision to exclude a complainant from a program or service - fees or charges levied - the conduct of an officer - a policy or procedure." Limitation periods 12 months, unless there are special circumstances.	Process to complain Complaints can be lodged online, in writing, in person or by phone. Complaints proceeding to an investigation must be made in writing. Complainants are encouraged to complain to the agency in question in the first instance, including asking for an internal review. Form of complaint Not specified. <i>Role of victim-survivor</i> Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted Before investigating a complaint, the Ombudsman will consider: - Whether they can legally investigate the issue - Whether the complaint is less than 12 months old - Whether the complainant has first complained to the agency in question - Whether they have other appeal rights (e.g. through the courts or other complaint handling organisations) - Whether the complainant has provided enough supporting information - Whether the complainant has any particular needs that may make it "harder to go through the complaints process" Any report to police prompted Not specified. Relationship of complaint body to victim, complainant, perpetrator or context Is an independent body.	Range of possible outcomes If an investigation concludes that the organisation's actions were unlawful, unfair or unreasonable, the Ombudsman may make recommendations to fix the complaint. This may involve working informally between the parties to reach an outcome, such as, for example, a change in the organisation's policies or procedures. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Ombudsman states: "While the majority of our investigations are based on complaints, investigations into serious systemic issues may be initiated by the Ombudsman. These investigations are often released publicly to bring these issues to the attention of parliament, the public sector and the general public." Any enforcement or monitoring of outcomes The Ombudsman cannot force an organisation to accept its recommendations. Monitoring of outcomes is not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making The Ombudsman's <u>policy and procedure</u> on complaints handling states that: "Representative complaints will generally be accepted where: • there is a written authority from the person apparently affected that authorises the person to make the complaint to the Ombudsman on their behalf • the person contacting the Office is a registered professional who typically assists people (e.g. Lawyer, town planner, registered health practitioner) and who is bound by professional responsibilities in respect of the person. • an elected representative is referring the matter • a government agency is referring the matter		Nature of complaint resolution process If the Ombudsman decides that a complaint should be investigated, an investigator will undertake an informal investigation to "assess: • the impact of the organisation's decision or action • whether the organisation's decision was lawful, fair and reasonable • the outcome [the complainant] wants • whether an investigation is likely to lead to a positive outcome for [the complainant] and/or lead to an improvement in the organisation's procedures." A complaint may at this point be discontinued, or continue to the formal investigation stage. If an investigation proceeds, the time taken to investigate will vary depending on the complexity of the matter. The parties will be kept informed of the progress of the investigation throughout. Role of victim-survivor in complaint resolution May be requested to provide further information in relation to their complaint, and is	Powers of complaint body to investigate, monitor and take action The Ombudsman has special "powers to: • make preliminary inquiries to decide whether a complaint should be investigated • investigate informally • investigate formally, using coercive powers." They also have "formal powers to obtain answers and access documents," and "the power to enter and inspect premises." Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Complainants who remain unsatisfied with how their complaint was handled can request an internal review. The request must stipulate why the complainant thought the Ombudsman reached the wrong decision and provide any new relevant information. The review will be handled by an office not involved in the initial complaint. The review will "consider whether:

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		there is some other evidence the complainant wishes for the person to represent them and there is reason to believe the complainant cannot access the Office's services directly." Does a specific individual perpetrator need to be identified? Not specified.		then kept informed of the progress of an investigation, if it proceeds. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	- the processes followed by staff were fair - the conclusions reached were reasonable - they properly explained their decision" Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS The Ombudsman's policy and procedure for complaints and handling states that if the Ombudsman considers that a complaint relates to corrupt conduct, the matter may be referred to the Crime and Corruption Commission. Any confidentiality or privacy rules (protective of or gagging complainant) The Ombudsman collects personal information: - using fair and lawful means - for a lawful purpose directly related to complaint-handling functions.

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					They also state: "Unless you tell us otherwise, we will work on the basis that you consent to providing necessary and relevant information to the organisation you have complained about. We need to do this so that the organisation can respond to your complaint. Your personal information will not otherwise be disclosed unless you consent, or the disclosure is required or authorised by law." What information is publicly available from the complaint resolution? The Ombudsman publishes de-identified complaints data through its Open Data policy. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? When "deciding that a person is a suitable representative for a complainant who has died or is unable to make a complaint...Officers should consider: the nature and extent of the relationship between the representative and the other person

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					- whether there is another more suitable person to represent the interests of the person.” Any specific provision for particular groups? The Ombudsman has different ways available to help complainants if they: - identify as an Aboriginal or Torres Strait Islander - are under 18 years of age - have an intellectual impairment - need help with reading or writing - are experiencing domestic violence - are an asylum seeker or refugee. They also provide access to interpreter and translation services, or services for people with hearing or speaking impairments.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Queensland Human Rights Commission</u>	Who can complain? Anyone who has been personally affected by a situation involving potential discrimination, sexual harassment, or a breach of human rights. Complaints about vilification on the basis of race, religion, sexuality or gender identity may be made by a 'relevant entity' which could include a community group, support organisation or an individual from one of those communities. Types of violence the complaint applies to/excludes Includes discrimination on the basis of age, sex, race, religion, sexuality, gender identity, impairment, family responsibilities, breastfeeding, parental status, relationship status, pregnancy, political belief, trade union activity, lawful sexual activity and association with someone with the above characteristics. In addition, the above discrimination must have taken place in specific areas of public life covered by the relevant Anti-Discrimination Act (e.g. work, education, accommodation, etc.).	Process to complain Complaints must be made in writing, lodged online, in person or by mail. If the complaint is about an alleged breach of human rights, the complaint must first be made to the agency in question. Form of complaint Anonymous complaints are not accepted. Role of victim-survivor Must be the complainant, unless the Commission authorises a representative to complain on their behalf. They must provide sufficient information in their complaint for the Commission to assess whether to proceed to conciliation. Role of lawyers/advocates Lawyers are not required for the conciliation process, however complainants are encouraged to seek legal advice if they wish. The Commission also states: "Complainants and respondents must request permission to have legal representation at conciliation conferences. This must be done in advance of the conciliation conference by contacting the conciliator either by phone or in writing. The conciliator will decide whether to approve the inclusion of an advocate in the process by considering whether:	Any interim measures prompted Complainants are asked to advise the Commission, when lodging their complaint, if: - there is an imminent and significant risk to them or their family's life, liberty, health, or safety - significant harm to them would result from delay in dealing with the complaint - an effective remedy for their complaint would be denied to them, if there was a delay – for example, where a student has been suspended or expelled and would not be able to sit for examinations. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The Commission is an independent, impartial body. Their role "is to: - work to ensure that everyone puts forward their point of view, is listened to, and feels safe	Range of possible outcomes "It is up to the complainant and respondent to agree on the outcome... The conciliator can make suggestions, but does not decide on the outcome. Outcomes from a conference vary and may depend on whether the complaint was dealt with under the Anti-Discrimination Act or the Human Rights Act. Common outcomes to resolve discrimination complaints include: - making an apology; - changing organisational policy or practices; - paying compensation for hurt feelings and lost wages; - organising training in the workplace so that everyone understands their rights and responsibilities." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	Also includes complaints about sexual harassment, wherever it is alleged to have occurred. Complaints about breaches of human rights, alleged to have occurred in public entities of the state of Queensland are also accepted. Finally, complaints about vilification are accepted if the alleged incident: • happened in public • is capable of inciting hatred, contempt or severe ridicule • was of someone on the grounds of race, religion, sexuality or gender identity. Complaints relating to any of the above which occurred in federal government departments/agencies, private businesses or the courts are excluded. Limitation periods Not specified. Evidentiary requirements Complainants must provide "enough information about what happened" including details such as "who was responsible, where, when and what happened", in order for the complaint to be assessed.	the attendance of the advocate/s will assist the resolution of the complaint; the other parties will be represented; and the advocates agree to participate in a way that will assist the resolution of the complaint."	• assist everyone reach agreement about how to resolve the complaint • ensure the process is fair." Nature of complaint resolution process If a complaint is assessed as relevant to the Commission, and is accepted, it will be resolved through a conciliation process. In conciliation, the complainant and respondent will be directed to attend a conciliation conference, facilitated by the Commission. "How the conference is conducted depends on those involved and the nature of the complaint. The conference can be with everyone meeting face-to-face, by teleconference, or with the conciliator talking to each party in separate rooms." If the complaint is not resolved through conciliation, the complainant can request that the issue be referred to a tribunal to decide on. Role of victim-survivor in complaint resolution If they are the complainant, they are required to attend a conciliation conference and speak about their complaint, the impact it had on them and what outcome they are seeking.	Any enforcement or monitoring of outcomes For Anti-Discrimination Act complaints, the agreement between a complainant and respondent is filed in a Tribunal and enforceable as if it were a court order. For Human Rights Act complaints, a copy of the agreement will be given to each of the parties. The Commission does not specify whether it monitors implementation of agreements made in relation to these complaints. Powers of complaint body to investigate, monitor and take action "The Commission does not have the power to decide if unlawful discrimination or other conduct has occurred." Are written reasons for decision provided? "If the complaint is resolved the Commission will write it down and ask the parties to sign it." Any appeal/review processes following outcome	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Role of legal capacity and substituted decision-making "If someone cannot make a complaint themselves – such as a child or a person with disability – [the Commission] may authorise someone, such as a parent or guardian, to make a complaint on their behalf." Does a specific individual perpetrator need to be identified? No, can be an organisation.		Role of perpetrator (individual/service provider/government) in complaint resolution If a complaint about a perpetrator is accepted by the Commission, they will be given a copy of the complaint and will have an opportunity to respond to it, usually through the conciliation process. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker An impartial conciliator at the Commission, with specialist knowledge of human rights and discrimination will run the conciliation conference.	"For Anti-Discrimination Act complaints, the complainant can choose to have their unresolved complaint referred to a tribunal for a public hearing. Work-related complaints are decided by the Queensland Industrial Relations Commission and all other complaints are decided by the Queensland Civil and Administrative Tribunal (QCAT). For Human Rights Act complaints, if the complaint is not resolved through conciliation, the Commission will prepare a report for the parties. This report may include recommendations for actions the respondent should take to ensure its actions and decisions are compatible with human rights." Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Complainants are warned that all of the information provided in their complaint will be given to the

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					respondent, including identifying information such as the address for delivery of mail they provide to the Commission (which may be their home address). Complainants are advised to lodge their complaint through other means if they do not wish this information to be passed to the respondent. Otherwise, all personal information is "generally treated confidentially." What information is publicly available from the complaint resolution? The Commission publishes information about its complaints data in its annual reports. Relationship of complaints process and resolution to policy and law reform The Commission aims "to promote human rights in a number of ways. These include partnerships with government and community bodies, organising and attending community events, and taking part in forums and focus groups, through our community engagement work." The Commission also makes "submissions to state and federal consultations on the development of laws and policies."

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					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Commission provides access to interpreter and translation services, and services for people with hearing or speaking impairments. They also have specific provisions for people in prison, Aboriginal and Torres Strait Islander people, and people from the LGBTI communities.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	<u>Complaints and Prevention Unit of the Department of Communities, Disability Services and Seniors</u>	Who can complain? Recipients of a service provided by the Department or a service funded by the Department. Types of violence the complaint applies to/excludes None specified. Limitation periods 12 months. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making None specified. Does a specific individual perpetrator need to be identified? None specified.	Process to complain Directly to the Complaints and Prevention Unit of the Department of Communities, Disability Services and Seniors. Form of complaint Telephone, email, online, and post The online complaints form asks what happened, when did it happen, where did it happen, the outcome the complainant was expecting and if the complainant wished to be contacted. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted None specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context It is part of the Department of Communities, Disability Services and Seniors. Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	Range of possible outcomes None specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: None specified. Any enforcement or monitoring of outcomes None specified. Powers of complaint body to investigate, monitor and take action None specified. Are written reasons for decision provided? None specified. Any appeal/review processes following outcome Requests can be made that the Complaints Unit to review its processes. If the complainant is still not satisfied, they can complain to the Queensland Ombudsman. Any incidental consequences of complaint resolution None specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Relationship to police and CJS None specified. Any confidentiality or privacy rules (protective of or gagging complainant) None specified. What information is publicly available from the complaint resolution? None specified. Relationship of complaints process and resolution to policy and law reform None specified. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? Interpreters are available: "We will provide and pay for professional interpreting services for clients who have difficulties communicating in English, and can also arrange for interpreters in Auslan and other sign languages when required."
Other relevant non-complaint bodies	Queensland Mental Health Commission Note – does not handle complaints but drives system-wide reform				

Jurisdiction: South Australia

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	SA Department of Education	Who can complain? "Anyone who has been affected by a decision or action at a school or preschool (including a failure to make a decision or take action)" Types of violence the complaint applies to/excludes Complaints can be about • "the type, level or quality of service" • staff behaviour and decisions • a policy, procedure or practice." Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making "An advocate is authorised to lodge a complaint or speak for the person making the complaint. Generally, this will be when the person does not have	Process to complain The Department directs complainants about education providers in SA through different streams, according to type of provider being complained about. Each stream reflects a different variation of the "3 levels of complaint handling" applied by the Department (frontline/early resolution; central resolution; external resolution). <i>For schools/pre-schools:</i> • First raise the issue with the original staff member/teacher • then raise with the principal or pre-school director • then raise with the "Customer Feedback Team" of the Department • if still unsatisfied, contact the SA Ombudsman or Education Standards Board. <i>For tertiary education providers:</i> • First raise with the student administration area of the tertiary education provider • Then lodge a formal complaint with that provider • If unsatisfied with the response, lodge an internal appeal with that provider	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund a service that is the subject of the complaint. Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome For each stream, there is an opportunity for an internal review by the service provider or the Department of Education, and then an external review by a body such as the SA Ombudsman, the ACCC or the SA Education Standards Board.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		capacity to communicate effectively or fully understand the actions arising. Where personal information is involved, the complainant must give written confirmation (by email) that the advocate has permission to act for the complainant." Does a specific individual perpetrator need to be identified? Not specified.	• If still unsatisfied, request an external review by a body chosen by the provider • If still unsatisfied, contact the SA Ombudsman or the ACCC. <i>For child care services</i> • First raise with the relevant provider • If the matter is not resolved, contact the Education Standards Board • If still unsatisfied, contact the CEO of the Department of Education. • If still unsatisfied, contact the SA Minister for Education. Complaints directed to the Department's central Customer Feedback team can be lodged online or over the phone. Form of complaint The department accepts anonymous complaints. It states: "If there is enough information we will action and/or respond. However, if there is little information and no contact details, the matter can't be followed up." Role of victim-survivor Not specified.		Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform "To measure the performance of the department, regular reports are gathered on: • Level 1 complaints – principals, preschool directors and team leaders monitor and record complaint handling compliance, statistics and trends. Particulars of the volume, nature and results of complaint handling, including whether resolution occurred locally or was referred to Customer Feedback is reported annually by schools and preschools.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
			Role of lawyers/advocates "Anyone aged 18 or older can be a support person or advocate for a parent, carer, family member or student making a complaint. The role of a support person or advocate is to help make the complaint process easier for the person making the complaint. Roles must be made clear and agreed by all parties at the start. A support person can: • attend meetings • suggest a pause during meetings to support the person making the complaint and provide advice or assistance • take notes and help with implementing outcomes. An advocate is authorised to lodge a complaint or speak for the person making the complaint. Generally, this will be when the person does not have capacity to communicate effectively or fully understand the actions arising. Where personal information is involved, the complainant must give written confirmation (by email) that the advocate has permission to act for the complainant."		• Level 2 complaints – Customer Feedback provide a quarterly report to the department's Senior Executive Group and to relevant executives monthly. Customer Feedback complaint data is also published in the department's annual report. An analysis of these reports is undertaken regularly to identify and monitor trends, review the quality of service and make improvement." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? A number of provisions are made to support different groups, including people with a disability, Aboriginal and Torres Strait Islander people, people who require translation and interpreting services, the National Relay Service and young people. See here.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Education Standards Board</u>	The Education Standards Board is a state-government authority responsible for regulating early childhood services and schools in SA. In addition to handling complaints about childcare services and pre-schools, it has a broader remit to, for example, establish Quality Frameworks for the SA education sector, assess and approve childcare and education providers in SA, and investigate providers to ensure legislative compliance. In relation to complaints handling, there is only limited detail available on its website. It states: "Anyone can report a complaint to the Education Standards Board if they have a concern about: • non-compliance with the early childhood services legislation • health, safety or wellbeing of any child within a service."	Complaints can be lodged via email or phone, however complainants are expected to have attempted to resolve the complaint with the relevant service provider in the first instance.	In relation to complaints handling/resolution, the Board's website states: "Complaints will be: • assessed for risk to the health, safety or wellbeing of any child • investigated by an authorised officer • reviewed for non-compliance with the legislation. Action taken will: • be based on the seriousness of the matter • assess the level of risk to children."	No details could be found on the Board's website about potential outcomes arising from a complaint.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Health	<u>SA Department of Health</u>	Who can complain? Consumers, carers and the general community. Types of violence the complaint applies to/excludes Not specified. The Complaints Management Guide states that "consumers, carers and the community should be able to give feedback and/or make a complaint to any health service staff and at any point of contact with the health service." Limitation periods "Consumer, carer and community complaints must be lodged within two years from the day on which the complainant first had notice of the circumstances giving rise to the complaint. However, the Chief Executive SA Health, through written request may extend this period if satisfied doing so is appropriate for the particular case." Evidentiary requirements None specified.	Process to complain Complaints can be lodged in person, via phone, email or in writing. Form of complaint "SA Health services will receive and act on anonymous feedback including complaints to the extent that they are able with the information provided." Role of victim-survivor May be the complainant, or may have an advocate/guardian/carer/lawyer complain on their behalf. If the latter, they are required to give consent unless they do not have the legal capacity to do so. Role of lawyers/advocates SA Health expects that its "health services actively encourage and facilitate feedback and complaints from carers, consumer advocates and representatives who may support individual consumers or communities." "When written consent is required health services are to have the consumer sign the consent form or, if the consumer is a child, is deceased, too ill or lacks mental capacity, have the advocate, guardian, person with the Enduring Power of Guardianship or executor sign on the consumer's behalf."	Any interim measures prompted Complaints are classified and an initial assessment is conducted to determine the complaint's severity. "Where appropriate, at the point of receiving a complaint, the staff member should ensure that the consumer is safe and able to access treatment that they require, especially in the case of an acute condition." If the "complaint involves an incident, immediate action should be taken to support and treat the person and to prevent further injury to that person and others." Any report to police prompted Not specified. However the Complaints Management Guide states that "in some cases the consumer, carer and community complaints raise issues that require mandatory external notification." Relationship of complainant, perpetrator or context May be the perpetrator or may fund a health service that is the subject of a complaint.	Range of possible outcomes "Options for appropriate action may include: • offering an explanation and an apology • developing or amending a policy or procedure or process • education and training of staff or public • confirm / reassure appropriate clinical care was provided • compensating for out of pocket expenses / replacement of items lost or damaged • waiving fees • modification of the environment • requesting a formal review • ongoing monitoring of an issue • notification to an external regulatory agency • mediation meeting between complainant and staff • complaint resolution meeting with complainant and staff • taking no action."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
			Role of legal capacity and substituted decision-making "Consumers, carers and the community should be informed of the requirement for consent as part of the formal acknowledgement of the complaint." "Consent is required from the consumer (person who experienced the issue / problem) whenever...another person is making the complaint on behalf of the consumer who received the treatment eg an advocate is making the complaint on their behalf (the complainant), except where the complainant holds an Enduring Power of Guardianship or an enacted Advance Care Directive / Shared Decision Maker (SDM) for the consumer." Does a specific individual perpetrator need to be identified? Not specified.	Nature of complaint resolution process The complaint process has seven (7) steps: • Receive • Register and acknowledge • Initial assessment • Investigate • Respond • Resolution "All consumer complaints require, to a greater or lesser degree, a fact-finding process to determine what has happened, and what course of action is required in the response." "Once the information has been analysed, the person managing the complaint determines findings and recommendations for action...Actions taken by a health service to resolve a complaint must be based on the evidence, address any system issue or process or practitioner issues. They must be informed by the principles of natural justice, public interest and good clinical governance."	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: "All consumer, carer and community complaints, compliments, advice and suggestions are to be recorded in the Safety Learning System (SLS) Consumer Feedback module to enable the identification of trends and risks. This information can be used to improve services and produce reports on aggregated complaint information." Any enforcement or monitoring of outcomes This is left to the relevant unit/health service who has managed the complaint. SA Health states that "Outcomes and recommendations should be integrated into quality improvement systems through appropriate implementation and subsequent reviews of effectiveness." It also states that "follow up preventative action, monitoring and evaluation should be undertaken in line with local policies and procedures."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of victim-survivor in complaint resolution Provides initial information to assist with the investigation. Is kept updated and informed of the process, and informed about their rights at each stage. Role of perpetrator (individual/service provider/government) in complaint resolution “Consumer, carer and community complaints should be dealt with by the unit involved, where possible, with support from a manager or Consumer Adviser. However, for more serious matters or those with broader implications for the health service, senior management and the executive must be notified and participate in the resolution.” The Consumer, Carer and Community Feedback and Complaints Management Strategic Framework and the Complaints Management Guide provide extensive expectations about how health service providers should act throughout the complaints process.	Powers of complaint body to investigate, monitor and take action Not clear. There are a number of obligations under various acts (including the <i>Health and Community Services Complaints Act 2004 (SA)</i>) however it is not clear if any of these confer investigative/enforcement powers on SA Health. Are written reasons for decision provided? Written reasons may be provided, but are not compulsory. SA Health states that the health service managing the complaint “must ensure the outcome and recommendations are clearly communicated to the consumer, carer, community, staff and management.” If providing this response in writing, the response should include the following: • an acknowledgement of the complainant’s experience • address each of the points raised by the complainant, including their expressed expectations for resolution with a full explanation of:

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				Roles of other independent persons/monitors in complaint resolution Complainants are informed that they can access an independent review of the complaint from the HCSCC at any time. Qualifications/background of complaint resolution decision-maker Not specified.	• what was discovered • what action has been taken as a result of the complaint • or give the reason(s) why it is not possible to address a specific issue • provide clear information about the complainants rights to seek further internal review of the resolution. • provide clear information about the complainants rights to seek external review of the complaint and resolution, and contact details of external complaint bodies." Any appeal/review processes following outcome If complainants remain unsatisfied with how their complaint was handled, or the outcome of their complaint, they are provided with the following options: • "escalation to a Consumer Adviser, where complaint has been handled at the health service level in the first instance • review by another senior staff member, if considered by the Chief Executive Officer / General Manager

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					• contact Health and Community Services Complaints Commissioner (HCSCC) • contact the Australian Health Practitioner Regulation Agency (AHPRA) • seek independent review by another external agency / person. "Complainants can [also] be provided with information about or referred to the Office of the Chief Psychiatrist (OCP) for consumers receiving mental health services." Any incidental consequences of complaint resolution None apparent. The guidelines state that: "a fair feedback and complaints management process that ensure impartiality and acts to support and protect the welfare of the complainant is vital to the credibility and accountability of the health service and success of any complaint's management process."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Relationship to police and CJS "In some cases the consumer, carer and community complaints raise issues that require mandatory external notification or referral because: - the complaint should be managed by another agency (Department of Human Services, Commonwealth Aged Care Complaints Resolution Scheme etc). - contact Health and Community Services Complaints Commissioner (HCSCC) - contact the Australian Health Practitioner Regulation Agency (AHPRA) - seek independent review by another external agency / person." "Complainants can [also] be provided with information about or referred to the Office of the Chief Psychiatrist (OCP) for consumers receiving mental health services."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any confidentiality or privacy rules (protective of or gagging complainant) “Complainants should be informed of: - the nature of information that needs to be gathered. - whether patient medical records and other documents will need to be accessed. - who may access this information as part of the complaints management process. - what will be documented about the complaint. - where information about the complaint will be stored.” “It should be explained to the complainant that although the health service will endeavour to maintain confidentiality, there may be some circumstances where it is necessary, with the complainant’s consent, to reveal certain information to staff, services or external complaints bodies, so that they can respond appropriately to the complaint.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Not clear. Relationship of complaints process and resolution to policy and law reform Complaint data is used to inform quality improvement within SA Health, and is used to inform review of SA Health policies. See the relevant <u>Strategic Framework</u> for more information. Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? "SA Health staff will apply the principles of natural justice, equity of access and cultural appropriateness and will assist people with special needs. For example: access to an interpreter, if needed, including someone who can interpret for people who may have an intellectual disability

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					- a reader, translator or assistant for people who are not sufficiently literate in English or their own language or whose visual impairment makes reading difficult - materials in plain English - alternative ways for people to access information ie via audio or visual media - adequate signage for people with vision impairment - a signer or broadcast facilities for those who are profoundly deaf or have hearing difficulties - building access for people with a physical difficulty eg wheelchair access, provision for an assistant, assistance dog."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Office of the Chief Psychiatrist</u>	Who can complain? "Any person can refer a matter to the Chief Psychiatrist for investigation. As noted, the Chief Psychiatrist has discretion as to whether or not to investigate a particular issue or refer it to another organisation or agency." The Chief Psychiatrist can also instigate 'own-motion' investigations. Types of violence the complaint applies to/excludes Not specified. Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Not specified. Form of complaint Not specified. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted "In determining whether or not to undertake an investigation, the following factors will be considered: - Resolution of matters at a Local Health Network level shall be sought first. - Complaint matters should be pursued by the investigator or official with the most appropriate powers to obtain evidence and draw a conclusion. - The complaints severity assessment code index - Interface with other investigations." Any report to police prompted Not clear. "The Office may receive complaints that should be better investigated locally by service, or by another statutory officer who has more relevant powers." Relationship of complainant, perpetrator or context An independent body.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: "The Office may receive complaints directly, or become aware of complaint investigations into mental health services undertaken by services and other agencies, and wish to monitor the outcome." In relation to systemic matters: "The Office will investigate matters of a systemic nature that are related to the delivery of mental health care by the unit or team, or a service. Matters involving more than one practitioner or affecting multiple consumers would also be considered." AND 2. Local resolution has not occurred... AND 3. The Office has the most appropriate powers."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Nature of complaint resolution process There are four main stages to the complaints management process: • Receipt – the complainant will receive a letter of acknowledgement within 24 hours of lodging their complaint • Triage – the complaint will be allocated or referred within 2 weeks, including a decision on whether or not to investigate the complaint or refer it to another agency • Updates – complainants “will be provided with regular updates about the progress of their complaint” • Attention to Immediate Risks – “early action will be taken to resolve immediate risks, prior to the resolution of a complaint investigation.” Role of victim-survivor in complaint resolution Not specified. Complainants “will be provided with regular updates about the progress of their complaint.”	Any enforcement or monitoring of outcomes “Systemic recommendations from a Chief Psychiatrist complaint investigation will be referred either to a relevant service to implement, or where it involves statewide matters, to the Chief Executive.” The Office of the Chief Psychiatrist “may itself be involved in implementing service redesigned and improvements, that stem from the outcomes of a complaint investigation.” Powers of complaint body to investigate, monitor and take action The Chief Psychiatrist has legislated powers related to monitoring and service improvement, inspection powers, and delegation powers. Are written reasons for decision provided? Not specified. “Complainants will be advised of the outcome of a complaint investigation, subject to limitations on what can be provided due to patient confidentiality, if the complainant is not a consumer or carer.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker “The following staff may undertake an investigation, either alone or in combination: • The Chief Psychiatrist • Office staff with clinical training, where that training will be needed to assess and investigate the complaint matter • Office staff with a general administration policy background, who have knowledge in an area related to the subject of the complaint. Example of this would be the allocation to legislative and policy staff of complaints related to the use of the Mental Health Act.	Any appeal/review processes following outcome “If the party is dissatisfied with an Office complaint investigation, they may wish to approach the Chief Executive [of the Department of Health] or the Minister, or lodge a further complaint about how the matter has been dealt with, with the HCSCC, or the Ombudsman.” Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Complaints may be referred to the HCSCC or AHPRA if they are deemed more appropriate, or have greater powers to investigate the matter. These organisations in turn have greater interface with legal institutions. Any confidentiality or privacy rules (protective of or gagging complainant) “Complainants will be advised of the outcome of a complaint investigation, subject to limitations on what can be provided due to patient confidentiality, if the complainant is not a consumer or carer.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- Office staff with investigation training. - External staff who are invited to join a complaint investigation, as additional skills are needed or the anticipated workload of such an investigation is so extensive, that it could not reasonably be undertaken internally."	What information is publicly available from the complaint resolution? Not clear. The Chief Psychiatrist reports on complaint data in its annual reports. Relationship of complaints process and resolution to policy and law reform "The Chief Psychiatrist also has specific powers and functions to improve the delivery, and organisation, of mental health services. The recommendations made from Chief Psychiatrist inspections will become part of the service improvement regime of the Local Health Networks and the Department for Health and Wellbeing to inform improvement at the local and state level." The Chief Executive of the Department of Health, and the relevant Minister, are also informed when complaint investigations related to systemic issues occur, or when particular inspection powers are used to investigate complaints. Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific provision for particular groups? Not specified. Range of possible outcomes Not specified directly. Complainants are encouraged to suggest the outcome they are seeking. Examples include an apology, explanation, information, a problem solved, improved future service provision. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The HCSCC aims to "identify, investigate and report on systemic issues of concern in health and community services" and "monitors trends in health and community services complaints and recommends improvements." Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action The Health and Community Services Complaints Commissioner (HCSCC) has the power to issue an Prohibition Order (PO)
	<u>Health and Community Services Complaints Commissioner</u>	Who can complain? "A consumer or their nominated representative such as a family member, carer, guardian or advocate can make a complaint. The Commissioner can also accept a complaint from a service provider or someone else." Types of violence the complaint applies to/excludes "You may complain if: • Services were refused • Services were not completed on time • Services were inappropriate for you for some other reason (for example, you have a disability or your cultural needs were not taken into account) • Services were delivered inadequately, negligently, or if significant errors were made during their delivery "	Process to complain Complaints can be lodged online, or by phone. Also, "home or site visits can be arranged on request." Complainants are encouraged to resolve the matter with the service provider in question as a first measure. Form of complaint Not specified. Role of victim-survivor If they are the complainant, they are expected to provide information about the complaint when requested, and keep the HCSCC informed of any developments that have a bearing on their complaint. Role of lawyers/advocates Not specified.	Any interim measures prompted The HCSCC can issue an Interim Prohibition Order against a person or service provider for reasons including that it reasonably believes an offence has been committed, or there is a danger to public health or safety. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context The HCSCC is an independent body. Nature of complaint resolution process Any or a number of the following approaches may be used to resolve the complaint: 1. Assessing the issue The complaint will be considered to decide whether further action is required. 2. <i>Direct Resolution</i> The HCSCC may request that the complainant attempts to resolve the issue directly with the service provider in question; they can also offer to assist in this process.	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- The service provider treated you in a rude or disrespectful manner - Abusive treatment, whether physical, verbal, or sexual - The care provider failed to respect your rights." Complaints are excluded if they relate to the following: "Most incidents that happened over two years ago - Court decisions or notifiers - A matter that is currently being decided by a court - A complaint that has already been decided under the law - A death, once the Coroner has started an inquest - Actions of Government Ministers or Politicians - Most matters related to housing - Food handling or food safety in shops or restaurants		3. <i>Informal mediation</i> The HCSCC may conduct informal mediation between the complainant and the services provider. This may be facilitated in person, via phone or in writing. 4. <i>Conciliation</i> The HCSCC may facilitate a confidential conciliation process; this is reserved for "matters that are very complex, serious or involve financial settlements." 5. <i>Investigation</i> The HCSCC may also choose to investigate a matter that has been brought to their attention. "This approach is taken where serious and/or systemic matters arise from the complaint and it is not amenable to the other forms of complaints resolution." 6. <i>Refer</i> If the complaint can be handled by a more appropriate body/agency, the HCSCC may refer it accordingly.	against a person or persons or an entity providing a health service. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS "The HCSCC has a statutory relationship with the national health practitioner registration boards through the Australian Health Practitioner Regulation Agency (AHPRA)." Any confidentiality or privacy rules (protective of or gagging complainant) The HCSCC states that its services are "strictly confidential." What information is publicly available from the complaint resolution? Interim Prohibition Orders and Prohibition Orders are published on the HCSCC's website. Complaint data is published in the organisation's annual reports.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- Environmental health issues - Employment disputes." Limitation periods <i>Generally, two years.</i> Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		Role of victim-survivor in complaint resolution Depends on the approach taken. If they are the complainant, they are expected to provide information about the complaint when requested, and keep the HCSCC informed of any developments that have a bearing on their complaint. They may also be required to participate in informal mediation or conciliation meetings, if deemed appropriate to resolve their complaint. Role of perpetrator (individual/service provider/government) in complaint resolution Service providers are expected to respond to requests by the HCSCC, cooperate in complaint resolution processes such as informal mediation or conciliation, and implement service improvements if recommended to by the HCSCC. Roles of other independent persons/monitors in complaint resolution Not specified.	Relationship of complaints process and resolution to policy and law reform The HCSCC "works to ensure complaints are used to improve the safety and quality of services." Apart from its annual reports, the HCSCC can also <u>publish reports</u> following investigations into particular concerns. For example, in 2020 the HCSCC published a report following its own-motion investigation into the care of people with disability by SA Health in acute settings. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The HCSCC provides assistance to people who are deaf, or have a speech or hearing impairment; and people who require interpreter or translation services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	
Social Services	SA Department of Human Services	Who can complain? Customers of DHS. Types of violence the complaint applies to/excludes Complaints can relate to any issue. However, complaints that are the subject of an administrative appeal or other form of legal redress, and complaints concerned with workforce conduct, are excluded. Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Complaints can be made using an online form, in writing via email or by mail, by phone or in person at a DHS office. Form of complaint Not specified. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund a service provider that is the subject of a complaint. Nature of complaint resolution process Unclear. The department's complaint handling policy states that it "will maintain good communication with complainants all the way through the process, including prompt acknowledgement, information about expected timeframes, outcomes and avenues of review and appeal" and will "ensure that complaints are	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/ government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome If complainants remain unsatisfied with the outcome

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				acknowledged within five business days and will aim to finalised complaints within 30 business days.” Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified. Relationship of complaints process and resolution to policy and law reform Business units of the department are required to provide information in their quarterly reports on “issues arising from complaints and feedback, for example complaint trends, risks, systemic issues, and improvements made as a result of contact.”	of their complaint, they are referred to the Health and Community Services Complaints Commissioner, or the SA Ombudsman. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS “Any complaints or feedback that potentially relate to issues of corruption, misconduct and maladministration will be immediately reported to the Office for Public Integrity.” Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The department’s complaints handling policy states that it “will collect, monitor and evaluate our performance, and look for opportunities to improve.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The department provides access to interpreter and translation services, and services for people with hearing or speaking impairments.	Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? There is a specific Aboriginal Client Feedback form, and feedback forms in different languages.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>SA Attorney-General's Department</u> 1	Who can complain? A complaint can be submitted by a customer of the department, or by a third party on a customer's behalf. Types of violence the complaint applies to/excludes Complaints may relate to "behaviour, communication, service delivery and service quality" of the department. Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Complainants can lodge their complaint using an online form, or contact the department by email or by phone. In order to assess a complaint, the department requires the following information: - The complainant's name and contact details - If they are a third party, details on who the department should contact to discuss the complaint - Information about any assistance the complainant requires in order to communicate with the department (e.g. an interpreter) - The details of the complaint - Whether they have contacted the department before - What outcome they are seeking. Form of complaint Not specified. Role of victim-survivor A third party may submit a complaint on their behalf. Role of lawyers/advocates A third party may submit a complaint on someone else's behalf.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or fund a service provider who is the subject of a complaint. Nature of complaint resolution process Not specified. It appears to be a simple investigative process by the department. The department will confirm they have received the complaint within 5 working days, assess the complaint within 10 days and attempt to resolve it within 21 working days of having received it. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant)

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	To ensure the appropriate business area handles the complaint, the department may need to share the complainants personal information "with other relevant state government agencies, statutory authorities or even organisations outside of government, such as a utility company." Complainants "information will not be used or disclosed for any other purpose without [their] consent unless permitted by the Government of South Australia's Information Privacy Principles (IPPs) issued by the Department of the Premier and Cabinet." What information is publicly available from the complaint resolution? "AGD is required to report the number and type of complaints and the outcomes/improvements made as a result of complaints in the annual report."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	SA Ombudsman	Who can complain? Anyone. Types of violence the complaint applies to/excludes Complaints can only be about administrative acts. "For example: - a decision-making process - a failure to act or delay in taking action - an unreasonable or unfair decision or requirement - the conduct of staff or delivery of a service - the irregular or unauthorised use of public money or substantial mismanagement of public resources." Complaints relating to Commonwealth government agencies, consumer matters involving private businesses, police misconduct, health and community service providers, legal practitioners and the judiciary, employment issues, housing, utilities, banking, insurance,	Process to complain Complaints can be lodged online, or by mail or phone. Complainants are required to have tried to resolve their complaint with the agency in question, before contacting the Ombudsman. Form of complaint Anonymous complaints are accepted, however this may make it more difficult to resolve the complaint and/or keep the complainant updated on its progress. Role of victim-survivor If they are the complainant, they are required to provide as much information about their complaint as possible, at the time of lodging it. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The Ombudsman adopts an investigative approach. This involves: - Assessment – the Ombudsman assesses the complaint and contacts the complainant for further information - Notification to the agency – the agency that is the subject of the complaint is notified, and allowed to respond - Early resolution – attempts to resolve the complaint either formally or informally with the agency's cooperation - Investigation – in the event no early resolution is possible, the Ombudsman may decide to investigate the matter further	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: If a complaint cannot be resolved through early resolution, the Ombudsman has additional criteria to determine whether to pursue a formal investigation. These criteria include whether the matter concerns issues of a systemic nature, or are in the public interest to investigate. For example, the Ombudsman considers the following questions: "does the alleged administrative error amount to a serious failure to meet expected standards of public administration?" - is the complaint about matters of serious concern and benefit to the public rather than simply an individual's interest? - is there evidence of ongoing systemic failure in public administration?

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		superannuation providers, the media, and education and training providers are all excluded because they have other complaint handling authorities responsible for them. The Ombudsman also “cannot investigate when a person making a complaint has a right of appeal or review under legislation, or a legal remedy, reasonably available to them.” Limitation periods Usually 12 months. Evidentiary requirements Complainants are required to provide the following information when lodging their complaint: - the name of the agency the complaint relates to - a clear outline of the complaint - the steps taken to resolve the complaint with the agency - dates of the agency’s acts that the complainant is concerned about		- Provisional view – the Ombudsman forms a provisional view about the matter and the parties are invited to comment - Final view and recommendation – the Ombudsman comes to a final decision and if it considers the agency has made an error, will make recommendations for that agency to address the error. It will also notify the relevant Minister of its decision. Role of victim-survivor in complaint resolution May be invited to resolve the complaint informally by the Ombudsman through facilitated discussions with the agency. If the matter is investigated, they may be invited to provide further information, and/or to provide comment on the Ombudsman’s provisional decision. Role of perpetrator (individual/service provider/government) in complaint resolution May be invited to resolve the complaint informally by the Ombudsman through	- are the circumstances of the complaint likely to arise again? - is the complaint about an error of process? - is the complaint about failures of ethical and transparent management? - does the complaint relate to matters of public safety and security, the economic well-being of South Australia, the protection of public well-being, the protection of human rights or the rights and freedoms of citizens? - has the complainant suffered significant personal loss or is the complainant in vulnerable circumstances? - would investigation of the complaint be likely to lead to meaningful outcomes for the complainant and/or to the improvement of public administration? - has another review body considered the matter or is another body more appropriate for reviewing the matter? - what is the likelihood of collecting sufficient evidence to support a finding of administrative error?

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		• other key dates • any documents to support the complaint, such as: • emails or letters sent to the agency • any responses received from the agency • photographs (if applicable) • the outcome the complainant is seeking. Role of legal capacity and substituted decision-making Complainants are advised that if they require assistance in making a complaint, they may ask a representative (such as a relative, carer, solicitor or Member of Parliament) to make it on their behalf. Does a specific individual perpetrator need to be identified? Not specified.		facilitated discussions with the complainant. If the matter is investigated, they may be invited to respond to the complaint against them, and/or to provide comment on the Ombudsman's provisional decision. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	• would investigation of the complaint involve effort and resources that are proportionate to the seriousness of the matter?" Any enforcement or monitoring of outcomes The Ombudsman cannot force an agency to comply with its recommendations; however, if the agency does not comply, they can report it to the Premier and the South Australian Parliament. Powers of complaint body to investigate, monitor and take action "The Ombudsman or, by delegation, his staff may: • determine the procedure to be used in an investigation • obtain information held by an agency • enter and inspect any item on the premises of an agency." The Ombudsman also "has all of the powers of a Royal Commission, which include the powers to: • summons a person to give sworn evidence • summons a person or agency to provide documents • inspect premises.

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					In some cases, the Ombudsman can direct an agency not to perform an act for up to 45 days to allow the Ombudsman to undertake an investigation." Are written reasons for decision provided? Yes. The provisional view, and final view, of the Ombudsman is set out in a report. Any appeal/review processes following outcome If at the conclusion of an investigation, a party is still concerned about the Ombudsman's decision, they can ask the Ombudsman for the case to be reviewed. The request for review must provide "significant persuasive evidence and [explain] how the decision is wrong." If the Ombudsman agrees to review the decision, the review will be assigned to an officer who was not involved in managing the original investigation. Decisions will only be reviewed once. "A review is not a reinvestigation. Rather, [the review will] look at whether the processes which the

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					officer/s followed were fair and adequate, whether the conclusions reached were reasonable on the information available at the time and whether the conclusions were properly explained.” Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS If the Ombudsman has a reasonable suspicion of corruption in public administration, the Ombudsman must refer the matter to the Office for Public Integrity. They are also required to make reports under the <i>Public Interest Disclosure Act 2018</i>. Any confidentiality or privacy rules (protective of or gagging complainant) Unless the Public Interest Disclosure Act 2018 applies, the Ombudsman will disclose the complainant's identity to the relevant agency for the purposes of assessing and investigating the complaint. Complainants can request that they not be identified to the agency, at the time of making a complaint.

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					If this occurs, the Ombudsman will withhold their identity from the agency in question, unless they consider it necessary to properly assess and investigate the complaint. What information is publicly available from the complaint resolution? If the Ombudsman thinks it is in the public interest, they may publish a decision on the Ombudsman SA website and Austlii. The Ombudsman may also table a report in Parliament. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Ombudsman provides access to interpreter and translation services, and services for people with hearing or speaking impairments.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Office of the Commissioner for Equal Opportunity</u>	Who can complain? Anyone. Types of violence the complaint applies to/excludes Discrimination on the basis of age, association with a child, caring responsibilities, disability, assistance animals, therapeutic animals, gender identity, intersex status, marital status, pregnancy, race, religious dress, sex, sexual orientation, or a spouse or partner's identity; sexual harassment and victimisation. Limitation periods 12 months. However, late complaints can be accepted if the complainant can show that there is good reason for the complaint being late, and it would be fair for the complaint to be taken up despite being late. If the Commissioner does not accept the complaint because it is late, a complainant has a right to apply to the <u>South Australian Civil and Administrative</u>	Process to complain Complaints can be lodged online, by mail, fax or email. Form of complaint Not specified. Role of victim-survivor May be the complainant, or may have someone complaining on their behalf. They are required to provide as much evidentiary material as possible to inform the initial assessment. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent, impartial body. The Commission does not determine whether discrimination, harassment or victimisation has occurred. It assists the parties to reach a resolution. Nature of complaint resolution process Complaints are handled in two key stages: assessment and conciliation. Assessment When a complaint is lodged, the Commission will assess it to see whether it is covered by the Equal Opportunity Act (1984). If it is, and it appears the complainant has been treated unfairly, the Commission will accept the complaint and allocate it to a Conciliation Officer.	Range of possible outcomes There are four possible outcomes from conciliation: <i>Agreement</i>: where both sides agree on an outcome and sign a confidential agreement. This agreement "may include": • Changes to policies/procedures to prevent future discrimination • Equal opportunity training • Job reinstatement or transfer, promotion, training, adjustment to hours, pay or conditions • access to previously refused accommodation, entry to a club, admission to a course or a loan • a private or public apology • compensation for economic loss, damages or injury to feelings." <i>Withdrawal</i>: "After further discussion or more information, the person who made the complaint may withdraw or not continue with their complaint." <i>Discontinuance</i>: "The Equal Opportunity Commissioner may decide not to continue to conciliate the complaint based on the information from both sides."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		<u>Tribunal (SACAT)</u> for a ruling that the complaint should be accepted. The person being complained about has a right to argue against the application. Evidentiary requirements Complainants are required to: - provide their complaint in writing (can be in their preferred language) of no longer than 5 pages. - explain what has happened and why they think it is discrimination - identify the grounds of discrimination and an area of activity in their complaint - include details about the organisation they believe has discriminated against them - attach copies of any relevant documentation.		If it is not covered under the Act, then the complaint will be declined, and the complainant will receive a letter explaining why this is the case. Conciliation If a complaint is accepted, it will be referred for conciliation. "Conciliation can be conducted in various and flexible ways, depending on the nature of the matter. For some matters, conciliation will occur via email, letter and/or telephone correspondence. For other matters, the Commissioner may also deem it appropriate to call a face-to-face conciliation conference." "Conciliation conferences are chaired by a Commissioner's delegate and typically involve: - Placing all parties in a room together with a conciliator; - Presenting all the facts and perspectives in a coherent way; - Ensuring each party is heard in an impartial and confidential manner;	<u>Referral to SACAT</u>: "If both sides do not reach agreement, the person who made the complaint can ask the Commissioner to refer their case to the <u>South Australian Civil and Administrative Tribunal (SACAT)</u>. This is a public court hearing where the Tribunal can make a legal judgement about the case." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? If an agreement is reached, both parties sign a written, confidential agreement. Any appeal/review processes following outcome Not specified.

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		Role of legal capacity and substituted decision-making A person may lodge a complaint on behalf of someone else, as long as they have their written and signed consent (this may be a power of attorney if they are unable to sign for themselves). Does a specific individual perpetrator need to be identified? Not specified.		• Promoting frank, honest, and open discussion around solutions / outcomes; and • Working together to reach mutually agreeable outcomes and to draft those outcomes into a signed agreement." Role of victim-survivor in complaint resolution Is expected to provide the Commission with further information about the matter, and participate in a conciliation conference. Role of perpetrator (individual/service provider/government) in complaint resolution Is expected to provide the Commission with further information about the matter, and participate in a conciliation conference. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Personal information will not be disclosed to a third party "unless: • the person has consented to the information being sent, either expressly or impliedly • it is to prevent or lessen a serious threat of life, health or safety of yourself or another person • the disclosure is authorised under law • the disclosure is necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty, or for the protection of public revenue or the interests of the government or statutory authority or statutory office holder of an employer

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					the disclosure is necessary because of suspicion of unlawful activity, illegal or serious misconduct." What information is publicly available from the complaint resolution? Complaint handling data is published in the Commission's annual reports. Relationship of complaints process and resolution to policy and law reform In addition to complaints handling, the Commission performs a number of functions, including advising government on legislative and policy reforms relating to equal opportunity. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Provides access to interpreter and translation services, and services for people with hearing or speaking impairments.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	<u>Office of the South Australian Health and Community Services Complaints Commissioner</u>	Who can complain? Not specified. Types of violence the complaint applies to/excludes Physical, verbal or sexual abuse: "You may complain if: • Services were refused • Services were not completed on time • Services were inappropriate for you for some other reason (for example, you have a disability or your cultural needs were not taken into account) • Services were delivered inadequately, negligently, or if significant errors were made during their delivery • The service provider treated you in a rude or disrespectful manner • Abusive treatment, whether physical, verbal, or sexual • The care provider failed to respect your rights."	Process to complain Directly to the Commissioner Form of complaint Telephone or online form. The complaint form asks for the details of the complainant, whether they need an interpreter, details of the person who received the service, details of the service which the complaint was about, how the complaint would like the complaint resolved, whether the complainant has tried to resolve the complaint with the service provider and whether the complainant has made a complaint to another person or organisation. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted None specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Independent third party. Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker None specified.	Range of possible outcomes When a complaint cannot be resolved informally, it can be mediated informally, referred to conciliation, referred to another body or closed Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution None specified. Relationship to police and CJS Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods None specified. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.			Any confidentiality or privacy rules (protective of or gagging complainant) Complainants are confidential. Complainants are protected from intimidation. What information is publicly available from the complaint resolution? None specified. Relationship of complaints process and resolution to policy and law reform Complaint trends are monitored and reported: • "At all times we commit to: acting independently, impartially and in the public interest. • protecting consumers involved in a complaint from reprisals, threats or intimidation in any way related to the complaint. • making recommendations to improve safety and quality in service delivery. • monitoring and reporting complaint trends." Any specific differences in process and resolution where victim-survivor is deceased? None specified. Any specific provision for particular groups? None specified.
Other relevant non-complaint bodies	SA Mental Health Commission Note – does not handle complaints but drives system-wide reform				

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	TAS Department of Education	Who can complain? “Anyone who is directly impacted by a school or CFLC decision, action and service or the failure to take an action, make a decision or provide a service.” Types of violence the complaint applies to/excludes Refers simply to a complaint being an “expression of dissatisfaction...from a person who has been directly affected by an action, decision or service” (or lack thereof). Complaints that the Department excludes include complaints about enrolments, incidents outside of school, and student transport. It also states that complaints about staff misconduct are managed under separate “Human Resource processes”, rather than its complaint management policy.	Process to complain The Department adopts a 3-level approach to complaints handling. <i>Level 1: Early Resolution</i> The Complainant is expected to attempt to resolve the dispute at the service provider level (e.g., the school or family learning centre) in the first instance. <i>Level 2: Internal Review</i> If a complainant remains unsatisfied with the complaint handling at Level 1, they can request an internal review by the Learning Services unit at the Department. This can be lodged using an online form, or contacting them by phone. This must be done within 28 days of receiving the Early Resolution outcome. Complaints will be acknowledged within 3 working days. <i>Level 3: External Review</i> If a complainant remains unsatisfied after an internal review, they are directed to an external review body such as Ombudsman Tasmania. Form of complaint It is unclear whether the Department accepts anonymous complaints.	Any interim measures prompted Not specified. Any report to police prompted “All staff are legally required to report any known or suspected abuse of students to the appropriate authorities.” Relationship of complainant, perpetrator or context The Department may be the perpetrator or fund the service provider who is the subject of the complaint. Nature of complaint resolution process At Level 1 (Early Resolution), complaints are resolved according to the processes of each individual service provider/school. The Department’s complaint handling policy notes that at this level, a principal may engage a dispute resolution provider to assist in resolving the complaint, however this is not guaranteed.	Range of possible outcomes “Resolutions can include: • an explanation • reaching a compromise • changing a decision or action • speeding up a decision.” The Department cautions that “a resolution may or may not satisfy everyone.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? The Department states that it contacts complainants about the outcome of their complaint and any review options available to them. It does not specify whether this is done in writing.

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		Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	At Level 2 (Internal Review), the Department does not provide details on the complaint resolution procedure. It notes that it aims to resolve complaints quickly, and that "the complaint process and level of resources allocated to a complaint, will be determined by the DoE based on the substance of the complaint." Complaints at Level 1 are expected to take up to 45 working days. Internal review requests must be submitted within 28 days of receiving a complaint outcome; and an internal review can take up to 90 working days. Role of victim-survivor in complaint resolution The Department's complaints management policy states that "all parties will be kept informed about the progress of the complaint, including the outcome and the reasons for any decisions." Role of perpetrator (individual/service provider/government) in complaint resolution	Any appeal/review processes following outcome Level 2 of the complaints handling process is, by nature, an internal review of a decision that is assumed to begin at Level 1 (the service provider). The Department's complaints handling policy does not specify whether there is further scope for complaint outcomes to be reviewed at Level 2 (within the Department). Complainants unsatisfied with Level 2 outcomes are encouraged to seek an external review from Ombudsman Tasmania. Any incidental consequences of complaint resolution The Department's complaint management policy states that "complainants will not be adversely affected because they have made a complaint." Relationship to police and CJS "All staff are legally required to report any known or suspected abuse of students to the appropriate authorities."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				The Department's complaints management policy states that "all parties will be kept informed about the progress of the complaint, including the outcome and the reasons for any decisions." Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any confidentiality or privacy rules (protective of or gagging complainant) Department employees are expected to "maintain the confidentiality of all parties when managing complaints in alignment with policy and legislative requirements." For privacy reasons, the Department states that it "cannot give [the complainant] information about other people involved in [their] complaint." What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform The Department's Learning Services unit records "data on complaints to identify trends and emerging issues, identify effective solutions and measure performance." This information is "reported quarterly to the Learning Services Directors and annually to DoE Executive, to inform future planning, policy, and continuous service improvement."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The Department accepts complaints from deaf, hearing-impaired or speech-impaired customers through the National Relay Service.
Health	<u>TAS Department of Health</u>	There is limited information on the department's website about the complaints process.	People seeking to provide feedback to the Department can use an online feedback form, or fill out a Client Experience Survey. They may also contact the department by phone for further assistance.	There is no information on how complaints are resolved.	There is no information on the outcomes of complaints. Complainants who require communication assistance are directed to the National Relay Service or interpreting and translation services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	Health Complaints Commissioner	Who can complain? Only a person who has received a health services in Tasmania, or their representative. Types of violence the complaint applies to/excludes Complaints can relate to: • “treatment • access to services • quality and safety • care and attention • respect and dignity • fees and charges	Process to complain Complaints can be lodged using an online or hard copy complaint form, by phone or in person. All complaints will be required to be put in writing. Complainants are encouraged to raise their complaint with the service provider in question in the first instance. Form of complaint Anonymous complaints are permitted, however this may impact the effectiveness of the investigation into the matter.	Any interim measures prompted Receipt of complaints is acknowledged, and then they are assessed to see if early resolution is possible, before moving to a more formal assessment process. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. However, of note – the Commissioner is also the State Ombudsman.	Range of possible outcomes Possible outcomes include: • “an apology • an explanation • a refund of out of pocket expenses • a change in policy or procedure • compensation” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response:

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- communication about treatment, options and costs - your involvement in healthcare decisions - the way your health service provider handles your complaint" Complaints which are excluded include those concerning: "the contents of a medical report - Medicare or health insurance - orders made by the Mental Health Tribunal - orders made by the Guardianship and Administration Board - health services received in another state or territory. - restrictions on prescribing by the Pharmaceutical Services Branch" Limitation periods Usually 2 years from the date of the incident in question, or when the complainant became aware of the issue that is the subject of the complaint.	Role of victim-survivor Not specified. Role of lawyers/advocates Lawyers are not required, but complainants can seek legal advice if needed.	Nature of complaint resolution process There are a number of options/avenues that may be pursued. <i>Early Resolution</i> The focus is on quick, informal resolution between the parties, facilitated by the Commission, over the phone. <i>Formal Assessment</i> If a complaint is assessed as being more complex, it may be taken through a more formal assessment process. The Commission will write to the complainant seeking further information. The process may also involve the following: "sending a copy of the complaint to the health service provider requesting a response to the issues raised - obtaining a copy of the medical records which relate to the complaint - seeking information from previous or subsequent health care providers	Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Complainants who remain unsatisfied with the outcome or process of handling their complaint, can request a review. These reviews will be handled by a different, more senior staff member originally involved. External reviews can also be requested from the Ombudsman. However, of note: the Commissioner is also the State Ombudsman in Tasmania. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Evidentiary requirements Complainants are encouraged to provide as many details as possible, such as “the dates of key events, the names of people [they have] contacted and copies of letters, documents and photos.” Role of legal capacity and substituted decision-making People who may lodge a complaint on behalf of a consumer include: • “The parent or guardian of a child under 14 years • A person appointed by a child over 14 years • The donee of a power of attorney • A legally appointed guardian, executor or (in some circumstances) a close friend or relative.” Does a specific individual perpetrator need to be identified? Not specified.		• seeking clinical advice in relation to the complaint • sending the complainant a copy of the response for comment • exploring available resolution options relevant to the complaint.” “Following this process the complaint may be dismissed, referred to a relevant registration board, assessed for conciliation or for further investigation. In some instances, more than one option may be chosen. Each party will be advised about the assessment decision.” “If no resolution is reached using this approach, [the Commission] may not be able to assist the complainant any further.” 3. <i>Referral to a relevant health registration board</i> For example, this may include referring to AHPRA.	Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? De-identified case summaries are available on their website. Complaint data is published in annual reports. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The National Relay service, and interpreter/translation support services are offered for assistance.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				4. <i>Conciliation</i> “Conciliation enables all parties to meet and have a full and frank discussion in a privileged and confidential process. More detailed explanations may be provided or compensation may be discussed. Conciliation allows parties to resolve the complaint in a collaborative way. If parties are seeking compensation, this process may be an alternative to litigation.” 5. <i>Investigation</i> “An Investigation is a detailed examination of the complaint, and is usually reserved for highly complex matters where complaints give rise to systemic or public interest issues. An investigation report will be prepared and published on [the HCSCC] website.” 6. <i>Dismissal</i> “The complaint may be dismissed if a reasonable explanation has been provided for the concerns raised in the complaint, and there would be no benefit in continuing the complaint process.”	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Role of victim-survivor in complaint resolution This will depend on the avenue adopted for complaint resolution, ranging from the provision of information (for more informal resolution processes) to participating in conciliation meetings. Role of perpetrator (individual/service provider/government) in complaint resolution As above. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	
Social Services	<u>TAS Department of Communities</u> Note – does not appear to have a central complaints handling process.	The department has separate complaints contacts for each service area, but does not appear to have a central complaints handling process.	N/A.	N/A.	N/A.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Justice	<u>IAS Department of Justice</u>	Who can complain? Not specified. Types of violence the complaint applies to/excludes Complaints may relate to: • “communication by a staff member that does not adhere to the Service Standards; • behaviour by a staff member that does not comply with the Service Standards; • unreasonable delay in providing information or services; • inadequate service, explanation or reasons; • human error; • procedural deficiency; • inadequate knowledge/training of staff; • poor facilities (such as unclean toilets, inadequate seating).” Limitation periods Not specified. Evidentiary requirements Complainants are encouraged to provide the following information: • their contact details;	Process to complain Complainants are encouraged to resolve their complaint with the manager of the staff member or service provider that is the subject of the complaint, in the first instance, before lodging a formal complaint. Formal complaints can be lodged via email, or by phone. Form of complaint Anonymous complaints are accepted, however they may not be able to be effectively investigated and the complainant will not be able to be kept updated on the progress of the complaint. Role of victim-survivor “It is the responsibility of the complainant to: • identify the issues of the complaint, and how they believe they do not meet the Service Standards • give the Department all the available information about the complaint in an organised format at the time of making the complaint • cooperate with the Department’s enquiries or investigations • treat the Department’s staff with courtesy and respect.” Role of lawyers/advocates Not specified.	Any interim measures prompted Upon receiving a complaint, the Department will make an assessment about whether the complaint indicates the department’s service standards have been breached, and whether it is the most appropriate body to handle the complaint. If neither of these apply, the Department may decline to handle the complaint and/or refer the complainant elsewhere. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund the service provider that is the subject of the complaint. Nature of complaint resolution process “After accepting a complaint, the Department will undertake an assessment based on the following criteria: • severity • health and safety implications (for the complainant, the public, or the employee/agency)	Range of possible outcomes “The outcome may include: • an apology • amending or retracting documentation (e.g., publications, media statements, web pages) • changed policies or practices to prevent a repeat of the incident or matter you complained about • action to modify the behaviour of the staff member who the complaint was about, if applicable (e.g. further training, mentoring etc.).” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The department states that if they “receive a complaint that highlights a systemic problem with [their] processes or services, or... repeated complaints about specific business areas or issues, [they] will use the feedback [they] receive to review [their] policies and procedures.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- who should be contacted regarding the complaint; - the complainant's or representative's preferred contact method; - details regarding the complaint (e.g. date, time, location, staff member(s) or output involved, incident or issue); - any organisation identifier (e.g. reference number, date of correspondence, name of author) relating to the complainant; - any special assistance required by the complainant to interact with the Department; - whether the issue has been raised previously, and if so details of this process - the outcome sought; - whether the complainant wishes the Department to contact them about their complaint.		- complexity - potential for the matter to escalate - whether we have received other complaints about the same issue - the need for and possibility of immediate action - the outcomes sought by the applicant - whether other outputs or areas of the organisation need to be involved. The assessment process will determine: - who will deal with the complaint - the best method to achieve resolution - the level of investigation required." "Depending on the type of complaint and the outcome of the assessment process, a complaint may be referred for investigation to: - the direct Manager of the employee or service involved; - the Output Manager for the relevant business area; or - the Deputy Secretary, Secretary (or delegate)."	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome There does not appear to be an option for internal review. If complainants remain unsatisfied with the outcome of their complaint, they are encouraged to contact the Tasmanian Ombudsman. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) "Where possible and to the Department's best efforts, a complaint investigation will maintain confidentiality and privacy...All Department personnel have an important

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Role of legal capacity and substituted decision-making Not specified, however the department's policy implies a complainant's representative may lodge a complaint on their behalf. Does a specific individual perpetrator need to be identified? Not specified.		Role of victim-survivor in complaint resolution If they are the complainant, they provide information about the issue at the time of lodging their complaint. Their involvement in the resolution process is unclear. Role of perpetrator (individual/service provider/government) in complaint resolution Unclear. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	legal obligation to carefully consider the appropriateness of publicly disclosing personal and privileged information. This obligation is covered in the <i>Personal Information Protection Act 2004</i>." What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Improvement in the department's service delivery "will be achieved by: - identifying repeated complaints; - evaluating data, determining the causes of complaints and whether remedial action is required; - developing and implementing continuous improvements to services and products that are the cause of complaints." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	Ombudsman Tasmania	Who can complain? Anyone personally affected by the administrative actions of Tasmanian public authorities. The Ombudsman can also instigate own-motion investigations. Types of violence the complaint applies to/excludes Complaints can be made if someone believes a Tasmanian public authority has acted unfairly or unreasonably. However, the actions of the following public authorities are excluded: - The Attorney-General, the Solicitor-General or the Director of Public Prosecutions - The Tasmanian Audit Office - Judges, associate judges, magistrates or courts - The actions of public authorities with respect to court proceedings in which they are involved - Actions taken by a tribunal or its members in the performance of its decision-making functions.	Process to complain Complaints can be lodged online, by phone, in person or in writing. Complainants are encouraged to raise their complaint with the relevant agency before complaining to the Ombudsman. Usually, the Ombudsman will not accept a complaint if another means of review is or was open to the complainant - for instance by applying to a court or tribunal - and they have not made use of that. Form of complaint Anonymous complaints are accepted, however this may make it difficult for the complaint to be investigated effectively and/or to keep the complainant updated on the progress of the investigation. Role of victim-survivor If they are the complainant, they are required to provide as many details as possible about the matter at the time of lodging their complaint. Role of lawyers/advocates Not specified.	Any interim measures prompted "Investigation Officers (IO) working in the Ombudsman's team assess complaints to determine that they are within jurisdiction, this includes making sure the actions referred to in a complaint: - concern a Tasmanian public authority and administrative actions as defined by section 12 and Schedule 2 of the Act; - occurred within the time limit provided by section 19 of the Act; - have been raised with the agency in question in the first instance; - are not reviewable by a court or a tribunal. It must also be confirmed that the complainant is personally aggrieved by the actions complained of. The Act also gives the Ombudsman a discretion to refuse a complaint when investigation of it is unjustified or unnecessary. Once a complaint has been accepted, efforts will be made to address and resolve it informally, if possible. This may involve an IO seeking some additional information from the agency in question."	Range of possible outcomes If a complaint is upheld, the Ombudsman may make recommendations to the authority about how any problems should be resolved. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Ombudsman can instigate own-motion investigations following receipt of a complaint. Any enforcement or monitoring of outcomes "If the findings of the investigation include recommendations to the agency, the Ombudsman will follow up on these recommendations to make sure that they are complied with." The Ombudsman "cannot require the authority to act in a particular way but most comply with [their] recommendations. If they do not, and [the Ombudsman] believes it is in the public interest to do so, [it] can report [the agency's] non-compliance to Parliament."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods Usually 2 years. Evidentiary requirements Complainants are encouraged to explain their concerns "simply and clearly" including what outcome they are seeking. They are also encouraged to "include as many relevant details" as possible such as "dates of key events, the names of people contacted and copies of letters and documents." Role of legal capacity and substituted decision-making Not specified. However, the Ombudsman does state that someone else can lodge a complaint on behalf of a person directly affected by the actions of a Tasmanian public authority. Does a specific individual perpetrator need to be identified? Not specified.		Any report to police prompted Not specified. Relationship of complaint body to victim, complainant, perpetrator or context Is an independent body. Nature of complaint resolution process <i>Preliminary Inquiries</i> After an initial assessment is conducted, the Ombudsman may decide to make preliminary inquiries to determine whether the matter can be resolved informally. This may involve: - writing to the head of the agency and requesting a response to the issues raised in the complaint. - requesting copies of specific documents, copies of policies, or - interviewing certain people. "At the conclusion of this process the investigating officer will make a determination about whether the administrative action taken by the agency was reasonable in the circumstances." At this point, the matter may either be closed, or progress to a formal investigation.	Powers of complaint body to investigate, monitor and take action "Generally the Ombudsman attempts to obtain information cooperatively, but the Act does provide for the use of coercive powers if necessary." Are written reasons for decision provided? Yes, in the form of a final report. Any appeal/review processes following outcome Complainants can request an internal review if: - the Ombudsman has made a final decision in their case; - they believe the Ombudsman has made an error when dealing with their case; and - they have tried to resolve their concerns with their case officer. Requests for internal review should be made no later than 60 days after a case has been closed. In their request, the complainant must: - Explain why they believe the decision made in relation to their case was incorrect; and

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				<i>Investigations</i> If the Ombudsman decides to undertake an investigation, the agency will be notified and requested to produce information or documents. In addition, the Ombudsman may conduct interviews and summon witnesses. At the end of the investigation, the Ombudsman will prepare a preliminary report and deliver it to the agency's principal officer to allow the agency to respond. Any response will be considered and fairly incorporated into the report before a final report is sent to the relevant Minister. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution The agency may be required to provide information, documents or have staff interviewed as part of an investigation process. "If, as part of the investigation or in any report of its outcome, the Ombudsman is considering making an adverse comment	- Provide any supporting evidence "An Ombudsman officer more senior or of the same level as the case officer will conduct the review. The person will not be the original decision-maker and will review the whole file. They will consider whether or not the case officer's decisions and actions were reasonable and appropriate and if there was anything that could have been done better when handling the case." Possible outcomes of internal review include findings that: - the case should be re-considered and further steps taken - the original decision was correct and nothing further will happen - the Ombudsman should make improvements to how it handles cases in future. Complainants can also make an external complaint about how the Ombudsman has handled their matter, to the Joint Standing Committee on Integrity. Any incidental consequences of complaint resolution Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				about a particular individual a copy of that comment and supporting information will be given to the person to allow an opportunity for consideration and comment in the interests of procedural fairness." Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) "Not all information obtained through the [preliminary inquiries] process (or at the assessment phase or if required during an investigation) will be made public or released to the complainant. In the interests of transparency it is the Ombudsman's preference to be as open as possible, however any reasonable requests for information to be kept confidential will be taken into consideration." What information is publicly available from the complaint resolution? Complaints data is reported in the Ombudsman's annual reports. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific provision for particular groups? The National Relay service, and interpreter/translation support services are offered for assistance.
	<u>Equal Opportunity Tasmania</u>	Who can complain? A person affected by the discrimination or other conduct, or their representative, agent or trade union. Types of violence the complaint applies to/excludes Discrimination; sexual harassment; victimisation; incitement of hatred, contempt, severe ridicule; or conduct that offends, humiliates, intimidates, insults or ridicules another person on the basis of: • age • race • disability • sexual orientation • lawful sexual activity • gender • gender identity • intersex variations of sex characteristics • pregnancy • breastfeeding • marital status	Process to complain Complaints can be lodged in writing, via email, in person, or online. Form of complaint Not specified. Role of victim-survivor "It is the complainant's responsibility to ensure that: • your complaint is made in writing and signed by you and any other person making the complaint with you. • you identify the person/s, group of people, or organisation that you believe has discriminated against you. • you provide as many details as possible of the alleged discrimination or prohibited conduct. • you lodge your complaint in person, by post, or by other means that the Commissioner allows. • If you provide supporting documentation ensure you send copies and retain originals.	Any interim measures prompted The Commissioner must decide whether to accept a complaint for investigation, or reject the complaint within 42 days after receiving it. Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body. Conciliators do not advocate on behalf of either party, but remain impartial. Nature of complaint resolution process <i>Early resolution option</i> "The complainant and the respondent(s) will be asked if they want to try to resolve the complaint quickly. If they both do, a meeting will be arranged so they can talk about possible solutions. The Commissioner may decide that the complainant and	Range of possible outcomes "The kind of outcomes that are identified as suitable generally depend on the nature of the complaint. For example, if the complaint is about work issues, the complainant may, for example, want a written apology, a reference from the employer, anti-discrimination training for managers/supervisors and staff of the employer." "If the parties reach an agreement on how to resolve the complaint, that agreement is legally binding and everyone involved must do what they have agreed to do." "If the conciliation conference does not result in an agreement on how to resolve the complaint, there may be further investigation by the Commissioner's investigator, or the complaint may be referred to the <u>Anti-Discrimination Tribunal for Inquiry</u>."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- relationship status - Family responsibilities - Parental status Limitation periods 12 months. Evidentiary requirements Complainants are asked to provide their complaint in writing, and include details about who they are complaining about, who was affected by the behaviour in question, and details of the alleged discrimination or other unlawful conduct, including what happened and when. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	- You provide requested information within the specified timeframe (usually 14 days). - You provide clear and accurate information, which is not false or misleading." Role of lawyers/advocates "Parties involved in a complaint with Equal Opportunity Tasmania can choose at any time to be represented by a lawyer or advocate during the complaint handling process."	respondent(s) should meet to try to resolve the complaint at this stage even if they do not want to. Agreements reached in an early resolution meeting are binding on the parties." <i>Investigation</i> "If the complaint is not resolved early it will be investigated. This can include collecting evidence such as witness statements and relevant documents from the complainant, the respondent, witnesses and other third parties." <i>Investigation decision</i> "At the end of the investigation, the Commissioner considers all of the materials collected in the investigation and decides whether the complaint should: - Be dismissed; - Proceed to conciliation; or - Be referred to the Tribunal for an inquiry." Role of victim-survivor in complaint resolution During the investigation, the Commissioner may require parties to provide specific information or documents under section 97 of the Act.	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes "An agreement is enforceable as if it were an order made by the Tribunal. If someone doesn't do what they promised, the other party can ask the Supreme Court to enforce the agreement, or can ask the Commissioner to apply to the Supreme Court for this to happen." Powers of complaint body to investigate, monitor and take action "If the Commissioner forms the view that a party or another person or organisation has information or documents relevant to the situation being investigated, the Commissioner may require the person to provide the information or documents using section 97 of the Anti-Discrimination Act 1998."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				The complainant must comply with any such request or provide a reasonable explanation as to why they cannot comply. Role of perpetrator (individual/service provider/government) in complaint resolution "It is a respondent's responsibility to ensure that: - You reply within the specified timeframe (usually 14 days). - You request an extension of time in writing from the Commissioner if you have good reasons for not being able to meet a timeframe. - If you are not directly named as a respondent to the complaint, but are the responsible person in a company, business, organisation, club, agency etc that has been named as a respondent to the complaint, you respond for the organisation. - The information and other documentation you provide is clear and detailed.	If the person refuses to do so 'without reasonable excuse' the person can be fined." The Commissioner has the power to order people to come to a conciliation conference. The Commissioner does not have authority to decide whether or not the discrimination or other unlawful conduct took place. This is the role of the Tribunal. Are written reasons for decision provided? "The conciliator will make a written record of the agreement and the parties will be asked to sign it. Once it is signed, the parties will be given a copy of the agreement, and the signed original will be kept on the Commissioner's file for the complaint." Any appeal/review processes following outcome "If a complaint is rejected or dismissed the complainant has a right of review through the Tribunal.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- If you provide supporting documents ensure you send copies and retain originals. - You provide accurate information, which is not false or misleading." Roles of other independent persons/monitors in complaint resolution "The parties can request representation or to have an accompanying person attend. A representative is a person who speaks on behalf of the complainant or respondent and therefore has 'speaking rights'. An 'accompanying person' is a support person. They have no speaking rights during the resolution unless during the process both complainant and respondent agree that the accompanying person may speak." Qualifications/background of complaint resolution decision-maker Not specified.	If the Tribunal upholds the rejection or dismissal, the complaint lapses and the file is closed. If the Tribunal overturns the rejection the complaint will be returned to the Commissioner for investigation. If the Tribunal overturns the dismissal, the Tribunal holds an inquiry. This is a hearing or trial where the parties give evidence on oath or affirmation and are cross-examined and witnesses may be called. At the end of an inquiry, the Tribunal decides if discrimination has occurred or not, and makes orders about compensation or dismissal, etc." Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) "Conciliation Conferences are held in private. Everything said, written or done in the Conciliation is confidential."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Complaint data is published in the Commission's annual report. Relationship of complaints process and resolution to policy and law reform The Commission makes submissions and reports to various government enquiries, and conducts reviews when deemed necessary. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The National Relay service, and interpreter/translation support services are offered for assistance.
Disability specific	<u>Disability and Community Services</u>	Who can complain? Service users, community members, people with disabilities, families, carers and advocates. Types of violence the complaint applies to/excludes None specified.	Process to complain Directly to Disability and Community Services. Form of complaint Telephone, email, in person or by post. Role of victim-survivor Not specified.	Any interim measures prompted None specified. Any report to police prompted Not specified.	Range of possible outcomes None specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods None specified. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Role of lawyers/advocates Advocates can help people make complaints: "Can someone help me to provide feedback? Yes. You can ask a family member, carer or friend to help. You may like to use an Advocacy service. These services work with you to speak up for yourself to make sure your views and opinions are heard and understood. These services are free, independent and confidential. The following organisations may be able to assist: • Advocacy Tasmania • Speak Out Association of Tasmania • Association of Children with Disability"	Relationship of complaint body to victim, complainant, perpetrator or context Complaint mechanism sits within the Department of Disability and Communities Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution None specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.
Other relevant non-complaint bodies					

Jurisdiction: Victoria

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Education	<u>Victorian Department of Education and Training</u> Note - The Department adopts different complaints handling processes for different education service areas; as such, it is not possible to provide a consolidated overview.	The Department adopts different complaints handling processes for different education service areas; as such, it is not possible to provide a consolidated overview. The Department's website states that regardless of the avenue taken, they will: • outline the process for dealing with complaints • provide any reasonable assistance to lodge the complaint • treat complainants respectfully • act impartially and objectively • maintain confidentiality and privacy as required • provide an indicative time for addressing a complainant's issue • keep the complainant informed of the progress of the Department's inquiries	In most avenues, the Department encourages complainants to raise their concerns with the relevant service provider in the first instance. <u>Childcare/early childhood education services</u> If not able to be resolved at the service level, the complaint should be raised with the Department's regional office. Complainants can also contact the Licensed Childcare/Children's Services helpline. <u>Specialist early childhood services</u> If not able to be resolved at the service level, the complaint should be raised with the Department's regional office, and then with its central office as a last resort. <u>Complaints about Departmental regulation staff</u> Complaints about a Quality Assessment and Regulation Division (QARD) staff member should be directed to a QARD regional office in the first instance. If not resolved, the complaint can be directed to the Department's central office.	The nature of the complaint resolution process depends on the avenue taken for handling the complaint; however it appears that overall, the Department takes an investigative approach.	The Department's website does not provide details on potential outcomes. This is likely to depend on the avenue taken for resolving the complaint. For most avenues, external reviews can be requested from the Victorian Ombudsman.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- when extended time is required provide reasons for their decision - inform complainants of their rights of internal or external review. Reports of abuse are singled out on the department's website. Victim-survivors are encouraged to report current and former abuse to both the school and/or Department, and the police.	Government schools or school staff If not able to be resolved by the school in the first instance, complaints can be raised with the local Department office, then the Department's central office, then the <u>Independent Office for School Dispute Resolution</u>. Independent and catholic schools Complaints should be directed to the Catholic Education Commission of Victoria, or the Victorian Registration and Qualifications Authority. <u>TAFE and training organisations</u> If not able to be resolved at the service level, complainants should contact the <u>TAFE and Training Line</u>.		
Health	<u>VIC Department of Health</u>	Who can complain? Anyone receiving services from the Department, their advocate or representative. Types of violence the complaint applies to/excludes Applies to "a specific episode, occurrence or provision of service that has resulted in an impact on any individual or group." In particular, where complainants:	Process to complain There is a 2-step complaints process: Step 1: Complainants raise their complaint with a staff member at the relevant health service provider Step 2: If still dissatisfied, complain to the Department. Complaints to the Department can be made in writing, or using an online form.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator or fund the service provider that is the subject of the complaint.	Range of possible outcomes Not specified in detail. However, the Feedback (including compliments and complaints) management policy of the (former) DHHS available on the website, states that "the feedback management process will provide mechanisms and strategies to:

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		• “were given unsatisfactory service • did not receive enough information or choice • were denied respect, dignity or privacy.” Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified directly. However, the department states the following: “You may ask someone else to lodge a complaint on your behalf. However, they must have your permission to do this.” Does a specific individual perpetrator need to be identified? Not specified.	Form of complaint Anonymous complaints are permitted, but may affect the Department’s ability to follow up effectively. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Nature of complaint resolution process Not specified in detail. However, the Feedback (including compliments and complaints) management policy of the (former) DHHS available on the website, states the complaints management process “will: • explain how and where to make a compliment or complaint, including an anonymous complaint • consider specific needs of the individual or barriers they may experience • explain alternative complaint resolution pathways when the complaint is first lodged and when it is closed • explain how the department will manage a complaint and the expected timeframe for resolution • support individuals so they can identify and seek their preferred outcome.” The policy also states that the complaints management process “will:	• explain what happened and why, what will be done to fix the issue, who will do it, how we will communicate our progress and how we will check things are on track • explain the reasons for the decision • provide an apology • where an apology is provided, ensure it is sincere, and accepts responsibility for what occurred and the impact • explain the circumstances without making excuses, and summarise the key actions that will be taken • provide regular updates to the complainant if the resolution is delayed.” Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified in detail.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				• support the complainant to seek the most appropriate resolution • ensure there is clarity about the requested outcome • provide a respectful, valuing and informative acknowledgement • actively listen, empathising and acknowledging when the service was not the best it could have been • monitor timeframes for resolution • communicate with all relevant parties about the progress to resolve the complaint. Finally, regarding assessment and investigation of complaints, the policy states that the process "will: • assess complaints for severity, safety, complexity, impact and the need for immediate action • collect adequate and appropriate information to inform systemic improvement • protect the privacy and confidentiality of the information people have provided	However, the Feedback (including compliments and complaints) management policy of the (former) DHHS available on the website, states that the department will "follow up with complainants to determine the effectiveness of the outcome, where appropriate." Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified in detail. However, the Feedback (including compliments and complaints) management policy of the (former) DHHS available on the website, states that the department will "notify the complainant of alternative complaint resolution pathways and review mechanisms." External review bodies may include the Victorian Ombudsman, Disability Services Commissioner or Office of the Victorian Information Commissioner.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				- determine by whom and at what level the complaint should be dealt with - enable complaints to be considered independently, fairly and objectively." Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The department states: "We will use the information you provide us to investigate and resolve your complaint, and in accordance with our <u>Privacy Policy</u>. The investigation of your complaint may involve sharing your personal or health information with other relevant areas within the department to achieve a resolution. If a third party was involved, we may also need to discuss your complaint with them." What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified in detail.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					However, the <i>Feedback (including compliments and complaints) management policy</i> of the (former) DHHS available on the website, states that “the feedback management process will provide mechanisms and strategies to gather and record feedback and other information to: • meet any statutory, policy or procedural reporting requirements • improve the training and capabilities of feedback management staff • analyse feedback data and identify trends for performance improvement • monitor the time taken to resolve complaints • notify service providers of any changes necessary arising from a complaint as part of a continuous quality improvement approach.” Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific provision for particular groups? According to the department's website, "the department can arrange an interpreter to help with language services." Also, the <i>Feedback (including compliments and complaints) management policy</i> of the (former) DHHS available on the website, states that "the feedback management process will be responsive and provide mechanisms and strategies to...promote client rights, particularly those with special support needs, so they can actively participate in the feedback process."
	Health Complaints Commissioner	Who can complain? "Anyone with concerns about a health service that is being provided can make a complaint. This includes health service consumers and their friends and family members, health service staff and volunteers, concerned community members and professional organisations... Carers can also complain about how they have been treated in their caring role."	Process to complain Complainants are encouraged to resolve their complaint with the relevant service provider in the first instance. If they are unable to resolve the complaint directly, they can lodge their complaint with the HCC online, by phone, by mail or in person. Form of complaint Anonymous complaints are permitted, but this will limit the HCC's ability to handle the complaint and keep the complainant updated on its progress.	Any interim measures prompted The HCC may impose an Interim Prohibition Order for up to 12 weeks. "Orders are only made against general health service providers, meaning those not regulated by the Australian Health Practitioner Regulation Agency (AHPRA), and only if the Commissioner believes they've breached the general code of conduct and pose an unacceptable risk to the public."	Range of possible outcomes Options include the following: • "an explanation about what happened and why" • an apology • access to treatment • access or amendment to health records • a refund or compensation • a change in policy or practice to prevent future problems." Following an investigation, the HCCC may also decide to impose a prohibition order on the service provider, or issue a public warning.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Types of violence the complaint applies to/excludes Complaints frequently relate to: • “access to services • quality and safety • care and attention • respect, dignity and consideration • communication about treatment, options and costs • the level of involvement in health care decisions • access, privacy and confidentiality of personal health information • complaint handling by the health service provider.” Limitation periods Not specified. Evidentiary requirements Complainants are required to include with their complaint, the following: • “the name, address and contact details of the health service provider or organisation [they] are complaining about	Role of victim-survivor If they are the complainant, they must provide details of the matter along with their complaint. If they are not the complainant, they must provide their permission or authority to complain, to the complainant. Role of lawyers/advocates May complain on the victim-survivor’s behalf.	Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The HCC has several avenues for complaints resolution: <i>Early Resolution</i> – the least formal and quickest option. Involves discussing the complaint with the complainant and service provider over the phone, seeking to find an acceptable solution to both parties. <i>Formal Resolution</i> – The complainant provides a formal description of the complaint, including supporting documentation and a “resolution plan”; the service provider responds to this plan; if the service provider agrees to improve their services in response to the complaint the HCC will then monitor their compliance with this agreement.	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: This will depend on the outcome. If a less formal avenue is taken – e.g. formal resolution or conciliation – the service provider may need to take responsibility for changing their service practices. If an investigation leads to a prohibition order, they may be restricted from practicing for a period of time, or permanently. Any enforcement or monitoring of outcomes If an investigation recommends that a service provider must make improvements to their practice, the HCC will monitor the implementation of those recommendations. They may take “further action” if these improvements are not made. The HCC may also launch a follow-up investigation if a service provider fails to take agreed-upon actions arising from a formal resolution or conciliation process.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- any relevant supporting documents, including: [their] letter of complaint or email to the health service provider or organisation - their response to [their] complaint - other supporting documents such as letters, referrals, photos or invoices. - If...complaining for someone else...the consent of the person [they] are complaining for." Role of legal capacity and substituted decision-making Not specified directly. The HCC states that if complaining on someone else's behalf, a complainant requires the victim-survivor's permission or authority. Does a specific individual perpetrator need to be identified? Not specified.		Conciliation – Confidential discussions are facilitated by the HCC between the complainant and service provider. This process usually takes less than 12 months, but may take longer. Investigation – "a formal and detailed examination, often used in handling large or highly complex matters." The HCC may also issue interim orders prohibiting service providers from practising while an investigation is under way; or a prohibition order at the conclusion of an investigation. They may also issue a public warning statement "to alert people to serious risks to their health, life, safety or welfare." Role of victim-survivor in complaint resolution Will depend on the complaint resolution avenue adopted. Role of perpetrator (individual/service provider/government) in complaint resolution As above. Roles of other independent persons/monitors in complaint resolution Not specified.	Powers of complaint body to investigate, monitor and take action The HCC cannot force participation in complaint resolution, however they do have powers to obtain any information relevant to an investigation. This includes conducting interviews, gathering evidence, and seeking independent expert advice. They also have significant powers to introduce a regulatory regime for general health service providers, "requiring providers to comply with a mandatory code of conduct, and giving the Commissioner powers to investigate and ban service providers who breach standards in the code." Are written reasons for decision provided? After an investigation is completed, the relevant report may be shared with all relevant parties including the complainant and service provider. Any appeal/review processes following outcome Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
				Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	Any incidental consequences of complaint resolution Complainants "cannot be dismissed, disciplined or disadvantaged in any other way, for making a complaint. [They] are also protected from legal actions such as defamation and civil liability." Relationship to police and CJS The HCC may refer some complaints to AHPRA who have stronger enforcement powers over health professionals. Any confidentiality or privacy rules (protective of or gagging complainant) The HCC states: "The personal and health information we collect mostly relates to considering and, where appropriate, resolving or investigating complaints under the HCA or the HRA. We will only collect the personal and health information that is necessary to perform these functions. We will ensure any personal and health information you provide will not be disclosed, except when this is consistent with the HCA, HRA, the provisions in the PDPA or any other law."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Interim Prohibition Orders, Prohibition Orders, and public warning statements regarding health service providers are published on the HCC website. Relationship of complaints process and resolution to policy and law reform Part of the HCC's role is to "monitor and review trends in complaints data and use this analysis to inform quality, improvement possibilities within health services and the health system." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Refers complainants who are deaf or hearing or speech impaired to the National Relay Service. Also provides interpreting/translation assistance.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Mental Health Complaints Commissioner</u>	Who can complain? “Anyone who is concerned about someone’s experience with a public mental health service in Victoria.” Types of violence the complaint applies to/excludes “Complaints to the MHCC are often about difficulties in accessing public mental health services, or the treatment and care provided by them.” This may include, for example: - disagreement with treatment orders, and people not feeling that their views and preferences have been heard. - receiving inadequate, incomplete, or misleading information from their public mental health provider. - staff conduct, such as rudeness, or a lack of respect, empathy or compassion. - disagreement or dissatisfaction with medication, such as its side-effects.	Process to complain Complaints can be lodged via phone, an online complaint form, in writing or via email. Complainants are reminded that they have the option to complain to the relevant service directly, but do not have to. Form of complaint Anonymous complaints are accepted, but this may impact the MHCC’s ability to deal with the complaint effectively. Role of victim-survivor May be the complainant, or may have a guardian/advocate/other person lodge a complaint on their behalf. Role of lawyers/advocates Complainants are supported to access help from a lawyer and/or advocate, either instead of, or in addition to, making a complaint. They can browse the resources listed on the MHCC’s website or they can contact the MHCC for help in finding an appropriate advocate/lawyer.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The MHCC takes the following steps when trying to resolve a complaint: Step 1 – an initial conversation with the complainant to understand their concerns and determine what outcome they are seeking; or seeking the consumer’s consent if the complaint is lodged by another person. Step 2 – an attempt to resolve the complaint quickly by offering to speak with a staff member at the service which is the subject of the complaint. Step 3 – if Step 2 is not desired or appropriate, the MHCC will discuss other options, including whether to refer the matter to a more appropriate body, to proceed with the complaint, or to discontinue it.	Range of possible outcomes Will depend on individual complaints, however the MHCC points to the “4A’s of complaint resolution” which lead to positive outcomes: - Acknowledgement of a person’s experience. - Answers or explanations about the complaint issues. - Actions taken because of the complaint. - Apology for the person’s experience. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: When assessing a complaint, the MHCC considers “whether the complaint raises issues of rights, safety, risk or quality, or a systemic issue or practice that may affect many people.” Also note that the Commissioner “only investigates a complaint if it has broad implications for the public and it is appropriate to make findings about what happened.”

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Usually, a person complaining about someone else's experience will require that person's consent to lodge a complaint with the MHCC. However, the <i>Mental Health Act 2014 (Vic)</i> allows the MHCC to accept complaints without the consumer's consent if it is "satisfied that: - the person making the complaint has a genuine interest in the wellbeing of the consumer - there are special circumstances for accepting the complaint without the consumer's consent; and - accepting the complaint will not be detrimental to the consumer's wellbeing."		Step 4 – If the MHCC decides to proceed with the complaint, they will assist the complainant to formalise the complaint in writing if not yet done so, within 20 working days. They may also seek further information about the matter from the complainant and/or service provider. Step 5 – If the MHCC can proceed with dealing with the complaint, they may do one or more of the following: - help the complainant talk to the service directly about their concerns; - seek a response from the service about the concerns raised by the complainant, answers to specific questions and any actions taken by the service - arrange a meeting with the complainant and the service to discuss what happened, how to resolve the complaint and what will happen next - provide advice and recommendations to the service to improve the situation for the complainant and others, such as about its practice, processes or training	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action "In certain circumstances, the MHCC can request formal legal 'undertakings' from Victorian public mental health services to take specific actions and issue compliance notices if they do not." Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome If complainants remain unsatisfied with the process of the MHCC, they may take their complaint to the Victorian Ombudsman. Any incidental consequences of complaint resolution The MHCC reminds complainants that "<i>the Mental Health Act 2014</i> says you cannot be treated unfairly because you make a complaint. If you feel you have been treated unfairly for making a complaint, either to the service or to the MHCC, we encourage you to contact us."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		The MHCC also states that “accepting a complaint without the consumer’s consent is a serious decision. We decide on a case-by-case basis considering the mental health principles and our functions. Special circumstances may be where: - the consumer does not have capacity to consent to a complaint at the time - the consumer is under 16, and a parent or guardian makes the complaint - a guardian makes the complaint - the complaint is from a family member or carer and there is a risk of serious harm to the person and it is appropriate for the MHCC to deal with the complaint. If we accept a complaint without the consumer’s consent, the Act says we must notify the consumer and involve them in resolving the complaint whenever possible, as		- arrange a conciliation process (which the service must agree to) - seek an undertaking from a service to take actions where there has been a breach of the person’s rights or the requirements of the Mental Health Act 2014 - formally investigate the complaint. Note this final option to investigate is reserved only for cases where the “complaint has broad implications for the public and it is appropriate to make findings about what happened.” Role of victim-survivor in complaint resolution If they are the complainant, they may be required to participate in the resolution process, including negotiating an outcome with the service provider, facilitated by the MHCC. The MHCC states that complainants “determine how and at what pace [they] would like to take part in our processes.” Role of perpetrator (individual/service provider/government) in complaint resolution As above.	Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The MHCC “must comply with a number of laws when dealing with [complainants] information, including the: - Mental Health Act 2014 (the Act) - Health Records Act 2001 - Privacy and Data Protection Act 2014 - Freedom of Information Act 1982 - Charter of Human Rights and Responsibilities Act 2006” What information is publicly available from the complaint resolution? Individual complaints are kept confidential, however complaints data is available on the MHCC website and published in its annual reports. Under the Mental Health Act 2014, public mental health services are also required to report complaints about their services to the MHCC, that uses these to analyse trends and areas for improvement across the sector. The MHCC also publishes this work in detailed reports.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		early as possible. This is to uphold their rights and the mental health principles of the Act." Does a specific individual perpetrator need to be identified? Not specified.		Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	Relationship of complaints process and resolution to policy and law reform "The MHCC has broad functions under the Mental Health Act 2014 to: • identify and review quality, safety and other issues arising out of complaints • provide advice and make recommendations for service and system improvements, which services are expected to follow." The MHCC also makes "recommendations about systemic issues to the Department of Health, Chief Psychiatrist and other bodies including Safer Care Victoria." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Provides assistance to people who are deaf, speech or hearing impaired; and those who require translation or interpreting services.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Social Services	VIC Department of Families, Fairness and Housing	Who can complain? Anyone receiving services from the Department, their advocate or representative. Types of violence the complaint applies to/excludes Applies to "a specific episode, occurrence or provision of service that has resulted in an impact on any individual or group." In particular, where complainants: • "were given unsatisfactory service • did not receive enough information or choice • were denied respect, dignity or privacy." Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified directly. However, the department states the following: "You may ask someone else to lodge a complaint on your behalf. However, they must have your permission to do this."	Process to complain There is a 3-step complaints process: Step 1: Complainants raise their complaint with a staff member at the relevant service provider Step 2: If still dissatisfied, raise their complaint with a senior manager at the local office. Step 3: If still dissatisfied, complain to the Department. Complaints to the Department can be made in writing, via email, phone or an online form. Form of complaint Anonymous complaints are permitted, but may affect the Department's ability to follow up effectively. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund the service provider who is the subject of the complaint. Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Does not appear to have an internal review process. Step 3 (review by a Senior Manager within the relevant Department Division/Group) is considered an internal review of complaints handling at Steps 1 and 2 (service provider/local level).

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		Does a specific individual perpetrator need to be identified? Not specified.			After Step 3, complainants would be referred to an external complaints body such as the Victorian Ombudsman, Disability Services Commissioner or Office of the Victorian Information Commissioner. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The department states: "We will use the information you provide us to investigate and resolve your complaint, and in accordance with our <u>Privacy Policy</u>. The investigation of your complaint may involve sharing your personal or health information with other relevant areas within the department to achieve a resolution. If a third party was involved, we may also need to discuss your complaint with them."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? "The department can arrange an interpreter to help with language services."
Justice	<u>VIC Department of Justice & Community Safety</u>	The Department adopts different complaints handling processes for different justice service areas; as such, it is not possible to provide a consolidated overview.	Complainants are encouraged to raise their complaint with the relevant staff member in the first instance. If they remain unsatisfied, they are encouraged to lodge a formal complaint through the appropriate business area. The process to lodge a formal complaint varies according to each business area.	The Department's website does not provide details on the complaint resolution process adopted by each business area.	The Department's website does not provide details on potential outcomes. This is likely to depend on the avenue taken for resolving the complaint. If complainants remain unsatisfied with the complaints handling process, they are encouraged to contact the Victorian Ombudsman. Translation and interpreter services are provided. Complainants are also advised that the Department may take longer to acknowledge and respond to their complaint if it is lodged in a language other than English.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Victorian Ombudsman</u>	Who can complain? Any member of the public. The Ombudsman can also initiate own-motion investigations, and the Victorian Parliament can refer a matter to the Ombudsman for investigation. Types of violence the complaint applies to/excludes The Ombudsman can investigate complaints about • Councils • Victorian government departments • Victorian government organisations/agencies • Universities/TAFES in Victoria • Publicly funded community services • Prisons, and • Certain professional boards Limitation periods Not specified. Evidentiary requirements Complainants are asked to provide the following information: • relevant dates • which organisation is involved	Process to complain Complaints can be lodged in writing, online, by phone or in person. Complainants are expected to have attempted to resolve the complaint with the relevant agency in the first instance. Form of complaint Anonymous complaints are accepted, however this may impact the ability of the Ombudsman to effectively investigate the complaint. Role of victim-survivor May be the complainant, or have someone complain on their behalf. Role of lawyers/advocates May lodge a complaint on behalf of a victim-survivor.	Any interim measures prompted Complaints are assessed to determine whether they can be resolved quickly and informally directly with the agency involved. If this is not possible, the Ombudsman may launch an investigation. "The Ombudsman may decide to investigate a complaint or a series of complaints if: • the complaint/s are not able to be resolved informally • the complaint/s are serious and have broad implications for the Victorian public • it is appropriate to reach a formal opinion on whether an organisation has made an error." Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process The Ombudsman takes an investigative approach. At the final stage of an investigation, the Ombudsman "will:	Range of possible outcomes If a complaint is resolved informally, the agency may "agree to actions such as: • Reversing the decision or action at the centre of the complaint. • Acknowledging their mistake and apologising. • Providing a better explanation for their decision or action. • Waiving unfair fees or making payments where appropriate." If a matter is investigated, the Ombudsman "might conclude and report that she is of the opinion that a party's or organisation's action or decision was: • taken contrary to law • unreasonable, unjust, oppressive or improperly discriminatory • taken in accordance with a law or practice that is unreasonable, unjust, oppressive or improperly discriminatory • taken for an improper purpose or on irrelevant grounds • a decision for which reasons should have, but were not, given • based wholly or partly on a mistake of law or fact • wrong."

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		- any documents about the complaint - letters/emails sent - the organisation's response - any photographs - what outcome they are seeking Role of legal capacity and substituted decision-making Not specified directly. A person may lodge a complaint on someone else's behalf, with that person's permission. The Ombudsman will contact the victim-survivor to confirm their consent to be represented. Does a specific individual perpetrator need to be identified? Not specified.		- send relevant sections of the draft report to the person or organisation - provide an opportunity for the person and organisation to respond in writing - consider the person's and organisation's responses. We may vary, amend or omit a section of the report in light of the responses - fairly set out the relevant parts of the person's and organisation's response in the final report." Role of victim-survivor in complaint resolution Provides initial information about the complaint. Role of perpetrator (individual/service provider/government) in complaint resolution May be asked to comment on preliminary findings. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	The Ombudsman may also make recommendations, which set out actions that organisations should take to rectify any errors or prevent similar issues occurring in future. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: If deemed in the public interest, the Ombudsman may table their report in the Victorian Parliament. Any enforcement or monitoring of outcomes The Ombudsman does not have the power to enforce their recommendations, however may monitor their implementation and report on those subsequent findings. Powers of complaint body to investigate, monitor and take action The Ombudsman has the same powers as a Royal Commission, such as: issue a summons to a person to attend an interview or produce documents

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					• take evidence on oath or affirmation during an interview • enter the premises of an organisation to inspect the premises or anything in them • issue a confidentiality notice to any person • override certain privileges that usually protect disclosure of information In addition, it is an offence in Victoria to: • wilfully obstruct, hinder or resist the Ombudsman • refuse or wilfully fail to comply with her lawful requirements • fail to attend or produce any documents when summonsed • wilfully make a false or misleading statement. Are written reasons for decision provided? Yes. Any appeal/review processes following outcome Complainants who remain unsatisfied with the outcome of their complaint can request an internal review, within 60 days of their case

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					being closed. The request must explain why the Ombudsman has made an error and provide evidence to support this belief. The review will be conducted by a more senior staff member, who may decide: • that the case be re-considered • that the original decision was correct • that the Ombudsman should make improvements to their service. Complaints about the Ombudsman can also be made to IBAC or the Victorian Inspectorate. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Investigations remain strictly confidential while in motion. At the conclusion of an investigation, the Ombudsman may make the findings public if they deem the findings have implications for the wider Victorian community.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					What information is publicly available from the complaint resolution? The outcome of an investigation may not necessarily be made public. When an investigation finishes, the Ombudsman: - lets the parties know the outcome - must provide a report to the relevant Minister - must provide a report to the head of the relevant organisation (eg Department Secretary, Mayor, Board Chair) - may provide a copy of a report to the Premier - can decide whether to table her report in Parliament. When a report is tabled in Parliament, it becomes a public document. The Ombudsman also publishes its complaint data in its annual reports. Relationship of complaints process and resolution to policy and law reform The Ombudsman may table its reports in the Victorian Parliament and/or provide them to Victorian Ministers, with recommendations for systemic change.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Offers translation and interpreter support.
	<u>Victorian Equal Opportunity & Human Rights Commission</u>	Who can complain? Anyone who thinks they have been discriminated against, sexually harassed, victimised or vilified in Victoria. Types of violence the complaint applies to/excludes Complaints can relate to discrimination on the basis of the following characteristics: • age • parent and carer status • disability • employment activity • expunged homosexual conviction • gender identity • industrial activity • lawful sexual activity • marital status • physical features	Process to complain Complaints can be made in writing, online, by phone or by email. Form of complaint Anonymous complaints are accepted, however will not be able to utilise the Commission's dispute resolution services. The Commission also has a "Community Reporting Tool", which allows the public to report experiences of discrimination or harassment without pursuing a formal complaint. Role of victim-survivor May be the complainant, or may have someone else lodge a complaint on their behalf. Role of lawyers/advocates A complainant may have a family member, friend, advocate, union or lawyer apply for dispute resolution on their behalf.	Any interim measures prompted Not specified. Any report to police prompted Complainants who are complaining about assault are encouraged to call emergency services. Relationship of complainant, perpetrator or context Is an independent body. If a complaint proceeds to conciliation, the Commission will be impartial, supporting both parties to reach an agreement. Nature of complaint resolution process The Commission adopts a conciliation approach to resolving disputes.	Range of possible outcomes Outcomes will vary depending on individual cases. The Commission notes that common outcomes include: • "an apology from the respondent • financial compensation • a person being given their job back, a statement of service or a reference • access to a job opportunity or service that they had been refused access to • a promise to change or stop behaviour • new or updated equal opportunity policies • equal opportunity training for the respondent so they know the behaviour shouldn't happen again."

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		- political belief or activity - pregnancy and breastfeeding - race - religious belief or activity - sex - sex characteristics - sexual orientation personal association with someone who has, or is assumed to have, one of these personal characteristics; as well as sexual harassment, racial or religious vilification, or victimisation. Complaints about human rights breaches are also excluded, and complainants are encouraged to contact the Victorian Ombudsman instead. Limitation periods Not specified. Evidentiary requirements Complainants are encouraged to provide - details of what happened, where and when	Complainants do not need a lawyer to participate in conciliation, but can bring a legal representative or advocate to give them advice. They can also bring a support person along to give them moral support.	"Conciliators explain the law and assist the participants to explore options for resolution with the aim of resolving the complaint." Conciliation meetings may be conducted in person, or by phone, email or video conference. Role of victim-survivor in complaint resolution During the conciliation process, the victim-survivor has the opportunity to talk about what happened and the impact the matter has had on them; they can also state what outcome they are seeking. Role of perpetrator (individual/service provider/government) in complaint resolution As the conciliation process is voluntary, the perpetrator may decline to participate. However, if they do participate, they will have the opportunity to tell their perspective and think about the outcome the complainant may be seeking (including offering an alternative outcome). Roles of other independent persons/monitors in complaint resolution	Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: See above. Outcomes may include a perpetrator making systemic changes to its services. Are written reasons for decision provided? Not clear. Any appeal/review processes following outcome If resolution cannot be reached, we will close the complaint and the complainant has the option of taking their complaint to the Victorian Civil and Administrative Tribunal – Human Rights List. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant)

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		- information about what kind of discrimination, harassment or vilification was experienced - details of who the complaint is about – the respondent – and the complainant's connection to them (for example, if they are an employer, a university or sports coach etc.) Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		Not specified. Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	The Commission will usually provide a copy of the complaint (without the complainant's contact details) to the person or organisation they are complaining about and, if necessary, to others who have relevant information about the complaint. What information is publicly available from the complaint resolution? Complaint data is published in the Commission's annual reports. Relationship of complaints process and resolution to policy and law reform In addition to handling complaints, the Commission undertakes "independent reviews, investigations and advocacy activities to address systemic issues and promote human rights." The Commission also makes submissions to relevant inquiries and engages in public discussions related to discrimination, harassment and human rights issues. Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
Disability specific	<u>Disability Services Commissioner</u>	Who can complain? A person with a disability, family member or friend of a person with a disability, staff member, carer, or member of the community. From 1 July 2019, people receiving NDIS funded services are directed to the NDIS Quality and Safeguards Commission. Types of violence the complaint applies to/excludes Abuse and neglect by Victorian regulated disability services Limitation periods 12 months. Evidentiary requirements None specified.	Process to complain Directly to the Disability Services Commissioner Form of complaint Online complaints form, telephone, email or National Relay Service Role of victim-survivor Resolution officer will gain consent from the person with disability, where possible, to conduct an assessment. Role of lawyers/advocates None specified.	Any interim measures prompted None specified. Any report to police prompted Where a complaint involves criminal conduct, the Commissioner will refer that part of the complaint to Victoria Police. Relationship of complainant, perpetrator or context Independent third party: "An independent oversight body resolving complaints and promoting the right of people with a disability to be free from abuse." Disability Services Commissioner (DSC) works with people with a disability to resolve complaints about disability service providers,	Any specific provision for particular groups? The Commission has specific support options for Aboriginal and Torres Strait Islander complainants, including fast tracking of complaints. It also has provision to support complaints lodged in a language other than English. It also provides Auslan services. Range of possible outcomes Acknowledgement Apology Explanation why something has or has not happened. A disability service provider may issue with a notice to take action they must be required to report back to the Commissioner on the actions they have taken. If the Commissioner is not satisfied with the service's actions then further investigations can be undertaken. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response:

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		Role of legal capacity and substituted decision-making Guardians can make complaints. Does a specific individual perpetrator need to be identified? Not specified.		and we work with disability service providers to improve outcomes for people with a disability.” Nature of complaint resolution process During the assessment process the resolution officer will work with the complainant, person with disability and the service provider to resolve the complaint. Conciliation may also be used Where conciliation has failed or has been deemed unsuitable, the Commissioner may conduct an investigation. Oral and other evidence can be used Role of victim-survivor in complaint resolution Central to the process Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified.	The Commissioner can undertake Systemic Commissioner-initiated Investigations Any enforcement or monitoring of outcomes In cases where disability services have been issued with a notice to take action Powers of complaint body to investigate, monitor and take action Inspection powers can be used as part of an investigation. These enable the Commissioner to inspect a disability service without notice. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS. Where a complaint involves criminal conduct, the Commissioner will refer that part of the complaint to Victoria Police.

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				Qualifications/background of complaint resolution decision-maker Not specified.	Any confidentiality or privacy rules (protective of or gagging complainant) None specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Brochures are available in multiple languages and interpreters are available.
Other relevant non-complaint bodies	<u>Office of the Public Advocate</u>	Advice Service: The OPA operates an advice service, which “provides information and assistance to: • people with disability • their family, carers and friends • professionals from the health, human services, legal, community services and government sectors	“OPA protects your human rights by: • treating you with respect • listening to you • supporting you to make your own decisions • helping you have the greatest role possible when making a decision that affects you	“The Public Advocate is an independent statutory officer, with <i>considerable legislative power to promote and safeguard</i> the rights and interests of people with disability. Like the Ombudsman, the Public Advocate has <i>significant powers to investigate allegations of abuse of vulnerable Victorians</i>, reporting directly to Parliament.	

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
		on a diverse range of matters that affect people with disability, including: - guardianship and administration - enduring powers of attorney - medical treatment decision-making - matters affecting people with disability - referral to OPA's Community Visitors Program." It also operates an after-hours service, for urgent matters including: - emergency situations relating to people who have an OPA guardian - advice for medical professionals about urgent medical consent issues - urgent guardianship or administration applications - seeking advice on protection of a person with disability from abuse, violence or neglect - advice for private guardians appointed by VCAT confronted with an urgent issue."	enabling volunteers to monitor and advocate for the human rights and social inclusion of people with disability and people with mental illness." OPA investigations for administration or guardianship applications: "While OPA staff collect and provide information, it is VCAT that decides whether a guardian, supportive guardian, administrator or supportive administrator is needed and, if so, who should be appointed. It is also up to VCAT to decide whether an enduring power of attorney should be revoked, suspended, or whether other changes are required." Community Visitors: "Community Visitors are trained volunteers who visit Victorian accommodation facilities for people with disability or mental illness. They check on the quality of services and care provided, and that residents are treated with dignity and respect. Community Visitors can speak to staff and management about your concerns, if you wish. They can also report any serious problems to the Public Advocate."	"The Public Advocate is an independent statutory officer, with <i>considerable legislative power to promote and safeguard</i> the rights and interests of people with disability. Like the Ombudsman, the Public Advocate has <i>significant powers to investigate allegations of abuse of vulnerable Victorians</i>, reporting directly to Parliament. The Public Advocate was established under the <i>Guardianship and Administration Act 1986</i> and continues under the <i>Guardianship and Administration Act 2019</i>. The Public Advocate is supported by around 100 staff and more than 650 volunteers." Abuse is not OK plain English brochure: - Encourages a person to "speak up against abuse" by talking to someone they trust such as a "friend, family member, service provider, support worker, or Community Visitor from the OPA" - Under "Who can I call?" it lists:	

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				• Emergency services • National Relay Service • Interpreter Service • Disability Services Commissioner • CASA • Safe Steps • Victims of Crime Helpline • <i>Office of the Public Advocate "for advice or to request a Community Visitor"</i>	

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Education	WA Department of Education	Who can complain? “Any person affected by service provision or the actions of a school.” Types of violence the complaint applies to/excludes Complaints can relate to - the provision of education - any decision, including those about enrolment or support for a child’s learning - the Department’s policies or procedures - the conduct or behaviour of a staff member. Complaints that are excluded include those that relate to: “public interest disclosures (whistle blower) - disputes and grievances between staff members - mandatory reporting responsibilities (mandatory reporting legislation requires only specific people or professionals to report suspected child sexual abuse)	Process to complain Complainants can lodge a complaint in person, via a complaints advice phone line, in writing, via email or using an online form. Complainants are encouraged to raise their concerns with the school staff member or principal in the first instance. If they are unsatisfied with the handling of the complaint, they are directed to contact the Department’s regional office. Form of complaint The Department accepts anonymous complaints, however this may make them difficult to resolve. Role of victim-survivor Not specified. Role of lawyers/advocates The department allows complainants to use support persons in the complaint resolution process. They state the following: “A support person can attend meetings with you to help you feel more comfortable, but they don’t participate during meetings or speak for you as you move through the complaint	Any interim measures prompted Complaints are assessed and may be determined to not be substantial enough to be taken further (due to a lack of information, or because they are inappropriate). The Department will advise the complainant if their complaint will proceed, and if so, which business area(s) will be responsible for handling it. There may be several business areas that are involved, however there will be one primary contact who will liaise with the complainant. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator or may fund a service provider who is the subject of the complaint. Nature of complaint resolution process	Range of possible outcomes Some possible outcomes include: - providing an explanation - providing feedback to the individual or school - action taken to fix the matter or improve the situation - acknowledgement that the solution could have been handled better or differently - engaging in a restorative process Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified.

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		- matters relating to family court (restraining orders, access agreements) - complaints relating to Catholic and independent schools, or other government agencies." Limitation periods Not specified. Evidentiary requirements Complaints may be determined to not be substantial enough to be taken further (due to a lack of information). Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	process. They can take notes to talk to you about later, and they can ask to stop the meeting if they think you need a break. Your support person also needs to follow the complaint resolution process."	"The complaint resolution process may involve meetings with the different people involved. There might be times where you ask for a face to face meeting. [Complainants] can request a meeting at the school, or another mutually convenient location, to discuss the issue. Talking about problems can often be the best way to start resolving them. It may be possible to meet via phone or video meeting if everyone is comfortable with that method. If [complainants] have questions about these types of meetings [they] should raise them with the person handling [their] complaint." The complexity of a complaint will determine how much time it takes to be resolved. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified directly, however from the description of the complaints resolution	Are written reasons for decision provided? The Department states that it "will let [the complainant] know the outcome and explain the reasons for any decisions", however it is not clear that this will be done in writing. Any appeal/review processes following outcome If complainants can demonstrate that "the outcome was not fair, the process was not followed properly, or another reason related to procedural justice; such as not all parties able to tell their story, then the complaint may be reviewed." The review will be conducted by a different staff member to that who handled the original complaint. External reviews are then available through the Ombudsman of Western Australia. Any incidental consequences of complaint resolution The Department assures that "persons who are the subject of a complaint, who make a complaint or provide information in the course of

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				process, it would seem that they are expected to participate in conciliation-style meetings. Roles of other independent persons/monitors in complaint resolution "The Parent Liaison Office is able to provide support by acting as a liaison point between schools, education regional offices, central services, parents, carers and members of the school community. The Parent Liaison Office can: • provide information to parents, carers and members of the school community to assist them with understanding the complaint management process • provide support and advice to parents, carers and members of the school community on complaints resolution • broker specialist advice in assisting with complex matters." Qualifications/background of complaint resolution decision-maker Not specified.	managing a complaint shall not be subjected to prejudice, intimidation, and harassment or be subject to any detriment because of their involvement." Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The Department seeks to protect confidentiality and privacy at all times, however notes there may be some instances where confidentiality may be broken – such as in cases where mandatory reporting is necessary. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not clear. The department states that "if one of the outcomes recommends a change to a policy or procedure, we will include that information in our response to [the complainant]."

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					Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? The department states that extra support is provided to: • "parents and families living in regional or remote areas • people with disability • Aboriginal and/or Torres Strait Islander peoples • people from culturally and linguistically diverse backgrounds." People who require this support are encouraged to contact their school, departmental regional office or an advice line.
Health	<u>WA Department of Health</u>	Who can complain? Anyone. Types of violence the complaint applies to/excludes Complaints can be about the "provision of health care (or lack of it)." Limitation periods No limitation period applies: "A complaint can be made at any time after the problem has occurred."	Process to complain Complaints can be lodged by phone, email, in writing or in person. Complainants are encouraged to raise their concerns with frontline staff/service providers in the first instance. Form of complaint Anonymous complaints are accepted.	Any interim measures prompted Complaints are assessed and assigned a Seriousness Assessment Matrix (SAM) score. "The SAM provides a framework for assessing the seriousness associated with the event(s) that are the subject of the complaint... Rating the severity of the complaint will assist in determining:	Range of possible outcomes "There may be multiple resolution mechanisms in response to a single complaint: • Concern registered • Explanation provided • Apology provided from the facility or staff member(s) involved • Costs refunded or reduced

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Health	<u>WA Department of Health</u>	Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	The Department's Complaints Management Guidelines states that "it is recognised that there are limitations to assessing, managing and responding to anonymous complaints; however Health Service Providers are to investigate and manage such complaints to the greatest extent possible." Role of victim-survivor May be the complainant, or may have a representative complain on their behalf. Role of lawyers/advocates Not specified.	- Who needs to be notified of the complaint. - The priority for the Health Service Provider's response and the mode of response. - Who will need to be involved in the investigation and response. - Timeframes and extent of necessary action(s) to minimise the risk of recurrence." Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or may fund the service provider that is the subject of the complaint. Nature of complaint resolution process Adopts a 3-staged complaints management framework: Level 1: Front Line Resolution Level 2: Internal Complaint Management Level 3: Escalation to External Agency	- Compensation received - Services provided - Change in practice/procedure effected - Change in policy effected - Organisation accepts and acknowledges responsibility for the complaint – employee is counselled and/or offered performance support and development in accordance with local policy - Complaint has been withdrawn." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: The Department's Complaints Management Guidelines states that "Consistent complaint categorisation, analysis, reporting and benchmarking is essential to ensure that complaint data collection is compatible across a range of facilities and to identify systemic issues, complaint trends and common factors in complaints. This data can then be utilised to identify opportunities for service improvement."

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				At Level 2 (the Department), a Complaints Handling Officer attempts to "resolve complaints and/or refers more serious complaints (including those referred from frontline staff) for further investigation." "The level of investigation required will be determined by the relevant staff member (e.g. Complaints Manager) and based on an objective review of the information available, including the complaint's initial SAM score." "The conduct of an investigation should, where appropriate, include: • Gathering all relevant documentation (e.g. medical records, health professional rosters, policies and procedures, product details). • Interviewing/meeting with the complainant and/or significant others (possibly on more than one occasion and potentially with support from an advocate) • Interviewing staff members involved in the event(s) (possibly on more than one occasion).	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? The Department's Complaints Management Guidelines states that "the response to the complainant should include: • Information relevant to the complaint (the event(s)). • An explanation of the event(s). • Adequate reasons for any decisions that were made. • Any changes made as a result of the complaint. • An apology/expressions of regret for the person's experience and, where appropriate, for the event(s). • Contact details for the Health Service Provider's senior • Complaints Handling Officer (or appropriate staff member). • An acknowledgement thanking the complainant for their feedback.

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				- Interviewing staff members with relevant expertise. - Analysing the information for its completeness, reliability, relevance and impartiality. - Conducting further research as required (based on analysis). - Generating options for resolution and proposing a course of action." Role of victim-survivor in complaint resolution If they are the complainant, they provide initial information/evidence to the Department concerning their complaint; may meet with, or be interviewed by the Department subsequently; are then kept informed of the investigation process by the Department, and are informed of the outcome at the conclusion of the investigation. Role of perpetrator (individual/service provider/government) in complaint resolution If the complaint proceeds to an investigation, the service provider may be expected to provide documentation	Notice of the complainant's right to escalate the complaint to an external agency and the external agency's contact details." Any appeal/review processes following outcome Complainants are directed to an external agency if they remain unsatisfied with the Department's response to their complaint. This could include the Health and Disability Services Complaints Office, or the WA Ombudsman. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The Department states that privacy and confidentiality are protected throughout the complaints process, noting that "disclosure may be subject to legislative requirements and/or restrictions (e.g. documents

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				or information to respond to the complaint; may be interviewed by the Department; and may receive recommendations for service improvement at the conclusion of the investigation. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	generated throughout the complaint management process could be subject to a request under the Freedom of Information Act 1992)." What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform "Under the Complaints Management policy, Health Service Providers are required to classify and analyse complaints to assist in the identification and regular reporting of systemic and recurring problems. Health Service Providers should use information from complaints to: • Identify real and potential complaint trends. • Recognise common complaint/concern issues for specific consumer groups (e.g. Aboriginal, CALD, persons with a disability, people with mental health issues, children and young people, LGBTIQ+ people 18), and use this information to determine targeted strategies to improve engagement and service delivery for these groups.

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					- Initiate an investigation into current organisational practices and procedures with a view to make any necessary changes. - Continually reassess consumer needs. - Redesign care and services. - Provide staff and consumers with feedback on changes in care and service delivery. - Monitor if the outcomes and recommendations stemming from complaint data are implemented effectively." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Provides assistance to people who are deaf, speech or hearing impaired; and those who require translation or interpreting services.

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Social Services	<u>WA Department of Communities</u>	Who can complain? Anyone who receives a service funded by the Department of Communities. Types of violence the complaint applies to/excludes “Communities respects the right for anyone to make a complaint who is dissatisfied about a service, product, staff or the handling of a complaint by Communities or any aspect of its operations.” Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Complainants can lodge a complaint by phone, mail, or using an online form. The Department will then contact them within 2 working days. Form of complaint Not specified. Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context May be the perpetrator, or fund the service provider that is the subject of the complaint. Nature of complaint resolution process Not specified. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome If complainants remain unsatisfied with the Department's response, they are directed to an external agency such as the WA Ombudsman, the Health and Disability Complaints Office, or the NDIS Quality and Safeguards Commission. Any incidental consequences of complaint resolution Not specified.

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					Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.
Justice	<u>WA Department of Justice</u>	Who can complain? Any customer of the Department. Types of violence the complaint applies to/excludes Complaints can relate to the services provided by the Department.	Process to complain Complaints can be lodged using the Online Customer Feedback System, or by mail, phone, email, fax or in person. Form of complaint Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complaint body to victim, complainant, perpetrator or context May be the perpetrator, or may fund a service provider which is the subject of the complaint.	Range of possible outcomes Not specified. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified.

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		Public interest disclosures and allegations of misconduct or corruption are excluded, as they have separate processes. Limitation periods Not specified. Evidentiary requirements Not specified. Role of legal capacity and substituted decision-making The Department's Customer Feedback Management Policy states that "customers can nominate another person to represent them in lodging a complaint." Does a specific individual perpetrator need to be identified? Not specified.	Role of victim-survivor Not specified. Role of lawyers/advocates Not specified.	Nature of complaint resolution process Not specified directly, however appears to be an investigative approach. The Department receives the complaint, investigates and advises the complainant of the outcome within 10 working days. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Not specified.	Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Not specified. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Complainants are encouraged to contact the Ombudsman WA if they remain unsatisfied with how the Department has handled their complaint. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Provides assistance to people who are speech or hearing impaired; and those who require translation or interpreting services.
	Ombudsman Western Australia	Who can complain? “A complaint can be made by any person (or group of people) or a company, partnership, association or club.” The Ombudsman can also initiate own-motion investigations. Types of violence the complaint applies to/excludes Complaints can relate to “any decision, action or inaction” of “Western Australian public authorities including State government agencies, statutory authorities, local governments and public universities.”	Process to complain Complainants are encouraged to raise their complaint with the agency in question, in the first instance. If making a complaint to the Ombudsman, complainants are encouraged to phone the Ombudsman first to discuss their complaint, before putting it in writing – either by mail, fax or email. Form of complaint Not specified. Role of victim-survivor If they are the complainant, they are required to provide details about their complaint at the time of lodging it.	Any interim measures prompted “When the Ombudsman receives an enquiry about an issue, an assessment is made as to whether: • The complainant has tried to resolve the issue with the public authority concerned before contacting the Ombudsman; • The complainant is personally affected by the issue; and • The complaint is about the administrative practices of a Western Australian public authority.”	Range of possible outcomes At the conclusion of an investigation, the Ombudsman may make formal recommendations, including to: • refer the matter to another agency; • rectify administrative actions; • vary administrative practice; • reconsider the law which underpins administrative action; or • give reasons for a decision.

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		However, complaints can only be made if: - The complaint is related to a matter of administration (the decision-making practices and actions of public authorities in providing their services to the public); and - The matter affects the complainant personally. The Ombudsman cannot deal with complaints about: - Private individuals or businesses; - Electricity and gas providers (which are the jurisdiction of the Energy and Water Ombudsman); - Parliament, its committees, members and staff; - Judges, magistrates or coroners; - Courts and the State Administrative Tribunal; - Commissioners of any court; - The Governor and members of the Governor's establishment; - Decisions made by Cabinet or by Ministers of the Crown; and	Role of lawyers/advocates May lodge a complaint on the behalf of a victim-survivor.	Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Is an independent body. Nature of complaint resolution process "The purpose of an investigation is to gather information about the complaint." The agency in question is usually asked to comment on the complaint and provide background information. The Ombudsman then considers "whether the agency has: - Acted contrary to law; - Acted unreasonably, unjustly, oppressively or been improperly discriminatory; - Made a discretionary decision for an improper purpose, or taken into account irrelevant considerations or failed to consider relevant considerations; - Failed to provide reasons for a decision when reasons should have been given;	"The Ombudsman places a strong emphasis on making practical recommendations about significant matters. The Ombudsman does not make recommendations unless it is considered that they will be beneficial to the public. The Ombudsman also considers the costs recommendations will have for agencies." Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: See above. Outcomes may include a perpetrator making systemic changes to its services. Any enforcement or monitoring of outcomes The Ombudsman can only make recommendations to agencies. It cannot direct action to be taken. However, it can monitor the actions of agencies in response to its recommendations. Powers of complaint body to investigate, monitor and take action "The Ombudsman has the ability to interview the individuals involved, examine

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		- Those bodies listed in the Schedule 1 to the Parliamentary Commissioner Act 1971. Limitation periods 12 months, unless special circumstances apply. Evidentiary requirements Complaints should include the following information: - Who is being complained about; - What the complainant thinks has gone wrong; - Times and dates; - How they have been affected by the issue they are complaining about; - Details of telephone conversations and meetings; - Copies of relevant documents (eg letters); - The names of people the complainant has dealt with; - What the complainant has done to try resolve the issue; and - The outcome they are seeking.		- Failed to provide reasons for a decision when reasons should have been given; - Based a decision wholly or partly on a mistake of law or fact; and/or - Acted wrongly." Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker Ombudsmen are appointed officials, usually with legal and/or public service backgrounds.	agency files and, generally, investigate in whatever way seems appropriate." Are written reasons for decision provided? Yes. The Ombudsman will produce a report outlining its findings and recommendations. Any appeal/review processes following outcome If complainants remain unsatisfied with the process or outcome of their complaint, they can request an internal review. This must be made in writing, and must set out the reasons why they believe the decision was not reasonable or correct. "The decision to undertake a review is not automatic and it is not sufficient to merely disagree with the view formed by the case officer. The handling of a complaint is only reviewed once." If accepted, a senior officer who was not involved in the original complaint will conduct the review. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified.

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		Role of legal capacity and substituted decision-making "In most cases the Ombudsman can only deal with complaints from the person who is personally affected by a decision or action taken by an agency. However, if for any reason [they] are unable to act for [themselves] the Ombudsman may accept a complaint form from: • A legal or other adviser; or • A family member or other personal representative." "The Ombudsman may ask the person affected to confirm in writing that they are happy for the representative to act for them." Does a specific individual perpetrator need to be identified? Not specified.			Any confidentiality or privacy rules (protective of or gagging complainant) Not specified. What information is publicly available from the complaint resolution? The Ombudsman may send a report about the investigation to the relevant minister or the Premier, table a report in State Parliament, or place a report on their website. Complaint data is also published in its annual reports. Relationship of complaints process and resolution to policy and law reform A key function of the Office is to improve the standard of administration in public authorities. This is undertaken by: • Using knowledge gained through investigating complaints to make recommendations for improvement of public administration • "Undertaking own motion investigations that are based on the patterns, trends and themes that arise from the resolution of individual complaints and child death or family and domestic violence fatality reviews, referred to as own motion investigations;

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					• Providing guidance to public authorities on decision making and complaint handling through continuous liaison, publications, presentations and workshops; • Working collaboratively with other integrity and accountability agencies to encourage best practice and leadership in public authorities; and • Undertaking inspection and monitoring functions." Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Provides assistance to people who are speech or hearing impaired; and those who require translation or interpreting services. It also provides information about its services in languages other than English.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
	<u>Equal Opportunity Commission</u>	Who can complain? “The complaint should be lodged by the person who experienced the alleged discrimination.” Types of violence the complaint applies to/excludes Discrimination on grounds including: • Age • Breastfeeding • Family responsibility • Family status • Gender history • Impairment • Marital status • Political conviction • Pregnancy • Race • Racial harassment • Religious conviction • Sex • Sexual harassment • Sexual orientation, as well as victimisation, applicable only to specific areas of public life. Limitation periods 12 months.	Process to complain A complaint must be in writing and can be in a person's first language. It can be lodged in hard copy, online, or via email. The Commission can assist complainants to write their complaint down. Form of complaint Not specified. Role of victim-survivor They are expected to be the complainant; if so, they are required to provide details of their complaint along with supporting documents. Role of lawyers/advocates Not specified.	Any interim measures prompted “The rights and status of complainants and respondents may need to be protected while a complaint is being investigated. In such circumstances the State Administrative Tribunal may make an interim order. An interim order can be made by the State Administrative Tribunal (the Tribunal) preserving the ‘status quo’ between the parties, and protecting their existing rights. An interim order application can only be lodged by a person whose complaint has been accepted by the Commissioner.” Any report to police prompted Not specified. Relationship of complainant body to victim, complainant, perpetrator or context Is an independent body. Nature of complaint resolution process If a complaint is accepted, the Commissioner may investigate, and then may choose to conciliate a complaint, if appropriate.	Range of possible outcomes The Commission outlines the following outcomes: • Conciliated – When all parties are satisfied the complaint has been resolved. Specific outcomes arising from conciliation may include an apology, compensation, commitment to review policies/procedures or provide appropriate training. • Withdrawn – when a complainant pulls out of the complaint process at any time. • Lapsed – when the complainant fails to maintain contact and the complaint file is closed or does not allow it to progress. Dismissed – when the Commissioner decides at any stage that the complaint is misconceived, lacks substance, frivolous, vexatious or relates to an act that is not unlawful by reason of a provision of the Act and dismisses the complaint.

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		Evidentiary requirements Complainants are encouraged to provide supporting documents along with their complaint. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.		The purpose of an investigation is to gather information about the complaint. This process is both impartial and confidential. The complainant and respondent will then be provided with an opportunity to present their case in written form. If the matter cannot be resolved at this point, it may proceed to conciliation. "The conciliation conference is an opportunity for the parties to discuss ways to resolve the matter with an EOC conciliation officer present." "If a complaint is not conciliated and has not been dismissed by the Commissioner, it is referred to the State Administrative Tribunal with a assistance from the Commissioner. If a complaint has been dismissed the complainant can have the complaint referred to the Tribunal but is not assisted by the Commissioner." Role of victim-survivor in complaint resolution The complainant "must establish their case is supported by evidence	- Commissioner Referred – when the Commissioner refers the complaint to the State Administrative Tribunal if a complaint appears to have substance and attempts at conciliation have failed. - Complainant Referred – when the Commissioner dismisses the complaint and the complainant has sought a referral to the State Administrative Tribunal. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Not specified. Powers of complaint body to investigate, monitor and take action Under the Act the Commissioner has the power to compel complainants, respondents and any witnesses to produce evidence and attend conferences.

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				and is arguable." If their complaint is accepted by the Commission, they may be interviewed by a conciliation officer and/or provide further information for an investigation. Following this, they may take part in a conciliation conference. Role of perpetrator (individual/service provider/government) in complaint resolution The perpetrator may be required to provide information and/or be interviewed by a conciliation officer undertaking an investigation; and may then also partake in a conciliation conference. Roles of other independent persons/monitors in complaint resolution Not specified. Qualifications/background of complaint resolution decision-maker The Commissioner is an appointed person with significant experience in public health/ public administration.	Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution The Commission states that "it is against the law for anyone to threaten, harass or subject a person to a detriment because they have made a complaint or intend to make a complaint under the <i>Equal Opportunity Act</i> 1984. This protection is also afforded to anyone giving evidence about a complaint." Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) The Commission states: "The Commissioner and staff are required by the Act to protect the confidentiality of all complaints. The Commissioner cannot reveal information about the complaint to the media or any person, other than parties

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					to the complaint or those required to provide evidence about the complaint. Complaints are more likely to be resolved easily and satisfactorily if the complaint is kept confidential.” What information is publicly available from the complaint resolution? Complaint data is published in the Commission’s annual reports. Relationship of complaints process and resolution to policy and law reform The Commission makes submissions to various inquiries, releases research reports and guides to aid policy and law reform. Any specific differences in process and resolution where victim-survivor is deceased? Not specified. Any specific provision for particular groups? Not specified.

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Disability specific	<u>Western Australia Health and Disability Services Complaints Office</u>	Who can complain? Non-NDIS funded services from 1 December 2020 or NDIS funded services before 1 December 2020. Person who received the service, relative, representative, or carer, representative of a person who has died or a service provider. Types of violence the complaint applies to/excludes Not specified. Limitation periods 2 years. Evidentiary requirements None specified. Role of legal capacity and substituted decision-making Not specified. Does a specific individual perpetrator need to be identified? Not specified.	Process to complain Directly to the Western Australia Health and Disability Services Complaints Office. Form of complaint Online or by post The online complaints form requires the type of service provider, the details of the person who received the service, whether an interpreter is needed, type of disability, whether the complainant the person who received the service, the name of the organisation and the person who provided the service, whether the complaint is about the organisation or the person, the details of the organisation, whether the person is a registered practitioner, whether the complainant has raised their concerns directly with the provider and if so their response, whether a complaint about the matter has been made to another organisation, the details of the complaint, what the complainant wishes to achieve by making the complaint and authorisation to access information and authorisation to refer. Role of victim-survivor Not specified.	Any interim measures prompted Not specified. Any report to police prompted Not specified. Relationship of complainant, perpetrator or context Independent third party: Nature of complaint resolution process Assessment, negotiated settlement, conciliation, or investigation. An investigation may be initiated when negotiated settlement and conciliation has failed. Role of victim-survivor in complaint resolution Not specified. Role of perpetrator (individual/service provider/government) in complaint resolution Not specified. Roles of other independent persons/monitors in complaint resolution Not specified.	Range of possible outcomes Explanation, apology, change in policy or procedure, refund or waiver of fees, access to counselling or other support, access to a service, training or education for service provider, conciliation or investigation. Following an investigation, recommendations for improvements can be made. Roles of perpetrator (individual/service provider/government) in possible outcomes, including formal process for an individual complaint to trigger a systemic response: Not specified. Any enforcement or monitoring of outcomes Service providers must advise of the measures undertaken to meet recommendations. Recommendations will be monitored. Powers of complaint body to investigate, monitor and take action If an investigation is initiated the investigator is able to summons individuals and documents, apply for a

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
			Role of lawyers/advocates Support people, including advocates, can only provide support to the person during a conciliation. They are not allowed to speak for the person.	Qualifications/background of complaint resolution decision-maker Not specified.	warrant to enter premises and enter and inspect premises and take copies of any necessary documents. Are written reasons for decision provided? Not specified. Any appeal/review processes following outcome Not specified. Any incidental consequences of complaint resolution Not specified. Relationship to police and CJS Not specified. Any confidentiality or privacy rules (protective of or gagging complainant) Conciliations and conciliation agreements are confidential. What information is publicly available from the complaint resolution? Not specified. Relationship of complaints process and resolution to policy and law reform Not specified. Any specific differences in process and resolution where victim-survivor is deceased? Not specified.

Sector	Name of complaints body/organisation	Opportunity to make a complaint	Process of making complaint	Resolution of complaint	Outcome of complaint
					Any specific provision for particular groups? Easy English information sheet available in multiple multiples
Other relevant non-complaint bodies	<u>WA Mental Health Commission</u> Note - does not handle complaints but drives system-wide reform				

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