

Senate Standing Committee on Community Affairs

**Inquiry into violence, abuse and neglect against
people with disability in institutional and
residential settings**

Children with Disability Australia
Submission – July 2015

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Executive summary

It is frequently reported to CDA that children and young people with disability experience abuse and violence. The overwhelming majority of incidents reported to CDA occur in an education setting. Experiences include incidents that are clearly defined and understood as abuse. Also of significant concern are the number of incidents that are not recognised as abuse by many when the child involved has a disability. These incidents are often not named, treated or responded to as abuse.

Research shows that children and young people with disability are more than three times more likely to be abused than their peers without disability. Further, children and young people with communication difficulties and high behaviour support needs have been found to have a heightened risk of abuse. It has been stated that three factors make children and young people with disability more vulnerable. These are society's attitudes and assumptions; inadequate services; and factors associated with impairment.

Violence and abuse has been a shamefully common experience of people with disability in Australia, including children and young people. There have been many advocates who have worked tirelessly to raise awareness of the heightened vulnerability and frequency of abuse, violence and neglect of people with disability and the systemic issues that support the perpetuation of abuse. However, despite this advocacy, the widespread occurrence of abuse and associated systemic failings have not been acknowledged or addressed to date. Recent media reports of horrific incidents of abuse have put a spotlight on abuse of people with disability and were a major catalyst for the establishment of this much needed and long overdue national Inquiry.

A central focus of reform going forward must be on what needs to occur to prevent violence, abuse and neglect of people with disability. This requires consideration of not only management and governance practices and accountability, but also institutional culture and discriminatory attitudes that increase children and young people's vulnerability to abuse.

Introduction

Most children with disability in Australia experience some form of abuse throughout their childhood. This submission details blatant examples where incidents are clearly labelled as abuse. These incidents are shocking and some have attracted significant community attention through media reporting. However, the range of abusive behaviours, actions and interventions that children and young people with disability are often subjected to typically do not receive requisite attention. These actions often remain unchallenged and unquestioned due to the existence of a pervasive culture of low expectations and negative attitudes that position disability as an inferior characteristic of a person which is seen as a justification for certain circumstances of abuse.

The direct experiences of children and young people of abuse illustrate that the identification and responses to these incidents are often extremely inadequate and can often compound the harm inflicted by the abuse itself. These failings further entrench the marginalisation and discriminatory attitudes, which prevail in the Australian community towards children and young people with disability.

Why is it okay for children with disability to be denied access to a toilet? Why is it okay for a student to have his work desk in the sick bay at his school? Why is it okay to leave a child tied in a highchair or pram for hours to restrict movement? Why is it okay to not search for a reason a child is extremely distressed and self-harming? Why is it okay to deny a child use of an essential resource she needs to communicate? The direct experiences of children and young people indicate that many incidents of abuse are deemed acceptable when a child or young person has a disability.

Children with Disability Australia

Children with Disability Australia (CDA) is the national representative organisation for children and young people with disability, aged 0-25 years. The organisation is primarily funded through the Department of Social Services (DSS) and is a not for profit organisation. CDA has a national membership of more than 5000 with the majority being families.

CDA provides a link between the direct experiences of children and young people with disability to federal government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences and challenges of children and young people with disability.

CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- **Listen and respond** to the voices and experiences of children and young people with disability.
- **Advocate** for children and young people with disability for equal opportunities, participation and inclusion in the Australian community.
- **Educate** national public policy-makers and the broader community about the experiences of children and young people with disability.
- **Inform** children and young people with disability, their families and care givers about their citizenship rights and entitlements.

- **Celebrate** the successes and achievements of children and young people with disability.

Abuse and neglect of children and young people with disability has been frequently reported to CDA over many years. The overwhelming majority of experiences reported to CDA have occurred in an education setting, most being schools. Accordingly, abuse has been a core focus of CDA's advocacy since the organisation's establishment in 2009.

CDA has also contributed to a broad range of inquiries and consultations to highlight the magnitude, breadth and specific experiences of abuse of children and young people with disability. Through this work CDA has aimed to raise awareness of the vulnerability, increased risk and experience of abuse of children and young people with disability. Further, CDA has sought to ensure that a practice and policy based response occurs which not only acknowledges and responds more effectively to abuse but prevents its occurrence.

In 2012, CDA commissioned Dr Sally Robinson of the Centre for Children and Young People at Southern Cross University to produce an issues paper. The paper, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, examines recent research about abuse and neglect and national policy approaches in child protection and disability. It provides a framework for an improved understanding of the causes, experience and responses to abuse of children and young people with disability. This paper is attached for the Committee's consideration (see Appendix A).

Enabling and protecting has stimulated significant public discourse and been a major informant of present research and policy agendas regarding causes and responses to abuse of people with disability. There was significant national media response following the launch of the paper, with numerous articles and news reports prompting broad public attention to the issue. The community seemed rightfully aghast at the heightened risk and vulnerability of children and young people with disability to abuse and neglect. There have been 7600 copies of the issue papers distributed to date through CDA, electronically and via hard copy.

The Royal Commission into Institutional Responses to Child Sexual Abuse have used the paper extensively to inform their focus on the experiences of children and young people with disability. The paper is also cited extensively in a number of projects and published articles. Examples include the article *Preventing abuse of children and young people with disability under the National Disability Insurance Scheme: A brave new world?*, which was published in the Australian Social Work Journal; and *Zero Tolerance: a framework to prevent and improve sector responses to abuse, neglect and violence experienced by people with disability* developed by National Disability Services.

There has been ongoing, concerted efforts over many years by disability advocates and organisations to highlight the issue of abuse of people with disability and to develop a response commensurate with the known vulnerability. However, to date there has been minimal recognition widespread and frequent occurrence of violence and abuse of people with disability.

In recent years there has been an increased focus on issues of abuse and child protection. The Royal Commission into Institutional Responses to Child Sexual Abuse and the Victorian Royal Commission into Family Violence are two key examples of this.

More recently however there has been heightened attention regarding issues of abuse of people with disability, with announcement of various inquiries and related policy initiatives. This is due in part to media coverage of shocking allegations of abuse experienced by people accessing the

Victorian disability service provider Yooralla. Following these reports, inquiries into abuse in disability services were announced by the Victorian Ombudsman and the Victorian Parliament.

It is critical that there is explicit consideration regarding how the work, findings and implementation of these inquiries' findings can be coordinated across sectors and jurisdictions, so that a well-coordinated and meaningful response is developed which articulates the breadth of reform needed to ensure abuse and violence of people with disability is adequately recognised, responded to and ultimately prevented.

Responses to the Inquiry's terms of reference

(A) The experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts

Experiences of abuse are frequently reported to CDA. An analysis of CDA organisational records kept from all consultations and contact from children, young people and families to date revealed that experiences of abuse reported to CDA have overwhelmingly occurred in an education setting. Some of the reported incidents were extreme, involving physical or sexual abuse. Many involved a chronic devaluing of the child and/or denial of opportunities which are routinely afforded to their peers without disability, such as being able to go to the toilet on a school excursion.

Children, young people and families can commonly view incidents such as these as 'par for the course' of being a child or young person with disability. Consequently, expectations and standards of unacceptable practices and actions are frequently normalised and unchallenged by children, young people, families and service providers.

The following section provides a summary of the direct experiences of violence, abuse and neglect of children and young people with disability reported to CDA. Certain types of abuse discussed below, including sexual abuse and sterilisation are not commonly reported to CDA, with there being significant barriers to the disclosure and reporting of these incidents. However, these forms of abuse do occur in the Australian community and it is important that they are a consideration for this Inquiry.

EXPERIENCES OF ABUSE

Sexual abuse

There is currently no national data on the prevalence of sexual abuse of children and young people with disability in Australia. International research indicates that children with disability are approximately 3.14 times more likely to be sexually abused than other children.¹ Research suggests that children with communication and high behaviour support needs have a heightened risk of abuse and that children with disability are more likely to experience multiple assaults, more severe abuses and incur physical injuries as a result of abuse.²

¹ P Sullivan et al. 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child abuse and neglect*, Vol. 24, No. 10, p. 1257.

² Children with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Melbourne, p. 10, D Skarbek et al. 2009, 'Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education,' *Sexuality and disability*, Vol. 27, p. 157.

CDA has received few direct reports of experiences of sexual abuse. Similarly, despite the high numbers of survivors contributing to the Royal Commission into Institutional Responses to Child Sexual Abuse, there has been minimal direct participation of people with disability, including children and young people. It was anticipated by CDA that the representation of direct experiences of sexual abuse of children with disability would be low for a number of reasons. It is therefore important to CDA's work regarding sexual abuse to understand why this is the case and what the barriers to reporting sexual abuse are for children and young people with disability.

Reporting experiences of sexual abuse is challenging and traumatic for all children and young people. Many people can take years to make an initial disclosure of child sexual abuse.³ The challenge of reporting abuse can be further compounded for children with disability, often due to assumptions held about disability and views of impairment. For children and young people with high communication support needs, communication often occurs primarily through behaviour, however this is often not recognised. Certain behaviour, such as repeated head banging or nail biting, may indicate distress but is often misattributed to disability, meaning the cause of distress is not identified.⁴ Further, ill-informed views hold that children and young people with disability have limited comprehension which thus diminishes the impact of abuse. This can lead to assumptions that children and young people with disability do not understand what has happened, are unaffected by sexual abuse or that the impact is lessened.

CDA has been informed of peer to peer sexual harassment and abuse within school contexts. Students with disability have been subject to sexual taunting and harassment in the school yard, as well as incidents of assault such as having their pants pulled down by peers. In other cases, the privacy and personal space of children and young people with disability is not respected. An example of this is other students attempting to enter a toilet stall whilst a child with disability is using the facilities.

The following are other incidents which have been reported to CDA:

Mainstream schools have not met (my daughters) needs... (she was) sexually harassed by students and teachers – Parent.

My daughter attended a social program, (where) she was shown and directed to massage violent male students... This was excused away in the complaints process, no one questioned this or supported my daughter's need for specialist counselling. She was manhandled by up to four adults, including males. She learnt about fear, failure, humiliation, isolation, violence, abuse – the list goes on – Parent.

My 7 year old son experienced peer to peer sexual assault at school. I was informed 'x' (the sexual assault counselling service) don't have the capacity to see children with disability – Parent.

Physical abuse

Experiences of physical abuse reported to CDA include serious assaults. Physical abuse also occurs when children or young people are restrained in institutional settings, which is discussed in the next sub-section. Experiences of physical abuse reported to CDA include:

My brother was beaten by his teacher last year... (He) was in the middle of a seizure

³ Royal Commission into Institutional Responses to Child Sexual Abuse 2014, *Interim report volume one*, Commonwealth of Australia, Canberra, p. 154.

⁴ *Ibid*, p. 160.

while he was beaten. He has a very small vocabulary made up of mostly echolalia and was unable to tell us what happened – Sibling.

On placement in a special school, I saw kids being dragged by their hair and shoved outside – Student teacher.

(My daughter)...was smacked in kindergarten by her teacher. She was the size of a three year old and forced to sit on the floor at the front of the class, she moved off the 'X' he had drawn on the floor and was smacked. As she was non-verbal, the other children told me about it and all gave evidence... No disciplinary action against the teacher (was) taken – Parent.

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 sons' safety and support his education – Parent.

(My daughter) got so badly bullied, (she was) stabbed with an earring in year three (but) no one cared – Parent.

Staff intimidate, abuse, and humiliate students with behaviour (support needs) – Parent.

I received a call at work from the school to come and pick my son up as he had a runny nose. My husband and I were unable to leave work immediately, so my mum collected him from school. Our son was brought out from a room by three teachers, including his own teacher, with a bloodied face. The teachers and receptionist said that he had just had an accident whereby he had sneezed and bit his bottom lip. Mum then drove him home and cleaned up his face. She discovered that it was full of severe scratches, one near the eye, in addition to cuts on his lip. She rang the school for an explanation and was told that his teacher would call back to discuss. His teacher left a message later, but did not return any further calls after my husband and I left messages looking for an explanation... (Later) an incident report was sent home stating that another student had caused the injury – Parent.

I saw one of the staff wrestling a teenage boy with autism to the ground and screaming profanities at him. I think he bit her, not sure. It was all out of control – Parent.

A 12 year old student was king hit, a sudden and forceful punch to the head, and knocked out by one of his peers. When he regained consciousness he had to phone his parents himself because the school had not done so.

A girl in Grade two who was being regularly bullied by a boy in her class and kept coming home with bruises on her arms. One day the boy ran up to kick her and knocked her to the ground leaving her almost unconscious. The school took no action. Two weeks later she was found at lunchtime hanging by a rope, tied under her armpits, from the top of the slide in the playground. Her mother was not told in person but read about it in the communication book used for regular written correspondence from teachers.

Further, other experiences of children and young people with disability involve a denial of the right to exercise control over their bodies and personal boundaries.

A 14 year old girl in Victoria who had her armpits shaved against her will by a teacher at

school in front of two other students.⁵ The girl's mother was informed that the shaving was 'part of the school curriculum.'

Restraint

Restraint is often experienced by children and young people with disability, often as a 'strategy' to 'manage behaviour' or in cases where staff are unaware that what they are doing constitutes restraint, let alone abuse. It is often justified as acceptable or necessary to ensure the safety of the student concerned or others.

CDA supports the following definition developed by the Australian Psychological Society (APS), which defines restraint as "a range of programs, procedures, and psychosocial techniques that can impede a person's exercise of choice and self-determination, all of which prevent people from being able to exercise human and legal rights that are ordinarily available to other members of the community."⁶ Physical and chemical restraint occurs in a range of different settings, including disability services, schools and medical settings.

(I only) recently stopped my son's special school using a time out chair in a separate room - (the) chair (was) bolted to the floor and my son belted in – Parent.

The school I went to would (hold) down students for not doing their work. Surely there are better strategies than that – Student.

(My son) was 18 months old when he was excluded from day care. They had no interest at all in assisting him. I only found out after leaving from a staff member, that he was left restrained in a high chair for long periods of time – Parent.

(My son) is currently being sedated to attend school. The school says he is doing well. His doctors say he is suffering a huge amount of emotional distress due to his education – Parent.

My son was tied down with rope to a chair...while in childcare because he wouldn't sit and listen to story time – Parent.

As an acceptable strategy to safeguard a student from hitting his head, school personnel tied a student to his chair for all class lessons and then tied him to a pillow on the floor during other activities – Parent.

Schools have used martial arts therapists to restrain students. The following employment advertisement seeking Martial Arts Therapy (MAT) aides to provide 'behaviour management' to students at both primary and secondary levels demonstrates this occurrence:

⁵ S Lillebuen 2014, 'Mother wants answers after teenage daughter's armpits were shaved by teacher,' *The Age*, viewed 22 April 2015, <http://www.theage.com.au/victoria/mother-wants-answers-after-teenage-daughters-armpits-were-shaved-by-teacher-20140529-396jg.html>.

⁶ Australian Psychological Society 2011, *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*, Melbourne, p. 11.

Martial Arts Therapy (MAT) Aides required in Melbourne's Eastern Suburbs

anzuk* education services - More jobs by this advertiser



Martial Arts Therapy (MAT) Aides required in Melbourne's Eastern Suburbs

- Casual & contract positions in a variety of school settings

anzuk* has opportunities for MAT Aides to work in a variety of special needs and primary schools in Melbourne's eastern suburbs. We now have a demand for integration aides with MAT program experience who can work in Mt Evelyn, Croydon and Wheeler's Hill.

As a MAT Aide with anzuk* you will provide a range of behaviour support to students enrolled in special development schools, dual-mode special needs schools, and mainstream primary schools. Our special schools provide educational and social programs to students aged between 5 and 18 years of age with moderate to profound intellectual and physical disabilities, and mild to severe social, emotional and behavioural disorders, including autistic spectrum disorder.

The ideal candidate will:

- Have completed MAT Program training
- Have experience in a school setting or disability support
- Have a caring and enthusiastic nature
- Have a genuine passion for special education needs
- Be open-minded and flexible to changes in daily programming
- Be adaptable to cater for a diverse range of student needs and disabilities

Your responsibilities include:

- Supporting the participation of students in an inclusive education system
- Assist with implementing behaviour management plans
- Supporting transitions for students within the school and outside community
- Providing support with personal care duties (where necessary)
- Assisting with hydrotherapy programs when required
- Building rapport with both staff and students
- Following directions and guidelines outlined by teachers

Previous experience working with children in special needs setting or schools is highly desired but not essential. Candidates with experience in the disability support and health care sector are encouraged to apply.

Figure one: Advertisement for Martial Arts Therapy aides from August 2014

Seclusion

The seclusion of students with disability is often justified as 'behaviour management' and it is also often reported to CDA that it is used as a punishment. The APS has defined seclusion as "solitary confinement of a person in a room or area (e.g. garden) from which their exit is prevented by a barrier or another person. Seclusion involves situations in which people believe they cannot or should not leave an area without permission."⁷

My son was locked in a broom closet at high school...and we were asked to pay for the window that he broke... (and) the school did not think that it was wrong. I pulled him out very quickly! – Parent.

(At my son's school there) was a huge cage in the middle of school, the school was padlocked once kids were in and parents were not allowed to be involved in their education. I cried every day I dropped him there – Parent.

My son was made to do his one on one work in a storeroom cupboard, no windows, shelves stocked high with supplies...how depressing! – Parent.

My son had a 'containment area' built for him when he was in Prep... horrific! – Parent.

I have heard of a child being sent to an area without a seat, one gum tree for shade and no teacher supervision they called the Pig Pen – Parent.

My child was abused at mainstream school. She was humiliated, isolated (and) placed in the corner facing the wall...That is just the tip of the iceberg of what happened to her – Parent.

(My son) was humiliated in his last school, he was stuck between two flag poles (in) rain, hail or shine and was told by the teacher if he leaves that spot he will be expelled. He was put on parade as a naughty child and when I rang this teacher he told me "what is your problem, I stick my head out the window to make sure he's ok, he's not thirsty or needs to go toilet" – Parent.

CDA is aware of numerous cases where enclosures have been used to seclude students with disability. This issue was brought to national attention with the reporting of the use of a cage on a student with disability in Canberra this year.⁸ However, this is not an isolated incident. Other cases where the media has reported the use of small enclosures to seclude and abuse students with disability include in New South Wales⁹ and Tasmania¹⁰ in 2010.

The following image provided to CDA shows a fenced enclosure used for the seclusion of students with disability at a special school in Melbourne.

⁷ Australian Psychological Society 2011, *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*, p. 11.

⁸ R Brown 2015, 'Children with autism caged and abused at school,' *Sydney Morning Herald*, viewed 22 July 2015, <http://www.smh.com.au/nsw/children-with-autism-caged-and-abused-at-school-20150402-1mbt48.html>.

⁹ News.com.au 2010, 'Outrage over Seven Hills West Public School putting autistic children in cage,' viewed 22 July 2015, <http://www.news.com.au/national/outrage-over-seven-hills-west-public-school-putting-autistic-kids-in-cage/story-e6frfkvr-1225839691640>.

¹⁰ D Brown 2010, 'Autistic kids 'caged' at school,' *the Mercury*.



Figure two: Image of fenced enclosure in Melbourne school

Bullying

Bullying is a persistent and ongoing form of abuse that many children and young people with disability regularly contend with. Bullying is defined by the Ministerial Council for Education, Early Childhood Development and Youth Affairs as “a pattern of repeated physical, verbal, psychological or social aggression that is directed towards a specific student by someone with more power and is intended to cause harm, distress and/or create fear.”¹¹

It is CDA’s experiences that responses to bullying of students with disability are often highly inadequate. For example, staff may attribute bullying behaviour to students with disability having ‘poor social skills’ rather than examining and responding to the student who is doing the bullying. In other cases, students with disability aren’t believed when they report bullying.

Below are some quotes illustrating the chronic, everyday abuse experienced by students with disability through bullying and harassment:

...Remembering all the times I have been bullied at school, I sink into my darkest times. I am being continually pushed over the edge, no-one has resolved the incident, and my Mum is not supportive enough to get me out of the greatest depression of my life. Now, I am considering killing myself just so no-one can bully me anymore – Student, boy aged 14 years.

¹¹ Ministerial Council for Education, Early Childhood Development and Youth Affairs 2011, *National Safe Schools Framework resource manual*, Commonwealth of Australia, Canberra, p. 8.

For me the worst thing is the bullying. There are just so many kids that are freaked out by disability and some teachers are as well, to be honest. This year I have been hit in the head, punched, called a retard just too many times or on a not so bad day just told I am not normal. I sometimes over-react to the bullying and then I get detentions for my behaviour. Once I had to wear my uniform to parent/teacher day because I had a detention. I then had to empty rubbish bins for 90 minutes. It didn't make me think about my behaviour, it just made me incredibly sad. How does that help someone learn? All this stuff really impacts on a kid's self-esteem you know – Student, boy aged 13 years.

Being bullied in primary school was hard. My bully pushed me and said mean words to me because she thought I was different – Student, girl aged 14 years.

I get bullied about my disability and the way I work. At lunch time I go to the library to avoid this. I wish people would accept me – Student, boy aged 10 years.

(My son) has broken an ankle through bullying, has been beaten up on the way home from school and is not under the care of a psychiatrist and psychologist – Parent.

My son was horrendously bullied, isolated, humiliated, tormented (and) left to his own devices. My son was self-harming and pushed to the brink of suicide because of the school system – Parent.

As a result of a traumatic incident at a special school, where his teacher threatened to cut his fingers off, (my son) now experiences great difficulty in going to school – Parent.

(My daughter was) bullied by some of the aides (at school). When these issues were brought to the attention of the Principal, changes were made but unfortunately the aide concerned was also the integration coordinator. In the integration room, the aides made her feel unwelcome. They called her names such as 'blabber-mouth' and 'sticky-beak.' As much of her progress has to do with cooperating with the aides, their unethical and irresponsible behaviour served only to alienate her. She was constantly being told off. It was a time of much stress and anxiety – Parent.

Exclusion

Children and young people with disability are regularly excluded from the range of activities and opportunities typically afforded to their peers without disability. This includes opportunities to play at their local playground, participate in social and recreational activities, attend a local sporting club or music class or attend a local school or preschool. Further, there is a common belief that children and young people with disability should only access segregated services or activities.

Being persistently excluded or segregated sends a profoundly strong message that children and young people with disability are not worthy or valued. Exclusion positions children and young people with disability as 'peripheral' to their peers and the wider community. CDA believes that the emotional harm this creates is significant and that the constant diminishing of a child's worth perpetuates the profound inequality children and young people with disability experience. The following are experiences of exclusion reported to CDA:

(My daughter) has to miss out on school discos (held) each term – Parent.

At a special school my daughter was excluded from the playground for a year because they said they didn't have the staff to keep her safe till I informed the Principal I was going to take it up with the (education department) and seek legal advice – Parent.

I was asked to keep my child at home three mornings a week so his teacher could provide class with uninterrupted learning – Parent.

At his previous school my son was excluded from all but one excursion, special events and incursions. He was also entirely excluded from his class from the end of term two and for all of term three until he was expelled in the first week of term four last year. This took the form of being placed in a separate room (not much bigger than a cupboard) in isolation away from his class and teacher. He spent all day with one of the up to eight different aides engaged to watch him – Parent.

(My child has not attended) even one excursion in three years. Not even one foot outside the school fence – Parent.

(My child) has been excluded from some class activities and given menial tasks to do to keep him busy whilst the rest of the class learn – Parent.

School says they only (provide) support for 'core learning' (areas) of literacy and numeracy and will not support other disability-specific needs. (My child is) not permitted to attend lunch or any classes after 12pm each day (or) attend sports carnivals, any sports program, interschool sports, excursions or camps - even if we go (to provide support) – Parent.

Abuse and neglect arising from inadequate support and care

Children and young people with disability also experience abuse and neglect arising from inadequate services and supports. This can include a failure to provide appropriate personal care, nutrition, health care and treatment for injuries, leisure opportunities and social contact. Neglect is often associated with the family context in child protection literature, however, as can be seen from the following experiences, it is also relevant to service contexts.¹² Examples include children and adolescents accessing respite services not being provided with appropriate personal care or supervision.

Experiences reported include:

Over a number of months, our son's lunchbox would come home virtually untouched. His teacher had told me in a program support meeting that she won't let him eat his food unless he goes and gets his lunchbox as per the other students. He has a complex disability and obviously finds this hard to do. She would often write me an email at the end of the day saying that he was unwell and didn't eat his food. However, when he comes home, he gulps his food and drink down. Being given food and drink during the day is a fundamental right and I believe this teachers attitude is severely flawed – Parent.

Our son has come home on numerous occasions during the winter months in cold, wet shoes and saturated clothing. When asked for an explanation, his teacher has said that it was impossible to keep him away from wet areas in the playground despite wearing a bright vest. I have asked the principal and teacher to find a way to keep him safe and dry but the situation remained unchanged – Parent.

¹² D Scott 2014, *Understanding child neglect*, Australian Institute of Family Studies, Melbourne.

The following article published in 2013 provides a tragic example of abuse arising from inappropriate training and information provided to staff.

Adam Cooper, 'Autistic boy's carer had no experience with children,' *The Age*, 25 June 2013.

The carer who looked after a severely autistic boy who drowned on a day trip was unaware of his client's disabilities and never received any relevant training from the agency that hired him, an inquest has heard.

Vipula Rajakaruna Mudiyansele was caring for Felix Hua in his then role as a community support worker with Southern Cross Care when the 14-year-old went missing at Yarra Bend Park in Fairfield on May 30, 2009.

Felix's body was found three days later in the Yarra River, near Dights Falls. On the second day of Felix's inquest at the Coroners Court, coroner Heather Spooner granted Mr Rajakaruna Mudiyansele protection that anything he said in evidence could not be used against him should police consider laying criminal charges.

In applying for the protection, the carer's lawyer, Michelle Wilson, told the court that her client wanted to give evidence, but there was a chance he could incriminate himself if he did so. When he entered the witness box, Mr Rajakaruna Mudiyansele had a statement read out, in which he said he had told Southern Cross Care he had never worked with children before the agency employed him, and thought it strange when he was later asked to care for Felix.

Mr Rajakaruna Mudiyansele arrived in Australia from Sri Lanka in 2007 and worked as a carer to help get by while he studied law and finance at university. He said before he joined Southern Cross Care his only previous caring experience was cleaning for elderly people at their homes. He said he was never made aware of the extent of Felix's disability - or his fascination with water, his inability to swim or his tendency to run away from carers - by his employer or the boy's mother, whose English was limited. He said he knew nothing of autism until after Felix's death.

Southern Cross Care and the City of Yarra - which outsourced its care program to the agency - have both acknowledged deficiencies in the way Felix was looked after, and have apologised to the boy's family.

Jonathan Morris, a former manager at Southern Cross Care, told the court on Tuesday the agency should not have taken on children and people with disabilities as clients when it took over the City of Yarra's care contract in 2008, as the agency had only previously cared for elderly people. Mr Morris said he was unaware Mr Rajakaruna Mudiyansele lacked the skills to care for Felix, and acknowledged no one in the agency was qualified to do so.

"Felix clearly needed someone with more specialised skills," he said. Felix went missing when Mr Rajakaruna Mudiyansele went to his car to get some biscuits, leaving the boy playing alone in a sandpit for about four minutes. The carer said Felix's death had devastated him, as despite the difficulties in caring for him on weekly outings he had regarded him as a son, and the boy's family as his own family in Australia.

The court heard that during his time as Felix's carer, the boy had been left alone on another occasion, when a passer by discovered him playing alone in the dirt on an oval and called the police. But Mr Rajakaruna Mudiyansele said that incident had been a misunderstanding, as people often did not realise a man of Sri Lankan appearance was caring for a boy of Vietnamese

appearance, and that he was giving Felix the space he liked. "I always tried my best when I looked after Felix and all my other clients. I was not lazy. I was always respectful. I did not neglect my duties as a carer," Mr Rajakaruna Mudiyansele said. The inquest continues.¹³

Sterilisation

It is important to recognise forced or coerced sterilisation as a form of torture and abuse. Forced or coerced sterilisation occurs when children, young people and their guardians and families cannot exercise free and informed choice in relation to the procedure. There are numerous reasons cited for the sterilisation of children and young people with disability, including to prevent wanted or unwanted pregnancies, eugenic motivations of preventing the procreation of people with disability or to 'manage' menstruation.¹⁴ There is limited information available about the prevalence of experiences of coerced sterilisation among children and young people with disability. Often, experiences of sterilisation are not disclosed until children have reached adulthood.

Since the High Court's ruling in 1992 in *Marion's Case* it has been required that court authorisation is required before any child can be sterilised. Currently, in all Australian states and territories, the authorisation of either the Family Court of Australia or a state or territory guardianship tribunal is required before a child or adult with disability can be involuntarily sterilised (except in emergency situations in which there is a serious threat to life or health). Despite this legal framework being in place it is the view of many disability organisations and the Australian Human Rights Commission (AHRC) that it has failed to protect people with disability.¹⁵ Further, the concluding observations of the United Nations regarding Australia's meeting of its obligations under the Convention on the Rights of Persons with Disabilities stated it is "deeply concerned" by Australia's record on the practice and urges the adoption of "national uniform legislation prohibiting the use of sterilisation of boys and girls with disabilities."¹⁶

It is therefore critical that sterilisation be recognised as a form of abuse and that the right of children and young people to make decisions about their own bodies and reproductive rights are respected.

SETTINGS WHERE ABUSE OCCURS

The following section discusses issues associated with the setting where abuse occurs. Expectations around what is considered acceptable can differ dramatically depending on the context. For example, the use of restrictive practices on a child with disability however would be seen as abuse in the family context. Locking a child in a small enclosure or denying food and drink are examples which would be defined as abuse if experienced in the family home but are frequently accepted or unquestioned in institutional settings. Children and young people with disability commonly experience this double standard.

¹³ A Cooper 2013, 'Autistic boy's carer had no experience with children,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/autistic-boys-carer-had-no-experience-with-children-20130625-2ouk8.html>.

¹⁴ Women with Disabilities Australia 2013, *Dehumanised: The forced sterilisation of women and girls with disabilities in Australia*, Rosny Park, pp. 36-57.

¹⁵ Senate Community Affairs Reference Committee 2013, *Report into the involuntary or coerced sterilisation of people with disabilities in Australia*, Commonwealth of Australia, Canberra, viewed 5 August 2014. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/~media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/first_report/report.ashx.

¹⁶ United Nations Committee on the Rights of Persons with Disabilities 2013, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013)*, p. 6.

Education

As previously indicated, abuse of students with disability is shamefully common in schools and includes a range of different types of abuse. While it is not suggested that all incidents are due to a malicious intent to abuse students with disability, systemic discriminatory attitudes towards disability mean that abuse is often not recognised or it can be justified as ‘behaviour management.’

It is important to situate the abuse of students with disability within broader education experiences. Students with disability are typically denied their right to a quality education. CDA’s experience is that broader community attitudes about disability are reflected within education settings. It is rare for students with disability to be welcomed as valued members whose contribution is believed to enrich the school community. Further, students with disability are rarely provided with the support required to participate in a meaningful education program. This stems from a complex range of factors, including attitudes towards disability, a lack of resourcing, and a lack of expertise among educational staff. The increasing reports of abuse in education settings received by CDA is seen to reflect a system in crisis that is struggling to meet the needs of students with disability.

Domestic settings

CDA would also like to raise the issue of abuse experienced within domestic settings, particularly the family home, although it’s not explicitly included in the terms of reference. There is a great paucity in local data as to the prevalence and impact of family violence and abuse upon children with disability in Australia. Existing research generally does not disaggregate the location of abuse (i.e. whether it occurred in the family home or an institutional setting). The limited small scale research that does exist has typically found an increased prevalence of domestic abuse among children with disability¹⁷ and disability is often considered to be a ‘risk factor’ for familial abuse in child protection literature.¹⁸ Further, children with disability face barriers in accessing child protection services, including support regarding domestic violence.¹⁹ In cases where support services are accessed, staff may have limited experience and expertise in identifying and providing support to children with disability.²⁰

School transport

The issue of transport to school has raised a number of issues of significant concern. Policy and procedures vary in each jurisdiction. The most prominent concerns relate to the length of travel, pre-employment and ongoing screening of staff, qualifications and professional development for bus personnel and widespread inadequate policies and procedures. A number of incidents have occurred nationally, which illustrate that this is an environment where children with disability appear to be very vulnerable.

In Victoria, bus transport is provided to students enrolled in special schools. Presently the policy is that the travel time for each journey can be up to two hours for a student to travel to or from school – a potential of four hours per day. CDA has known that children, from as young as five years of age, are spending four hours a day traveling to and from school. In some instances this involves very short distances of less than 10km. This can mean that a child leaves home at 7.00am and returns

¹⁷ I Brown et al. 2014, ‘Quality of life, children with intellectual and developmental disabilities and maltreatment,’ *International public health*, Vol. 6, No. 2, F Briggs 2005, ‘Personal safety issues in the lives of children with learning disabilities,’ *Children Australia*, Vol. 30, No. 2, p. 21.

¹⁸ Australian Institute of Family Studies 2013, *Risk and protective factors for child abuse and neglect*, Commonwealth of Australia, Canberra, viewed 22 July 2015, <https://aifs.gov.au/cfca/publications/risk-and-protective-factors-child-abuse-and-neglect>.

¹⁹ E Baldry et al. 2006, ‘Domestic violence and children with disabilities: Working towards enhancing social work practice,’ *Australian social work*, Vol. 59, No. 2, p. 189, 193.

²⁰ Ibid, p. 189.

home at 5.00pm. In many instances the families must utilise school transport because of work or other family commitments so it is not simply a preferred choice of families but the only transport option. The extensive travel time immediately denies many children significant opportunities and experiences of play, recreation, extracurricular activities and family time. All are basic rights outlined in the United Nations *Convention on the Rights of the Child*. Further, for children with high health and physical care needs, the long periods spent travelling to and from school inhibits the provision of necessary support. Some experiences provided to CDA include:

My eight year old son used to spend up to four hours a day travelling to and from his school which was less than 10km away from our home – Parent.

I have a 10 year old son that attends (a special school) and can be traveling for 90 minutes or more each way every day. I feel that this is a disadvantage to him and many other children therefore I believe that the education department should do a review of their current policy.

The many attributes associated with longer travel time (for my son) are:

- *Headaches every day from pure exhaustion due to travel time;*
- *Dehydration from not drinking and sitting in the hot bus for long periods;*
- *Not being able to go to the toilet for the duration of the bus trip;*
- *No food whilst on the bus;*
- *Sickness increased from the run down and sheer exhaustion;*
- *More meltdowns when he gets home;*
- *Unable to eat properly at night (because he is) too tired;*
- *Medication given way too early in the morning in order to catch a bus;*
- *(Sensory issues) increased with the increased noise;*
- *We should never put a cost figure on a child with (disability), (the school) currently disadvantages our children making the buses bigger (and) trips longer instead of smaller buses and shorter routes;*
- *The emotional and physical cost on a child;*
- *Not being able to join sports clubs events (from) Monday- Friday (because) they come home too late and too exhausted;*
- *Miss out on...after school therapies;*
- *The emotional toil and stress on families due to having more meltdowns; and*
- *Teachers at (school) would find that these children are less attentive during the day and possibly more disruptive – Parent.*

In June this year, a student who attends a special school in Melbourne was left on a locked bus for five hours because the driver failed to check that all students had exited.²¹ The student had fallen asleep when the other students exited the bus at 9am and was not found until 2.30pm.

The following article published in 2013 reported a further experience of abuse experienced by a student with disability on a school bus:

Jewel Topsfield, 'Tough discipline on the school bus,' *The Age*, 8 April 2013.

Last year, Michael Teggerth was told his 11-year-old daughter Caitlyn, who has epilepsy and developmental delays, was tied up by a school bus driver, allegedly for trying to damage the bus.

²¹ M Calligeros 2015, 'Bulleen Heights Special School student left on locked Crown Coaches school bus,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/bulleen-heights-special-school-student-left-on-locked-crown-coaches-school-bus-20150611-ghlayw.html>.

"She has a very vivid imagination - she was pretending to be a lion or tiger and scratching the seat," Mr Teggerth said. "When they tried to tie her up, she started fighting and the driver and the carer on the bus both slapped her."

Mr Teggerth said when he met staff from Caitlyn's school, Ballarat Specialist School, later that day, they said nothing about the incident but complained about her behaviour. "When she pointed out, 'I got tied up on the bus', I thought, 'That explains it'. Surely this can't happen? This is the 21st century, not the 16th century."

Mr Teggerth will seek damages in the Victorian Civil and Administrative Tribunal, alleging discrimination and "inhumane and degrading" treatment in breach of the charter of human rights. The Teggerth family's disability advocate, Julie Phillips, said the use of physical restraint against a student with a disability was far from isolated in Victorian schools. "It is very common unfortunately, and the reason is that it seems to be accepted practice by the Education Department in the behaviour management of children with disabilities," she said.

A spokesman for Education Minister Martin Dixon said restraint should only be used in an emergency to prevent students from inflicting harm on themselves or others. "The minister would be concerned if there are cases where restraint has not been used in line with that policy," he said.

The restraint policy is silent on seclusion even though the Education Department told the Victorian Equal Opportunity and Human Rights Commission it was a clear breach of policy. Children with Disability Australia said "abusive practices in schools" included the use of a martial arts instructor to train staff in behaviour management and the use of small rooms and small fenced areas as punishment.

In another case before the tribunal, Karen Oakes alleges her autistic son, who was then six, had his challenging behaviours addressed through seclusion and restraint at Alfredton Primary. "The seclusion involved shutting him in a room for periods of time that were long enough that he soiled and urinated upon himself," the complaint says. "(The Oakes) also became aware (their son) was being forced to the ground and restrained, and dragged from one place to another."

And in a third case before the Federal Court, Anne Maree Stewart alleges her son Matthew, who has Asperger's syndrome, was subject to physical assault from staff at Maple Street Primary. "The Department of Education admits to physically restraining Matthew and notes reflect that they did so, even for behaviour which was just described as 'silly'," the complaint form says.

A spokesman said the Victorian Education Department was unable to comment on individual cases due to respect for the privacy of students. "In addition, the department is unable to comment on cases that are subject to current legal proceedings," he said. Mr Dixon's spokesman said while the minister did not "wish to underplay" concerns raised, the vast majority of staff responded in an effective and caring way to the difficult circumstances that arose in schools daily.²²

Again, depending on jurisdiction and circumstance, many children who are dependent on this bus transport, are often denied the opportunity to eat, drink or go to the toilet while travelling.

²² J Topsfield 2013, 'Tough discipline on the school bus,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/tough-discipline-on-the-school-bus-20130407-2hewi.html>.

A boy aged eight years old who was completely independent in toileting and continent was not provided with any options in the event he needed to go to the toilet if required throughout his two hour trip to and from school. After wetting his pants on a trip as he could not hold on any longer, his parents sought action from the Department of Education to ensure he could go to the toilet if needed to. The Department advised this was not an available option for him instead suggesting a number of possible options including a) wearing a nappy b) withholding of fluids during the afternoon or c) the provision of an absorbent towel in the event a situation arose if he couldn't access a toilet and simply couldn't hold on any longer.

In different jurisdictions it is unclear what mechanisms there are for training and supervision of staff that drive or chaperone on these transport services. The limited or poor policies and procedures in relation to school transport, notably regarding supervision, creates a significant risk. For example, in many cases there is one driver and one chaperone supervising up to 50 students. A lack of appropriate supervision can allow peer-to-peer abuse to occur, such as bullying and assaults.

The lack of supervision of staff employed in school transport services has also allowed instances of sexual abuse to occur. This was highlighted by the Royal Commission into Institutional Responses to Child Sexual Abuse's case study into St. Ann's Special School. In this case, a bus driver employed by the school sexually abused as many as 30 students during his time working at the school. Being the bus driver with no supervision meant he was able to groom and abuse the children without scrutiny for years.²³

Out of home care

The term 'out of home care' is often used to refer to placements for children who have been subject to a child protection order, including home based care such as foster or kinship care, family group homes, independent living placements and residential care.²⁴ Children with disability are users of other types of out of home care that are not a result of a child protection intervention. Out of home disability services and supports are frequently accessed, including respite services. Out of home respite comprises a wide range of services that aim to support families and provide a break from caring. These services can be more formal, such as day or overnight respite centres or day outings with respite workers. Out of home respite can also involve less formal and voluntary out of home care.

Children with disability are believed to be overrepresented in out of home care placements that result from child protection interventions despite there being no official national data. Available research reflects this high representation. Research undertaken by the Victorian Equal Opportunity and Human Rights Commission, CREATE Foundation and OzChild indicated that the prevalence of disability within the out of home care populations surveyed was 14%, 22.5% and 73% respectively.²⁵

²³ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Report of case study number nine: The responses of the Catholic Archdiocese of Adelaide and the South Australian Police, to allegations of child sexual abuse at St. Ann's Special School*, Commonwealth of Australia, p. 12.

²⁴ Australian Institute of Health and Welfare 2015, *Child protection Australia 2013-2014*, Canberra, p. 48.

²⁵ Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria*, Carlton, p. 7, CREATE Foundation 2015, *Submission to the Community Affairs References Committee Inquiry into the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*, South Brisbane, viewed 6 July 2015,

[http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Young_people_in_a_aged_care/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Young_people_in_aged_care/Submissions), p. 4, G Mitchell 2013, *Children with disabilities using child and family welfare services*, Melbourne, OzChild, South Melbourne, p. 2.

Even when considering the lowest estimate of 14%, this is almost double the prevalence rate of children with disability in the Australian population (7.3%).²⁶

CDA believes that any existing estimates of the proportion of children and young people with disability in out of home care are likely to be an underestimation. CDA is aware that many children with disability are not recognised as they do not have a formal diagnosis or do not personally identify as having a disability. Moreover, at times the knowledge and expertise is not available within the out of home care system to identify if a child has a disability. There is no data that specifically focuses on the proportion of children with disability who experience abuse in out of home care settings, however CDA would like to highlight the risk factors for abuse in this context.

Data on the level of abuse encountered by children residing in out of home care is inconsistently collected across the states. As such, available data is likely an underrepresentation of abuse and violence occurring. The 2015 *Productivity Commission Report on Government Services* indicates that between 2013-2014, 365 children Australia wide were subject to a substantiated case of child abuse perpetrated by an individual living in their out of home care setting (no data available for the Northern Territory).²⁷ An issue found in research by the Royal Commission into Institutional Responses to Child Sexual Abuse is that the major focus of efforts to prevent child sexual abuse in out of home care has been on peer to peer abuse, rather than caregiver to child abuse.²⁸

Research also suggests that children with disability are more likely to be in residential care than children without disability.²⁹ Residential care is subject to significantly higher allegations of abuse than other forms of out of home care placement.³⁰

Medical settings

Reports of children and young people with disability experiencing abuse in medical and health settings have been received by CDA. An example was a young person who was shackled to a hospital bed for days, restrained by staff and subjected to chemical restraint, including being tied down and injected with sedatives. Another example is a students' enrolment in school being contingent on the child having to take certain medication.

The following is an experience reported to CDA:

When Anthony was 12 months old he broke his tooth and required a cap. He had treatment under general anaesthetic with a medical team who did not know him. Due to sensory issues, Anthony had severe anxiety about band aids and hospital identification wristbands. Despite significant explanation and advocacy around this issue by his parents, the treating team insisted on him wearing an identification wristband whilst conscious and applying a band aid after administering by injection a pre-operation medication. Anthony subsequently was hysterical and his tortuous experience was compounded by him being forcibly restrained whilst receiving treatment. Following the treatment, he had bruises on his face from the

²⁶ Australian Bureau of Statistics 2012, *Disability, ageing and carers, Australia: Summary of findings, 2012*, Commonwealth of Australia, Canberra.

²⁷ Productivity Commission 2015, *Report on government services 2015 - Child protection*, Commonwealth of Australia, Canberra, pp. 15.28 – 15.3.

²⁸ Parenting Research Centre 2015, *Scoping review: Evaluations of out-of-home care practice elements that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Commonwealth of Australia, Canberra, p. 7.

²⁹ Australian Bureau of Statistics 2012, *Disability, ageing and carers, Australia: Summary of findings 2012*, p. 7.

³⁰ Victorian Ombudsman 2010, *Own motion investigation into Child Protection –out-of-home care*, Melbourne, p. 14.

application of a mask to administer the anaesthetic and further bruising on his arms from being restrained. For a number of years following this, Anthony was very reluctant to see any medical professional, particularly dentists. Usually if he would see any medical equipment, he would become extremely agitated and upset, often exhibiting physical signs of extreme stress such as dry heaving, heart palpitations and profuse sweating.

Criminal justice settings

At present there is no national data on the number of children with disability who have contact with the criminal justice system. Further, there is a wide disparity in results among smaller scale research on prevalence of children with disability in juvenile detention.³¹ Again, the issue of unrecognised disability may be a critical barrier to accurate data.

While there is a focus in Australia on diversion and community support for young people in contact with the justice system, there are still a number of young people in secure welfare, juvenile justice and adult prison settings. In June 2014, 58 young people under the age of 20 and 698 between the ages of 20-24 were incarcerated in Victoria.³² Research suggests that children and young people with cognitive disability are overrepresented in the criminal justice system.³³ There is somewhat limited Australian research about experiences of abuse in these settings, however CDA would like to highlight criminal justice settings as a consideration for the Inquiry and flag the need for safeguards in this area.

CDA is also aware of instances where criminal justice agencies have physically abused children and young people with disability. It is important to consider whether a lack of understanding of disability and the diversity of interventions available can lead to the use of excessive force and violence.

In regional Victoria, police used a taser on a student with disability at a special school.³⁴ The school had called the police because the student was carrying a knife.

Immigration detention centres

The AHRC has reported that in July 2014 there were 869 children in immigration detention, 28 of whom were children aged 2-17 years who were identified as having a disability.³⁵ The Australian Government Department of Immigration and Border Protection reported that as of September 2014 there were 54 minors with identified disability in immigration detention.³⁶ There is presently a lack of clarity regarding how disability is defined and identified in available data. The AHRC inquiry into children in immigration detention found that immigration detention has significant negative impacts on children's mental health, finding that "the most common impact on the emotional health of children and their parents were feelings of sadness and 'constant crying'."³⁷ The inquiry also found

³¹ L Haysom et al. 2014, 'Intellectual disability in young people in custody in New South Wales, Australia – prevalence and markers,' *Journal of intellectual disability research*, Vol. 58, No. 11, p. 1005.

³² Department of Justice and Regulation 2015, *Key statistics on the Victorian prison system 2009-2010 to 2013-2014*, Victorian Government, Melbourne.

³³ K Tyler 2015, 'Shining a light into the shadows: The hidden health needs of juveniles in detention,' *Alternative law journal*, Vol. 30, No. 2, p. 102.

³⁴ P Nolan 2014, 'Police taser teen in second Ballarat incident,' *The Courier*, viewed 22 April 2015, <http://www.thecourier.com.au/story/2085062/police-taser-teen-in-second-ballarat-incident/?cs=62>.

³⁵ Australian Human Rights Commission 2014, *The forgotten children: National inquiry into children in immigration detention*, Sydney, p. 17, 65.

³⁶ Department of Immigration and Border Protection, cited in J Flanagan 2014, *The plight of people living with disabilities within Australian immigration detention: Demonised, detained and disowned*, National Ethnic Disability Alliance, Civic Square, p. 17.

³⁷ Australian Human Rights Commission 2014, *The forgotten children: National inquiry into children in immigration detention*, p. 58.

numerous incidents of physical and sexual assaults perpetrated against children and self-harm by children.³⁸

Living in immigration detention also prevents the provision of necessary supports for children and young people with disability. The following testimony provided to AHRC relates to a family in detention. Both parents and child are deaf:

The parents reported that their hearing aids had been ruined on the boat journey to Australia. Their 19 month old daughter had no hearing aid. At the time Inquiry staff met with the family they had been in detention for over six months, being three months on Christmas Island and three months in Darwin. During this time they had no hearing aids and were unable to communicate with anyone in the detention centre without extreme difficulty.

The parents said that they felt socially isolated because they could not communicate with other people and they were unsure about what their future held because they didn't understand the conditions of their detention. They also reported concerns about their baby's language development without a hearing aid, telling the Inquiry that their baby was "not using her voice at all."

They said that they struggled to communicate and to play with her, and were not able to hear when she was crying.³⁹

(B) The impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole

Personal impacts of violence and abuse

The impact of cumulative traumas on children and young people's life outcomes and wellbeing are profound. The effects of violence, abuse and neglect on children and young people will vary for each individual. Some of the noted impacts of violence, abuse and neglect include the development of physical and mental health issues, maladaptive coping mechanisms, reduced trust in authority and learning and development difficulties.⁴⁰

Research has found that persistent experiences of violence, abuse and neglect can have a profound impact on the developing brain of a child. Long term, sustained maltreatment of children and young people can create a persistent fear response, chronic hyper-arousal, diminished executive functioning, delayed developmental milestones and increased difficulty reading and responding appropriately to social situations.⁴¹

³⁸ Australian Human Rights Commission 2014, *The forgotten children: National inquiry into children in immigration detention*, p. 62.

³⁹ Ibid, p. 68.

⁴⁰ Australian Institute of Family Studies 2014, *Effects of child abuse and neglect for children and adolescents*, Commonwealth of Australia, Canberra, viewed 21 April 2015, <https://www3.aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolesce>.

⁴¹ Child Welfare Information Gateway 2015, *Understanding the effects of maltreatment on brain development*, United States of America Department of Health and Human Services, viewed 3 July 2015, https://www.childwelfare.gov/pubPDFs/brain_development.pdf#page=5&view=Effectsofmaltreatmentonbraindevelopment.

It has been established in research that the “frequency and duration of maltreatment and the co-occurrence of multiple forms of maltreatment” are critical determinants of how child abuse and neglect affects children and young people.⁴² The impacts of childhood trauma can endure long after the experience of violence, abuse or neglect and can have significant repercussions on a child’s life. Research indicates that adult survivors of child abuse and neglect can go on to experience higher rates of homelessness, poor mental health (including suicidality), reduced educational and employment outcomes and involvement with the justice system.⁴³

There is limited research that examines specific considerations regarding impacts of violence, abuse and neglect upon children and young people with disability in Australia. As discussed previously, abuses against children and young people with disability are often not recognised as abuse. This means that appropriate support is not provided.

Systemic and cultural impacts

It is the view of CDA that social understandings of disability underpin experiences of abuse among children and young people with disability. Historically, disability was positioned within a medical framework as a sickness, with the assumption being that children and young people with disability need to be ‘fixed’ or ‘cured.’ This informed a prevailing view of people with disability as objects of pity and charity.

While there has been a shift in attitudes regarding disability in recent decades driven by the disability rights movement, the ongoing legacy of the medical model means that disability continues to be commonly understood as a negative. While many people do not actively seek to discriminate against people with disability or wouldn’t explicitly say that people with disability are inferior, underlying attitudes and assumptions about disability that are culturally and historically embedded have profound and ongoing impacts regardless. In many cases, a lack of understanding perpetuates harmful stereotypes about children and young people with disability. It is the experience of CDA that it is rare for children and young people with disability to be valued as contributing members of a community.

The current reality for children and young people with disability in Australia is having to contend with a systemic culture of low expectations. Children and young people with disability typically experience instances of being diminished, excluded or ignored on a daily basis. When taken as isolated incidents, these experiences of children and young people with disability would not necessarily fit into traditional definitions of abuse. An example is a child with communication support needs who is rarely directly spoken to but often talked about as if he isn’t there. However, the cumulative effects are extremely harmful to a child or young person’s wellbeing or self-worth and while these impacts are often unmeasured, CDA believes this amounts to abuse.

The Australian Institute of Family Studies has defined emotional abuse as deriving from a pattern of behaviour occurring over time, including rejecting, where “the adult refuses to acknowledge the child’s worth and the legitimacy of the child’s needs” and isolating, where “the adult cuts the child off from normal social experiences.”⁴⁴ While these definitions refer specifically to child abuse

⁴² Child Welfare Information Gateway 2015, *Understanding the effects of maltreatment on brain development*.

⁴³ Australian Institute of Family Studies 2014, *Effects of child abuse and neglect for adult survivors*, Commonwealth of Australia, Canberra, viewed 24 July 2015, <https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-adult-survivors>, R Gilbert et al. 2008, ‘Burden and consequences of child maltreatment in high-income countries,’ *The Lancet*, Vol. 373.

⁴⁴ Australian Institute of Family Studies 2012, *What is child abuse and neglect?*, Commonwealth of Australia, Melbourne.

perpetrated by families, there are parallels to the experiences of children and young people with disability of discriminatory attitudes within the community.

Many children and young people with disability and families experience such constant low expectations that these experiences become normalised and accepted, compounding and perpetuating embedded roles and expectations. Further, for some children and young people who have high or unmet support needs it is exceedingly difficult to independently challenge assumptions made about their ability. The positioning of children and young people with disability as inferior has significant flow on effects impacting on life opportunities and wellbeing. Opportunities to participate in a range of activities typically afforded to children and young people without disability are routinely denied.

Experiences reported to CDA of this continual diminishing and exclusion include:

At the special school I attend, I'm treated like an idiot, like I can't do what other kids can do. Their expectations of me are very low. They don't treat me like an individual – Student, boy aged 15 years.

(At school my child has to wear) a different coloured hat outside – Parent.

The system was unwilling to accommodate my son and this led to immense trauma with my son and other siblings. In the end (the school was) completely ignoring him and my family and telling us we were the problem. He missed so many days of school due to their ignorance and treatment of him. In the end he became suicidal and we realised the school was never going to help him only make him worse. We were ostracised as a family – Parent.

My children were treated severely until my child got so anxious they lost control of bladder and bowel movements on a regular basis – Parent.

When my child was due to start school I was told the school couldn't take him due to not (having) enough funding and the (occupational health and safety) of the staff. They had never met my child – Parent.

Not only does the cumulative impact of ableism diminish children and young people with disability's feelings of self-worth, it also leaves the prevailing culture of low expectations, ableism and discrimination unchallenged and unquestioned.

(C) The incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings

There is a significant gap in research on the prevalence of violence, abuse and neglect of children and young people with disability in Australia. CDA's issues paper, *Enabling and protecting* includes a review of the available research relating to abuse and neglect of children and young people with disability. While there are significant gaps in available data and research, the existing literature clearly indicates that:

- Children and young people with disability experience abuse and neglect at rates considerably higher than their peers who do not have disability;
- Children and young people with communication impairments, behaviour support needs, intellectual disability and sensory disability experience higher rates of abuse;

- Abuse and neglect of children and young people with disability is likely to be under-reported;
- Children and young people with disability are often abused on multiple occasions; and
- This maltreatment is significant.⁴⁵

There have been no population-based studies that seek to estimate the national prevalence of abuse experienced by children and young people with disability in Australia.⁴⁶ The Australian Bureau of Statistics' Personal Safety Survey does measure the age of people who experience crime, however does not disaggregate disability. Moreover, the Survey of Disability, Ageing and Carers also does not include experiences of violence and abuse. While statistics of this nature inevitably exclude people who do not have a formal diagnosis, there is a key need to expand the existing evidence base regarding the experience of violence, abuse and neglect among people with disability including children and young people.

Often, smaller studies or international research are used to infer prevalence rates. A commonly cited study by Sullivan and Knutson (2000) in the United States of America, which examined state based school, police and other records, found that children and young people with disability were "3.4 times more likely to be maltreated than nondisabled peers."⁴⁷

In Australia, there are barriers to developing an accurate national picture of the prevalence of abuse of children and young people with disability. Data regarding substantiated instances of child abuse differs between jurisdictions and sectors. Further, there are differing definitions of disability across states and territories. Further, definitions of what constitutes abuse are significantly variable, with many experiences of abuse by children and young people with disability not being defined as such.

Some areas in which there is a lack of research and statistics relevant to this Inquiry include:

- Research into abuse of children with disability in educational settings,⁴⁸
- Data on the use of restrictive practices on children and young people with disability in education settings;
- Research about children with disability in out of home care;
- Research about children with disability in juvenile justice facilities; and
- Prevalence of sexual abuse of children and young people with disability.

It is important that these gaps in knowledge are addressed. Not only does this lack of information inhibit forming an accurate assessment of the issue but it also allows it to be deprioritised. As stated by the United Nations Children's Fund (UNICEF), a "society cannot be equitable unless all children are included, and children with disabilities cannot be included unless sound data collection and analysis render them visible."⁴⁹ There is also a clear need to have a firm basis on which to develop and implement best practice in policy making and service delivery.

In seeking to address the research gap around the lived experience of children and young people with disability it is important to acknowledge the potential impact of research on participants. The

⁴⁵ Robinson 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 10.

⁴⁶ S Robinson 2014, 'Preventing abuse of children and young people with disability under the National Disability Insurance Scheme: A brave new world?', *Australian Social Work*, p. 3.

⁴⁷ Sullivan et al. 2000, *Maltreatment and disabilities: A population-based epidemiological study*, p. 1257.

⁴⁸ An exception is: S Robinson et al. 2014, *Safe at School? Exploring safety and harm of students with cognitive disability in and around school*, Centre for Children and Young People, Southern Cross University, Lismore.

⁴⁹ United Nations Children's Fund 2013, *State of the world's children 2013: Children with disabilities*, United Nations, New York, p. 63.

effects of participation in research about violence or abuse on children and young people have not been clearly established, in particular whether it can lead to further distress or re-traumatisation.⁵⁰ There is a need to be particularly mindful of this when developing any future research agenda in this area.

Recommendation 1: Funding of research that reliably identifies the scale and prevalence of all types of abuse and neglect of children and young people with disability in Australia. This may include collection of data regarding personal safety and experiences of abuse that disaggregates age and disability.

Recommendation 2: Commissioning of research into the emotional and mental health impacts of chronic diminishing and low expectations arising from entrenched ableism within the Australian community on children and young people with disability and implications for policy and practice.

Recommendation 3: Commissioning of research regarding the barriers to recognising abuse of children and young people with disability in institutional settings, why definitions of abuse differ between institutional and familial settings and implications for policy and practice.

Recommendation 4: Commissioning of research into experiences of abuse of children with disability in education settings.

Recommendation 5: Collection of national data on the use of restrictive practices on children and young people with disability in all contexts, including education settings.

Recommendation 6: Commissioning of national research regarding the experiences of children with disability utilising out of home care services and implications for policy and practice.

Recommendation 7: Commissioning of national research regarding the experiences of children with disability in juvenile justice facilities and implications for policy and practice.

(D) The responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices

Responses to abuse of children and young people with disability are variable, but are often defensive and deflective. It is rare following incidents of abuse for institutions to examine the systemic and structural factors that allow abuse to occur and develop appropriate safeguards.

Initial responses

This section discusses the range of individual and service provider responses to abuse of children and young people with disability.

As indicated under term of reference (A), many abuses experienced by children and young people with disability are not recognised. In these instances there are no individual or systemic responses.

In other cases, abuse of children and young people with disability is justified and defended by individual and service providers concerned. A common situation is justification of the use of restraint

⁵⁰ United Nations Children's Fund 2014, *Hidden in plain sight: A statistical analysis of violence against children*, New York, p. 20.

and seclusion as necessary for 'behaviour management,' thereby placing attributing abuse to the actions of the child or young person involved.

Often, the language of occupational health and safety (OHS) is used to position children and young people with as a safety risk to themselves, staff or others. However, this approach fails to examine the meaning behind behaviour and enact positive behaviour supports. This was acknowledged by the Victorian Equal Opportunity and Human Rights Commission, which was concerned that an OHS approach to restraint and seclusion in schools "conceptualises students with disability as a risk or hazard (and)...does not talk about the risks to the student if restraint or seclusion is used."⁵¹

CDA has also heard of abuse being justified as necessary in order fit in with existing models of service delivery. Examples are students with disability being denied access to a toilet on two hour bus journeys. In these cases, the resource constraints and processes of service providers are prioritised above the rights of children and young people with disability.

Another response reported to CDA is for institutions to deny abuse has occurred. For example, it has been reported to CDA that schools have refused to acknowledge that significant raised and weeping carpet burns across a student's body were caused by a teacher dragging the student across a room. In other circumstances, when seclusion rooms have been exposed in schools, it is believed they have been denied or physically removed to avoid public scrutiny or accountability.

In other cases, service providers and institutions may acknowledge abuse but assume the impact will be minimal because the child or young person has a disability. For example, schools may not intervene when students with disability are bullied because it is thought the child experiencing this will not understand or be impacted the name calling and taunting from peers.

It has been reported to CDA on numerous occasions that when children, young people and families make complaints regarding abuse, service providers and institutions become extremely defensive and adversarial. For example, families have reported feeling attacked and ostracised by schools for making complaints about their children's experiences. In some instances, schools have taken out intervention orders against parents, which appears to be a way of avoiding accountability about issues of concern.

For this Inquiry and also the current Senate inquiry regarding *Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support* many people have contacted CDA and expressed reluctance to provide submissions for fear of retribution for themselves or their children.

Further, incidents are often not correctly identified as crimes. In these cases, abuse may be seen as an incident that can be addressed within an organisation, rather than making appropriate referral to police. In addition, police often do not recognise abuse experienced by children and young people with disability as a crime. An example reported to CDA involved a four year old being trapped under a chair by his Principal at school. The boy's mother went to the police after the school refused to recognise what had occurred, however the police refused to take her statement.

Finally, in some cases of abuse services have responded by trying to assuage victims. An example was reported in *The Age* where "Yooralla management wrestled with how to handle the crisis, Sarah

⁵¹ Victorian Equal Opportunity and Human Rights Commission 2012, *Held back: The experiences of students with disabilities in Victorian schools*, Melbourne, p. 118.

(who had been sexually assaulted) began to receive gifts such as holiday vouchers and flowers from head office. This had never happened before.”⁵²

Service provider response – Education

CDA frequently hears of inadequate responses to abuse of students with disability from education providers. It is important to note that families have been raising concerns about abuse experienced by their children at school for years, however there has been minimal change in this time.

Responses from schools are often focused on containment or suppression of a student’s behaviour, rather than looking for the meaning behind behaviour and providing appropriate support. For example, a student may be secluded because of a particular behaviour such as yelling or banging on the table. The seclusion is seen and justified as ‘behaviour management.’

In other cases, students with disability are seen as ‘naughty.’ Behaviour in these cases is seen as intentional and manipulative rather than in the context of disability and an indication of a system not providing adequate support. It is CDA’s experience that students with disability experience high rates of suspension and expulsion. The lack of national data inhibits a clear picture of the issue. This response from a school clearly infers that students with disability are ‘the problem,’ rather than examining practices and systemic issues.

A key problem encountered by students with disability and families is the lack of an independent, timely complaints mechanism. Education sits outside the available complaints mechanisms for disability services such as the Office of the Disability Services Commissioner or Office of the Senior Practitioner (now within the Office of Professional Practice) in Victoria. The division of responsibility for the provision of education between states, territories and the Commonwealth further dilutes the available pathways for complaints. Families typically follow a path when they have unresolved concern which progresses from raising issues to: a teacher; the Principal; the regional education office; the state or territory education authority; a legal pathway; and/or letters to state or federal Members of Parliament. Often families are directed between jurisdictions and portfolios. More recently, a desire to avoid setting legal precedents has acted as an impetus to avoid litigation and confidentially settle disputes out of court. This diminishes the ability to gain momentum from successful court actions to progress systemic reform.

Other mechanisms include ombudsmen, the AHRC and the United Nations. This can be prohibitively difficult, expensive and time consuming. Families and students are frequently left with no options to have issues addressed and CDA is aware of families who have changed schools numerous times, enrolled in distance education or undertaken home schooling as a result. Again, there is a lack of statistics regarding home schooling and distance education enrolment of students with disability.

The impacts of this process on children with disability involves a further devaluing and diminishing of experiences and self-worth. Further, the pressure placed on families from this complex process is significant, usually causing significant stress, anxiety and financial pressure on families. This is an extremely untenable situation for many children, young people and families.

Recommendation 8: Review of practices, policies and procedures by education authorities with the aim of clearly defining and eliminating abuse of students with disability. The completion of this should be a pre-condition of education authorities gaining state or commonwealth government funding.

⁵² R Baker et al. 2013, ‘Yooralla senior executives accused of ignoring warning signs on rape claims,’ *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/ooralla-senior-executives-accused-of-ignoring-warning-signs-on-rape-claims-20131120-2xvin.html>.

Recommendation 9: All personnel who are associated with the provision of education for students with disability, including from state, territory and Commonwealth education departments and those who work directly in schools in any capacity to receive ongoing professional development on inclusive education. This should aim to enable and facilitate the establishment of a new culture which values the contribution of children with disability and ensures meaningful participation.

Recommendation 10: The establishment of an independent mechanism for complaints regarding education settings which allows disputes to be resolved in a timely manner.

Governance

A key consideration is the responses to abuse that relate to managerial and governance practices. CDA's issues paper, *Enabling and protecting*, provides a summary from available research regarding the institutional factors leading to increased risk of abuse and inadequate responses:

*The kinds of environments...have a closed culture, and cover up reports of abuse, and/or fail to protect people who report. They justify and rename abusive practices (e.g. behaviour management), readily accept excuses for abuse, and have low accountability and little outside scrutiny.*⁵³

CDA has observed a lack of accountability and transparency on behalf of governance structures with regard to responding to reports of abuse and neglect. In some cases institutions, including disability services and education providers have actively sought to cover up allegations of abuse. There have been cases where acknowledgement of abuse by service providers has only occurred following significant media reporting and community outcry.

When abuse is reported, it can be minimised by classifying the abuse as an 'incident' and managing complaints internally.⁵⁴ Pursuing an internal complaints process, rather than reporting matters of this nature to the police, repositions abuses against children and young people as organisational issues of concern rather than crimes. This organisational response minimises a potentially criminal act to a policy, staff development or training issue.⁵⁵ An example of this was the Joyce Review of Yooralla's "management of allegations of assault."⁵⁶

Frequently, organisations appeal to the notion that abuse has only occurred due to the presence of malicious individuals within the organisation. This is often referred to as the 'bad apples' argument. It is suggested that because the offending individual has been removed or disciplined, no further action is required. This deflects focus away from the systemic factors that contribute to abuse occurring, including poor governance, a lack of managerial accountability and a discriminatory organisational culture. For example, a public statement from former Yooralla Chief Executive Officer, Sanjib Roy, states "Yooralla is deeply sorry for the distress of clients affected by the inappropriate,

⁵³ Children with Disability Australia 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 12.

⁵⁴ Victorian Equal Opportunity and Human Rights Commission 2014, *Beyond doubt: The experiences of people with disabilities reporting crime*, Melbourne, pp. 23.

⁵⁵ Children with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p.16.

⁵⁶ Yooralla 2012, *The Joyce Report*, viewed 22 July 2015, <https://www.yooralla.com.au/about/Custom-er-wellbeing-and-safeguards/the-joyce-report>.

and in some cases criminal behaviour, of a small number of staff.”⁵⁷ Emphasis is placed singularly on offending individuals rather than systemic issues.

In other cases, rather than implementing an organisation-wide policy of prevention, responses within organisations have a narrow focus. This may be on improving reporting systems, screening workers or providing self-advocacy training to people with disability to report abuse. An example was an information booklet developed by Yooralla produced after a number of allegations of sexual were publicised.⁵⁸ An easy English version of the booklet was also released. The booklet describes the areas of reform within the organisation following allegations of abuse. These include: self-advocacy programs for clients; an automated reporting system for incidents and disclosures; training for staff; staff screening; and a whistle-blower policy.⁵⁹ The main focus of the booklet is on people with disability reporting incidents and responses to abuse. There is minimal emphasis around the actions and responsibility being taken as an organisation to provide a safe culture and services.

Many organisations rely upon clients actively making a complaint to activate a response to incidents of abuse, violence and neglect. However, a complaints approach places focus primarily on specific incidents, rather than the systemic factors. Further “complaints-based systems rely on articulate, assertive and empowered complainants.”⁶⁰ Given the specific barriers to reporting abuse for children and people with disability, a complaints based system cannot ensure all cases of abuse are recognised.

Reliance on compliance based practice standards can mean risk management becomes an end in itself.⁶¹ This can have the impact of shifting the focus from rights based, individual and inclusive service delivery to ‘tick box’ risk management approaches.⁶² Research has found that “managerial, compliance-based systems may be deflecting attention from recognising and responding more effectively to abuse and neglect at individual, systemic and structural levels.”⁶³

Presently, organisational governance frameworks offer minimal protection for people with disability accessing services. There is currently no legislation or regulation that mandates organisational responsibility for ensuring the safety of clients. There is a parallel that can be drawn with the legislated requirements for employers, including boards of directors and managerial staff, to ensure that OHS regulations are implemented and workers are safe. The requirements of employers are covered in relevant state and territory legislation and there are significant penalties for non-compliance.⁶⁴ This system ensures clear expectations for employers, demarcates clear responsibility within organisations and provides clear recourse within the law if violations are made. However, there are no comparable sanctions for a failure to ensure that people accessing services are safe and protected from abuse.

⁵⁷ Yooralla 2014, *Statement from Yooralla CEO Sanjib Roy*, Australian Broadcasting Corporation, viewed 22 July 2015, http://www.abc.net.au/reslib/201411/r1359820_19109021.pdf.

⁵⁸ Yooralla 2015, *How we’re upholding safeguards*, Melbourne, viewed 24 July 2015, https://www.yooralla.com.au/_data/assets/pdf_file/0017/21833/How-were-upholding-safeguards_web.pdf.

⁵⁹ Ibid.

⁶⁰ S Robinson et al. 2010, ‘Preventing abuse in accommodation services: From procedural response to protective cultures,’ *Journal of Intellectual Disabilities*, Vol. 15, No. 1, p. 71.

⁶¹ Children with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p.16.

⁶² Robinson et al. 2010, *Preventing abuse in accommodation services: From procedural response to protective cultures*, p. 68.

⁶³ Ibid, p. 63.

⁶⁴ A Blackwood 2014, ‘Yooralla failings: No more excuses,’ *The Age*, viewed 22 July 2015, <http://www.theage.com.au/comment/ooralla-failings-no-more-excuses-20141125-11t5cl.html>.

Recommendation 11: Legislation of a regulatory framework mandating organisational responsibility for the safety of people with disability accessing services, including criminal sanctions for serious breaches in duty of care regarding abuse of clients.

(E) The different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability

All children and young people should be afforded protections against violence, abuse and neglect. The importance of wellbeing and protection of children is a value deeply embedded and prioritised in the Australian community. This is reflected in the ratification of various United Nations conventions, national and state legislation and a diverse range of policy frameworks and initiatives throughout the country. However, as evidenced by the typical experiences of many children and young people with disability, the range of existing legislation, policy and practice is not providing adequate protections for children and young people with disability.

A discussion of current legislative, complaints and policy frameworks are provided below. Data collection frameworks are discussed under term of reference (C) and governance frameworks under term of reference (D).

Legislative frameworks

Criminal and civil legislation regarding assault and abuse exists at the state and territory level. In some areas, such as sterilisation, there is a need to strengthen legislative frameworks to ensure adequate legal safeguards.

Further, children and young people with disability experience significant barriers in accessing the justice system. Too often there is a failure to define and recognise abuse experienced by children and young people with disability as crimes and respond in a manner conducive to the seriousness of these offenses. For example, the use of enclosures to seclude students with disability represents a form of false imprisonment and restraint is in many instances a form of assault. Not only does this inhibit access to recourse and justice for the specific child or young person, but prevents a clear picture of the extent of the issue as it cannot be recorded in crime statistics. Further, many barriers exist for children and young people with disability who seek to access the justice system as victims of crime, which are discussed under term of reference (H).

Recommendation 12: National legislation that criminalises, except where there is a serious threat to life, the sterilisation of children (regardless of disability).

Complaints mechanisms

There is a range of different child protection and disability oversight bodies at the state, territory and Commonwealth levels, each with different powers of investigation. These include state, territory and Commonwealth ombudsmen, children's and public guardians, public advocates, the AHRC, state and territory human rights organisations and disability services commissions. There is significant variation regarding the powers for investigation and intervention between these bodies. For example, in Victoria the Senior Practitioner does not cover education, meaning families do not have any recourse through this authority for restraint and seclusion experienced in schools in contrast to disability service settings.

A key concern raised to CDA relates to organisations having insufficient powers to address complaints and enforce sanctions or compliance not being mandatory. Further, these organisations can have limited powers of investigation. For example, many families who made complaints to the

Office of the Disability Services Commissioner in Victoria regarding abuse experienced within Yooralla services reported to CDA feeling dismissed and diminished due to the lack of a formal investigation.

Further, as previously discussed there is no timely complaints and accountability mechanism for incidents that occur within schools. In addition, there is often minimal consideration of the specific issues that relate to abuse of children, such as the need for 'child safe' organisations, discussed in term of reference (I). Discussion of developing a national complaints body regarding disability services is discussed under term of reference (L).

Policy frameworks

In 2011 the Council of Australian Governments (COAG) endorsed Australia's first *National Disability Strategy*. The Strategy sets a 10 year reform plan for 2010-2020 for all Australian governments to address the barriers faced by Australians with disability. It aims to ensure that mainstream services and programs including healthcare, housing, transport and education are accessible and address the needs of people with disability. Under the policy area 'rights protection, justice and legislation, the Strategy identifies the following as a key policy direction: "People with disability to be safe from violence, exploitation and neglect."⁶⁵ However, the Strategy provides minimal specific actions around how to achieve this goal.

The *National Framework for Protecting Australia's Children 2009-2020* is the first long-term national approach to ensuring the safety and wellbeing of Australia's children. The Framework operates through a series of three-year action plans that identify outcomes, strategies to achieve these outcomes to be undertaken and indicators to monitor success. Currently, the Third Action Plan for 2015-2018 is being developed. The National Framework outlines six supporting outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to promote safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.⁶⁶

It is the view of CDA that at the outset there was minimal considerations of the specific vulnerabilities children with disability have to experiencing abuse and neglect. The second action plan identifies disability as a 'new priority' for the framework. It also defines some actions around disability that focus on interface with the NDS, the NDIS and out of home care.⁶⁷ However, there are minimal specific actions identified that relate to children with disability.

Australia's first national Children's Commissioner, Megan Mitchell, commenced in 2013. Operating within the AHRC, the role of the Commissioner is to promote public discussion and awareness of issues of issues affecting children; conduct research and education programs; consult directly with children and representative organisations; and examine Commonwealth legislation, policies and programs that relate to children's human rights. In addition, there are state and territory-based

⁶⁵ Council of Australian Governments 2011, *National Disability Strategy 2010-2020*, Commonwealth of Australia, Canberra, p. 38.

⁶⁶ Council of Australian Governments 2009, *Protecting children is everybody's business: National framework for protecting Australia's children 2009-2020*, Commonwealth of Australia, Canberra.

⁶⁷ Council of Australian Governments 2012, *Protecting children is everybody's business: National framework for protecting Australia's children 2009-2020, Second three-year action plan 2012-2015*, Commonwealth of Australia, Canberra, p. 27.

public guardians and commissions for children and young people. While these roles are highly important in progressing public understanding and reform regarding the rights of children and young people, there is often minimal understanding of the specific vulnerabilities and considerations regarding children and young people with disability. Further, these bodies vary in their jurisdiction and powers to enforce reform.

Various anti-bullying and anti-vilification policies have also been developed across the states and territories. These often target specific types of vilification such as racism and sexism. The *National Safe Schools Framework* provides guiding principles to support the creation of safe and supportive school communities. In particular, it focuses on bullying, harassment, aggression and violence in schools. However, there are minimal policies that directly address bullying on the basis of disability and ableism. The *Disability Standards for Education 2005* includes standards for eliminating harassment and victimisation of students with disability. However, in CDA's experience, the Standards have been of minimal effectiveness in preventing bullying and harassment of students with disability.

Often, the safety and wellbeing of children with disability is positioned as being the responsibility of the disability sector, rather than included and embedded in mainstream children's policy and services. As a result, children with disability are often excluded from policy considerations and the segregation of services remains unchallenged. By continually leaving children with disability out of policy considerations and reform, there can be minimal impact on day to day experiences of abuse.

Recommendation 13: Future implementation plans for National Disability Strategy include clear targets, measures and outcomes aimed at preventing the abuse of children and young people with disability.

Recommendation 14: Work within state, territory and Commonwealth commissions for children and young people to ensure experiences of children and young people with disability are a core focus of advocacy work.

Recommendation 15: Development of an 'anti-ableism' policy for schools by state and territory education departments providing clear objectives, the legislative context and rights imperatives, responsibilities and monitoring and evaluation. Examination of state based anti-racism and anti-sexism policies may be relevant to inform the policy.

(F) Australia's compliance with its international obligations as they apply to the rights of people with disability

Australia has demonstrated its commitment to upholding the rights of children and young people with disability to be safe and protected from harm not only in national policy but also through ratifying several United Nations (UN) conventions. Key human rights instruments ratified are: the *Convention against torture and other cruel, inhuman or degrading treatment or punishment 1984* (CAT); *Convention on the rights of the child 1989* (CRC); and *Convention on the rights of persons with disabilities 2006* (CRPD).

These conventions clearly articulate the rights of children and young people with disability to be safe and well in both the home and in institutional settings. This is illustrated by article 16 of the CRPD, which states:

*States Parties shall 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.*⁶⁸

These conventions also articulate the right of children and young people with disability to enjoy liberty and security of person;⁶⁹ to receive the safeguards and protections commensurate with the known vulnerability of children;⁷⁰ to receive protection of physical integrity;⁷¹ to have privacy respected;⁷² and to receive age appropriate and quality supports.⁷³

The CRPD also obliges state parties to:

*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.*⁷⁴

In relation to care and recovery from experiences of abuse, the CRC states:

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*⁷⁵

While Australia has demonstrated a commitment to the rights of children and young people with disability to be free from violence abuse and neglect, these rights are routinely denied. This is clearly evident in the experiences reported to CDA and in available research. In 2013, the UN Committee on the Rights of Persons with Disabilities adopted the report making observations on Australia's progress in implementing the principles of the CPRD. The report made a number of findings in relation to abuse and children and young people with disability, including:

- There is no national framework that articulates how the rights of children, including children with disability, "can be implemented, monitored and promoted." This was found to contravene article seven – children with disabilities;
- There is a lack of training and expertise within the justice system to ensure access to justice for people with disability, breaching article 13;
- The right to freedom from torture and cruel, inhuman or degrading treatment or punishment (article 15) is contravened with experiences of restraint and seclusion;
- Women and girls with disability's experiences of violence in institutional settings breaches the right to freedom from exploitation and violence (article 16); and
- The right to integrity of the person (article 17) is violated for people who are sterilised.⁷⁶

⁶⁸ United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 16.

⁶⁹ United Nations General Assembly 1989, *Convention on the Rights of the Child*, articles 16, 37, United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 14.

⁷⁰ United Nations General Assembly 1989, *Convention on the Rights of the Child*, article 21.

⁷¹ United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 17.

⁷² United Nations General Assembly 1989, *Convention on the Rights of the Child*, article 16, United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 22.

⁷³ United Nations General Assembly 1989, *Convention on the Rights of the Child*, article 23.

⁷⁴ *Ibid*, article 16.

⁷⁵ *Ibid*, article 39.

⁷⁶ United Nations Committee on the Rights of Persons with Disabilities 2013, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013)*, pp. 3-6.

Despite committing to uphold the principles of international law in relation to the human rights of children and young people with disability, the pervasive and persistent experiences of abuse illustrate that these are not being upheld in practice.

(G) Role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability

It has been extremely difficult to raise awareness of the depth and breadth of abuse experienced by children and young people with disability. The direct experiences of many children and young people has mostly not been believed, discounted and diminished. It has taken relentless advocacy and tenacity by numerous individuals and organisations to raise these issues. Without this advocacy, this issue would still be completely behind closed doors.

Individual advocates are an important source of support and advice for many young people and families of children with disability. People are often unaware of the rights that should be afforded to children and young people with disability, relevant legislation and protections and welcome support in accessing a fragmented and incoherent disability service system.

Families often contact CDA seeking support in dealing and responding to incidents of restraint, seclusion and other abuses in schools. Frequently, significant advocacy and support is required to obtain information about the specific incidents that occurred and to make complaints. It is often difficult to locate a community organisation that has understanding, expertise or capacity to provide advocacy for children, young people and/or families.

There are many challenges associated with formal advocacy regarding abuse and neglect of children with disability. There is a lack of clear pathways to having an issue addressed. Institutions, including schools, often become defensive and litigious. Further, supports for children and young people who have been abuses may not be inclusive and accessible.

As has been discussed extensively throughout this submission, there are significant barriers to reporting, recognising and responding to instances of violence, abuse and neglect of children and young people with disability in institutional settings. Formal advocacy provides a crucial role in conveying the breadth of the experiences of abuse of so many individuals and have a crucial role in contributing to how we respond to and prevent abuse in the future.

Recommendation 16: Increased resourcing of existing organisations to provide formal advocacy for children and young people who have experienced abuse.

Recommendation 17: Funding of disability advocacy organisations to provide ongoing systemic advocacy concerning experiences and protection of people with disability from abuse.

(H) What should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse

Prevention of abuse needs to be the primary focus of organisations and institutions that work with children and young people with disability because of the barriers to recognising and identifying abuse. Rather than relying on a complaints based system where responses occur only following the

reporting of an incident, prevention must be an active policy embedded within the policy and practice of each organisation. Critically, focus must be on addressing system wide factors, rather than treating abuse and neglect as an isolated incident.

Individual level

As a society, we recognise the specific vulnerabilities of children and afford unique protections. The focus of interventions at the individual level that relate to children should therefore be on preventing abuse, rather than the reporting of abuse of children and young people with disability.

Parents and families are typically afforded the responsibility for care and protection of their children until they are 18 and as such are a natural safeguard for children. It is also important that families are supported and equipped with information about how to recognise signs of abuse. Further, it is critical that families are able to access information, support and advocacy to respond on a range of required levels and ways to their children's experience of abuse.

Institutional level

Organisational child protection and child safe policies and procedures need to be clear, accessible, predictable and transparent. It is important to develop clear lines of accountability and responsibility for action within the reporting process, and detail the limits of each individual's authority. Further, policies should be revisited often.

Workforce capacity and training is an important consideration in addressing barriers to responding to abuse. It is critical that, in addition to having policies informed by human rights to participation and inclusion, staff have an understanding of the vulnerability that children and young people with disability have to abuse and that negative attitudes regarding disability are identified and countered. There needs to be explicit consideration of how this can occur across the variety of institutions and services that children and young people with disability use.

There is often a tendency for 'disability awareness training' to be seen as the key way to address organisational culture. This typically involves external, disability and often diagnosis-specific organisations entering a workforce to provide training. There is a need for caution regarding the potential of training of this sort to be tokenistic and limited in scope rather than fostering an inclusive culture. There is a clear need to examine how organisations can be supported to address negative institutional cultures in a way that is meaningful, genuine and long-term.

It is important that the role of families in the lives of children is explicitly addressed and understood within relevant policies. Children's right to family is set out in the UN *Convention on the rights of the child*. For example, article 18 obliges State Parties to the Convention to:

Use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.⁷⁷

The role of families needs to be respected by organisations. It is therefore important that families are informed of any organisational protective policies and feedback and complaints from families are taken seriously. For example, CDA often hears of families not being informed about abuses experienced by their children at school. Families then have to advocate strongly to obtain basic information about what happened, with both schools and education authorities being evasive and defensive at times. The views and complaints of families should be actively responded to through

⁷⁷ United Nations General Assembly 1989, *Convention on the Rights of the Child, article 18*.

transparent processes and lines of clear communication. Again, this practice must be embedded in organisational policies.

Recommendation 18: Training for staff working with children and young people with disability to uphold rights to safety and recognise abuse. This should include ensuring organisational practice is focused on upholding respect and valuing and acknowledging the contributions people with disability make to the community.

Criminal justice

There is a significant disconnect between what is known to be a high prevalence of abuse of children and young people with disability and the response and involvement of the criminal justice system. Throughout the judicial justice process, children and young people with disability face multiple assessors of capacity including parents, members of the institution, police, lawyers, prosecutors and judges.⁷⁸ The assessment of a child or young person with disability's capacity to relay their experiences is often prevented by assumptions regarding the capacity and competence of children and young people with disability.

There are a number of factors that inhibit the reporting of crime by victims with disability generally. These include a lack of protection services for people with disability, the failure of the justice system to provide support and adjustments to assist people with disability participating in the system and discriminatory attitudes that position people with disability as incapable of making reliable statements.⁷⁹

It has been reported to CDA that police have been unwilling to take a statement from a child either based on the assumptions of capacity regarding making a statement or because there is no communication support available if required. The Victorian Equal Opportunity and Human Rights Commission's 2014 report *Beyond doubt*, found that at times police refer incidents involving people with disability back to the institution for internal review, rather than investigating.⁸⁰

The refusal of police to take statements from children with disability contravenes the sections of the CRC that specifies the rights of the child victim and the child witness. The Convention states:

The child victim and the child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view...⁸¹ In particular, this means that every effort has been made to ensure that a child victim or/and witness is consulted on the relevant matters with regard to involvement in the case under scrutiny, and enabled to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process.⁸²

Police play an important gate-keeping role regarding whether complaints of abuse, violence and neglect are investigated, charges laid and referred to prosecution. It is vital that police operate from a human rights based framework and support all individuals to report crimes committed against them. The perpetuation of the stereotype that people with disability make 'poor witnesses' inhibits

⁷⁸ D Brown et al. 2013, 'Competence is in the Eye of the Beholder: Perceptions of intellectually disabled child witnesses', *International journal of disability development and education*, Vol. 60, No. 1, p.6.

⁷⁹ Australian Human Rights Commission 2013, *Access to justice in the criminal justice system for people with disability*, Sydney, pp. 2-3.

⁸⁰ Victorian Equal Opportunity and Human Rights Commission 2014, *Beyond doubt: The experiences of people with disabilities reporting crime*, p. 12.

⁸¹ United Nations General Assembly 1989, *Convention on the Rights of the Child*, article 62.

⁸² *Ibid*, article 63.

prosecution of crimes against children with disability. The curtailed opportunity to demonstrate credibility as a witness in a court of law further perpetuates this view.⁸³

It is important that police and other criminal justice agencies provide supports for children and young people with disability to make statements and to ensure human rights obligations are met. This is supported by the AHRC who recommend that criminal justice agencies “(provide) during interviews a sexual assault counsellor, disability support advocate or specialist disability lawyer to support adults and children with disabilities who have been sexually assaulted or experienced violence.”⁸⁴ Consideration of the specific needs and vulnerabilities of children who are victims of crime and are accessing the criminal justice system must be a key focus.

For each individual, the accommodations made will be unique. These could involve; regular breaks, provision and utilisation of assistive technologies and/or a communication assistant, flexible questioning style, pre-taping of evidence, minimising the number of times a victim’s statement has to be recounted and interviewing in a different setting.⁸⁵ Ensuring that the developmental needs of children are a core consideration and that appropriate accommodations are made is also highly important. This cannot be a one-size-fits-all approach but rather an adjustment of practice that accommodates every witnesses’ individual support needs on a case by case basis.

South Australia has developed a *Disability Justice Plan 2014-2017*, which aims to ensure that people with disability are supported “to take part in the criminal justice system on an equal basis with other members of the community, including victims and those accused or convicted of a crime.”⁸⁶ The Plan recommended the recently passed *Statutes Amendment (Vulnerable Witnesses) Bill 2015*. This legislation aims to guarantee the rights of people with disability who are victims of crime and mandates the provision of appropriate support when people with disability have contact with the criminal justice system. Consideration needs to be given regarding how this legislation can be replicated across all Australian jurisdictions.

Recommendation 19: Introduction of legislation that replicates the recently passed South Australian *Statutes Amendment (Vulnerable Witnesses) Bill 2015* across each state and territory.

Recommendation 20: Training and professional development for criminal justice agencies around the rights of children and young people with disability who are victims of crime and to support children with disability who are victims of abuse in making statements.

Recommendation 21: Development of mechanisms to regularly assess and monitor the accessibility of justice procedures nationally.

(I) What needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses

The experiences of children and young people with disability highlight the importance of preventing abuse. CDA strongly believes that all organisations accessed by children and young people with

⁸³ Australian Human Rights Commission 2014, *Equal before the law: Towards disability justice strategies*, Sydney, p. 23-24.

⁸⁴ Ibid, p. 34.

⁸⁵ Attorney General's Department 2014, *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best practice*, Government of South Australia, Adelaide.

⁸⁶ Attorney General's Department 2014, *Disability Justice Plan 2014-2017*, Government of South Australia, Adelaide, p. 5.

disability should have active policies and practices of prevention and protection. These should contain robust safeguards that reflect the specific vulnerabilities of children and young people with disability. It is critical that organisations and public policy adopt a child centred and rights based approach to prevention.

Organisational culture and preventative policy

Fundamental to removing the barriers to preventing and responding to violence, abuse and neglect of children and young people with disability is confronting ableism within organisations. This must occur through adopting a rights based, person-centred culture that values children and young people with disability and identifies upholding human rights as the primary consideration that drives service delivery.

Strong protective and preventative policies should be built on the right of all children to be free from harm and the responsibility of all adults to prevent child abuse and maltreatment. Research has found that “if constructed with heart and sensitivity, a child protection policy can shape and define the very narrative about what the organisation stands for in relation to the safety of children and the responsibilities of adults to fulfilling the rights of children and young people more broadly.”⁸⁷

It is often suggested that increased surveillance be used as a preventative safeguards for children and young people with disability, for example by placing closed circuit television (CCTV) cameras in services accessed such as school buses. Considerations regarding whether CCTV cameras are appropriate need to be balanced with children and young people’s rights to privacy. Further, surveillance should not be used as a sole safeguard in lieu of a comprehensive prevention and protection policy and robust safeguards.

Recommendation 22: Consideration of ways to better support institutions and organisations in developing frameworks and policies to prevent abuse and protect children and young people with disability.

Child safe organisations

An important approach to addressing the risk factors around child abuse is creating child safe organisations. In 2005, state, territory and Commonwealth community and disability service ministers agreed to the *National Framework for Creating a Child Safe Environment*. This is a non-binding document that allows the states and territories to develop and implement their own standards and accreditation processes for child safe organisations. Broadly, child safe organisations emphasise the rights of children to protection and to have a safe childhood, with these values underpinning workforce culture.

The organisation *Child Wise* have developed a 12 step guide for creating a child safe organisation. The steps identified are:

1. Understand child abuse;
2. Develop and maintain an open and aware culture;
3. Identify and manage the risks and dangers to children in your programs and activities;
4. Develop a Child Protection Policy;
5. Create clear boundaries;
6. Adopt best practice in recruitment and selection;
7. Screen all staff and volunteers;
8. Support and supervise staff and volunteers;
9. Ensure there is a clear complaints procedure for reporting concerns;

⁸⁷ J Tucci et al. 2015, ‘Constructing a child protection policy to support a safeguarding children culture in organisations and institutions,’ *Children Australia*, Vol. 40, No. 1, p. 78.

10. Know your legal responsibilities;
11. Empower children and encourage participation in your programs; and
12. Provide education and training to all participants.⁸⁸

There is great diversity between states and territories as to whether organisations providing the care of children are required to have child safe accreditation. It is the view of CDA that there needs to be a requirement for all organisations that have the care of children to maintain a child safe accreditation. Under the current system, consideration needs to be given as to how to ensure that services are meeting this standard where it is not mandatory.

Recommendation 23: Mandatory requirements to ensure all organisations providing services to children implement child safe policies and accreditation.

Education

Having access to education regarding safety and healthy relationships is important for all children. However, because the sexual development of children with disability is not always recognised, opportunities for education regarding sex and healthy relationships are often denied.⁸⁹ Further, children who require regular support with personal care can have less opportunity to define and protect their personal space and may be reliant on adults to impart the importance of boundaries.⁹⁰ These factors have been identified in research as increasing children with disability's vulnerability to experiencing sexual abuse.⁹¹

All children and young people should be able to access developmentally appropriate education regarding healthy relationships and who to tell if you don't feel safe. Healthy relationship and sex education training is a compliment to organisation based measures to ensure the safety of children in their care. It is no way a replacement for reform in this area.

Recommendation 24: Availability of education that teaches and reinforces the development of healthy and respectful relationships that are accessible to children with disability.

Restraint and seclusion

It is the view of CDA that there is a need for national oversight regarding the use of restraint and seclusion. CDA supports the creation of a national body charged with monitoring and reporting the use of restrictive practices, with the explicit aim of ensuring restraint and seclusion is recognised as abuse and its use is reduced. This body should be independent both from government, service providers and the National Disability Insurance Scheme and be the only body charged with powers to authorise the use of restraint and seclusion beyond a first unplanned emergency.

The proposed body could adopt features of the Victorian Senior Practitioner. However, unlike the Senior Practitioner, which is part of the Victorian Department of Health and Human Services, the proposed organisation should be completely independent. This will ensure clear accountability for

⁸⁸ Child Wise, *Choose with care: 12 steps to a child safe organisation*, South Melbourne, viewed 11 April 2015, <https://www.dcp.wa.gov.au/servicescommunity/information/Documents/Service%20Excellence/Choose%20with%20Care%20Manual%20-%20Child%20Wise%2012%20Steps.pdf>.

⁸⁹ I Wissink et al. 2015, 'Sexual abuse involving children with an intellectual disability (ID): A narrative review,' *Research in developmental disabilities*, Vol. 36, p. 28.

⁹⁰ Skarbek et al. 2009, *Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education*, p. 157.

⁹¹ Wissink et al. 2015, *Sexual abuse involving children with an intellectual disability (ID): A narrative review*, p. 28, Skarbek et al. 2009, *Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education*, p. 157.

the use of restraint and seclusion. It is also important to note that the Senior Practitioner role in Victoria does not cover seclusion. This is a significant gap and should not be replicated in the future.

CDA is also of the view that there must be mandatory reporting of restrictive practices. Accurate information will contribute to ensuring consideration of the use of restrictive practices in public and policy debates. Currently, there is a fundamental gap in data on the current experience of restraint and seclusion of people with disability, including children and young people, across the country. In order to ascertain whether efforts to reduce the use of restrictive practices are effective, it is imperative to obtain accurate data. Rigorous monitoring also progresses further accountability regarding the use of restrictive practices.

There is a clear and urgent need to ensure that best practice in behaviour support is adopted across the range of settings and services that children and young people with disability use, including disability services and education settings. This should include clear guidelines and strategies to eliminate the use of restraint and seclusion. The APS have developed *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*. These guidelines highlight the need to ensure that behaviour support strategies suit the needs of each person. In particular, Positive Behaviour Support (PBS) is proposed.

PBS focuses on understanding people and developing strategies and supports that will address each person's needs. This can focus on environmental factors such as staff training or accommodating the sensory needs of a child and young person. PBS also involves strategies to provide appropriate behaviour support that meets the needs of each person, such as focusing on communication and developing coping strategies for stress and anxiety.

An important consideration is around the quality of PBS plans. There is a need to ensure that PBS plans are established by professionals who have appropriate training to ensure that individual plans reflect best practice. CDA recommends adopting requirements to ensure quality PBS plans that adopt a rights-based framework that respects the dignity of each person with disability. Additional considerations will be required to ensure the unique needs, including protective needs, of children are met.

Recommendation 25: Establishment of a national oversight body for the use of restraint and seclusion that alone is charged with the power to authorise the use of restrictive practices beyond a first unplanned emergency. This body should also record national data on the use of restraint and seclusion regardless of setting.

Recommendation 26: Development of policy and/or legislation mandating the development and implementation of Positive Behaviour Support plans, ensuring that adequate training has been undertaken by those developing plans.

Recommendation 27: Development of policy mandating notification of families within an identified time period if their children are subjected to restraint and seclusion by an institution or residential setting.

(J) Identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed

It is important to examine the systemic workforce issues in institutions and the way this impacts upon abuse experienced by children and young people with disability. There has also been a link established in research between employment status of workers and the risk of abuse. In particular,

high levels of worker casualisation have been associated with an increased risk of client abuse.⁹² Research has found that the “increasing number of short term and casual staff has serious implications for the recognition and response to patterns of abuse and neglect in particular, as there is a dearth of long-term moral witnesses to note the cumulative effect of this maltreatment.”⁹³

There are also issues relating to the quality of service or care provided. High turnover of staff means that the preferences and needs of the child or young person with disability are subordinate to staffing needs. For example, this disruption of routine may cause distress or issues of inadequate handover between staff may lead to abuse arising from poor quality support.

Staff in contact with children and young people with disability need to be empowered to respond to abuse. A workplace that is adequately resourced in terms of staff, training, regular supervision and opportunities for professional development is important. Secure employment within these settings is also vital to sustained stability in the workplace.

Imperative to implementing safeguards to protect children and young people with disability from abuse and neglect involves ensuring staff are appropriately supported. It is important that human resource planning within organisations is focused on careful recruitment, selection, assessment, training and supervision of all staff, in line with child safe principles.

The safety of a child or young person with disability needs to be the primary concern when an organisation is selecting staff. Rigorous pre-employment screening is one key safeguard, although as previously discussed cannot be the sole safeguard at the expense of other protective measures. The Royal Commission into Institutional Responses to Child Sexual Abuse recently published a review on the available research about pre-employment screening practices for child-related work that aim to prevent child sexual abuse,⁹⁴ which contains significant learnings relevant to this Inquiry. These include:

- Criminal background checks appear to be “universally considered as an important component of pre-employment screening.”⁹⁵ However, they have a number of limitations, including the risk that an applicant has changed their name and the risk that offences occurred in another jurisdiction.⁹⁶ Because of this, the review found that criminal background checks must be conducted in conjunction with other screening practices;
- Other screening practices that should occur in tandem with criminal background checks include: conducting thorough reference checks, conducting employment interviews with questions aimed at determining an applicant’s suitability to work with vulnerable clients (for example understanding and commitment to child safe principles); obtaining information from alternative registries (such as child abuse registries); thorough examination of an applicant’s employment history (for example identifying and verifying the reasons for employment gaps); verifying an applicant’s identity with photo or other identification; and verifying an applicant’s education history;⁹⁷

⁹² Robinson et al. 2011, *Preventing abuse in accommodation services: From procedural response to protective cultures*, p. 65.

⁹³ Ibid, p. 65.

⁹⁴ Parenting Research Centre 2014, *Scoping review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Commonwealth of Australia, Canberra.

⁹⁵ Ibid, p. 6.

⁹⁶ Ibid, p. 6.

⁹⁷ Ibid, p. 37.

- There is a clear need for “legislation permitting employment prohibitions based on the outcomes of pre-employment screening practices,” so that findings from the screening practices can be effectively acted upon;⁹⁸
- It is also important to ensure that ongoing monitoring and supervision of staff occurs to ensure that participants are safe and are not experiencing maltreatment;⁹⁹
- Service providers should not adopt a ‘tick a box’ approach to implementing safeguards and that preventing abuse needs to be seen as core to the operations of each service; and
- Employment screening should be completed on new and existing staff.

Further consideration should also be given to working with children and/or vulnerable people clearances. Presently, there is considerable variability and overlap between the different checks at the state, territory and Commonwealth levels. CDA acknowledges the work undertaken to establish a national working with children check, notably through the *National Framework for Protecting Australia’s Children*. However, significant work needs to occur to ensure this reform occurs. Particular consideration should be given to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse on this matter.

Further, CDA also supports the creation of a national barred persons list that inhibits certain offenders from working with both children and young people with disability. Work will need to be undertaken regarding the definitional boundaries regarding which crimes or other features would mean someone should be on that list. Given the breadth of existing checks across the jurisdictions and proposed new checks, it is important that work is undertaken to coordinate these efforts and to minimise duplication. However, national checks are the preferred option to inhibit people from moving across jurisdictions and being able to repeat offending patterns.

Recommendation 28: Consideration of requirements for services working with children and young people with disability regarding minimum employment standards for staff supervision, training and working conditions. One option could be limiting the number of casual staff employed.

Recommendation 29: Development of mandated pre-employment screening processes for people working with children, people with disability and other vulnerable people.

Recommendation 30: Development of a national working with children check and a national barred person list prohibiting certain offenders from working with people with disability.

(K) The role of the Commonwealth, states and territories in preventing violence and abuse against people with disability

The care of Australia’s children is a national priority. Cross government collaboration has been seen in the development and incremental implementation of the *National Framework for Protecting Australia’s Children 2009-2020*. CDA would like to commend the National Framework for convening the range of government and non-government organisations through the Coalition of Organisations Committed to the Safety and Wellbeing of Australia’s Children. It is a significant achievement to bring such a diverse group of organisations together to collaborate on the issue of child abuse.

Collaboration between the various stakeholders on the issue of violence, abuse and neglect of children and young people with disability is important. The Commonwealth, state and territory

⁹⁸ Parenting Research Centre 2014, *Scoping review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, p. 7.

⁹⁹ *Ibid*, p. 8.

governments have a key role to play in coordinating and collaborating policy responses. This is particularly important in the context of the wide range of inquiries and consultations occurring regarding abuse of people with disability, child protection and other relevant areas.

A fundamental role of all Australian governments is to adopt a leadership role regarding the inclusion of people with disability across the Australian community. This can occur through promoting and progressing the aims of the National Disability Strategy and other areas of reform. An important starting point is examination of language used.

In February this year during question time in the House of Representatives, the Hon. Joe Hockey MP made a quip during following a second member being told to leave the chamber. He stated “that collectively lifted the IQ of the Labor Party.”¹⁰⁰ While it is seen as unintentional, this quip sends a strong message which is stigmatising to people with cognitive disability. It is important that all Australian governments are leaders in recognising the contributions made by people with disability within the Australian community.

(L) The challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability

The National Disability Insurance Scheme (NDIS) was introduced following prolonged advocacy and community activism by people with disability, families, carers and advocates. This led to a national recognition that the existing disability service system was highly inadequate. The Productivity Commission Inquiry into Disability Care and Support found that the disability service system “is underfunded, unfair, fragmented, and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports.”¹⁰¹ This led to a fundamental remodelling of the disability services system with the establishment of the NDIS.

The core principles underlying the NDIS are to:

- support the participation and inclusion of people with disability in social and economic life;
- provide certainty around disability services and supports;
- maximise the choice and control of people with disability around supports received; and
- support people with disability to achieve their goals and live independently.¹⁰²

The Scheme commenced in 2013 in a number of trial sites across the country. Because the Scheme represents a complete overhaul of the existing disability service system, it is being implemented in stages. It is anticipated that the Scheme will be fully implemented by 2019.

The NDIS represents a significant shift from the previous model of providing block funding to disability services to providing portable and individualised funding packages. Further, significant work is required to ensure that the underlying principles of the Scheme are embedded. This new system provides significant opportunities to ensure that Scheme participants are able to exercise choice and control regarding supports received. However, the shift to a market-based system of providing disability services and supports also creates challenges. The expanding market of service

¹⁰⁰ House of Representatives 2015, *Official Hansard, No. 1, 2015, Tuesday, 10 February 2015*, viewed 24 July 2015, <http://goo.gl/LHq9gY>, p. 338.

¹⁰¹ Productivity Commission 2011, *Disability care and support: Productivity Commission Inquiry report overview and recommendations*, Commonwealth of Australia, Canberra, p. 2.

¹⁰² *National Disability Insurance Scheme Act 2013 (Cth)*, part 2.3.

providers that will be funded through the Scheme poses logistical challenges regarding oversight, including around the development and implementation of safeguards.

Given the vulnerability to abuse experienced by people with disability, there is a clear need to develop strong safeguards to ensure NDIS participants are safe when accessing services. The additional protective needs of children also need to be recognised. It is also imperative to embed a culture in which safeguards and protective measures are not tokenistic.

Service providers who receive NDIS funding will need to have the capacity to provide high quality supports and implement and embed adequate safeguards which include ensuring:

- Appropriate training and ongoing professional development for staff;
- Thorough pre-employment screening;
- Appropriate supervision and monitoring of staff;
- Obtaining child safe accreditation when necessary;
- Provision of legally required and positive working conditions for staff; and
- The development and continual assessment of a positive organisational culture.

The National Disability Insurance Agency (NDIA) recently conducted a consultation regarding the proposed Quality and Safeguarding Framework for the NDIS. The Framework aims to ensure that service provided through the NDIS are of high quality and that participants are safe. The Framework proposed a three-tiered approach, focused on the developmental (individuals' natural safeguards), preventative (focused on risk management and safeguards within services) and corrective (responses to incidents) domains.¹⁰³ The Quality and Safeguarding Framework provides a significant opportunity to develop nationally consistent guidelines, principles, regulations and governing bodies focused on safeguarding people with disability from violence abuse and neglect. CDA provided a submission to the consultation.¹⁰⁴

In CDA's submission, support was given to the creation of a national independent oversight body for the NDIS. This could take the form of a national disability services commission with state and territory based offices. It is envisaged that the oversight body would have a number of functions. These include:

- Monitoring compliance with the Quality and Safeguarding Framework by the NDIA and service providers;
- Independent responding and management of complaints made against disability services (including those who do and do not receive funding through the NDIS);
- Oversight of quality in services;
- Compiling and publishing national data on the Scheme and disability services;
- Educative role; and
- Fostering a positive organisational culture with regards to children and young people with disability.

It is imperative that the oversight body has sufficient powers to address issues regarding poor quality supports, the implementation of safeguards and implement sanctions for non-compliance. In addition, it is important that has the ability to be proactive regarding specific issues or rather than being restricted by a requirement for complaints to be received.

¹⁰³ Disability Reform Council 2015, *Consultation paper: Proposal for a National Disability Insurance Scheme quality and safeguarding framework*, Commonwealth of Australia, Canberra.

¹⁰⁴ Available at <http://www.cda.org.au/cdasubmissions>.

The NDIS represents a momentous reform, however it is important to note that many children and young people with disability will not access the Scheme through having an Individual Funding Package (IFP).¹⁰⁵ For this reason, CDA has recommended that the proposed regulatory body also apply to services that are not funded by the Scheme.

Recommendation 31: Establishment of an independent national oversight body to monitor quality and safeguards in disability services. The body should have jurisdiction over supports that are funded through the National Disability Insurance Scheme and those that are not.

(M) What elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings

CDA supports a collaborative approach to addressing the abuse and neglect of children and young people with disability that combines expertise and leadership from different sectors, organisations and governments. Rather than being positioned as solely the domain of the disability sector and disability ministers, it is critical that mainstream sectors work to ensure they are inclusive of people with disability and address risk factors for abuse.

The elements for a national quality framework to safeguard are discussed throughout this submission. It is critical that policy going forward adopts a rights focus and ensures preventing abuse is the priority.

Conclusion

Experiences of violence, abuse and neglect are shamefully common in the lives of children and young people with disability. This includes a wide array of abuses experiences across many different institutions and service settings.

There is an urgent need for strong and robust safeguards to be implemented throughout Australia. The reform that does occur needs to be firmly grounded in the experiences of children and young people with disability and adopt a rights based approach.

It is the fundamental right of all children and young people to be safe, respected and valued within the community. This rights will only be afforded in Australia if the prevailing negative and stigmatising attitudes that devalue and exclude children and young people with disability are addressed. The direct experiences of abuse of so many children and young people with disability within this submission could not be a more blatant explanation of the reasons why we need to do this.

¹⁰⁵ Department of Social Services 2015, *A Framework for Information, Linkages and Capacity Building*, Commonwealth of Australia, Canberra, p. 3.

Contact

CDA would welcome the opportunity to discuss further any of the issues raised in this submission with the Committee. Thank you for the opportunity to provide a submission to this Inquiry.

Stephanie Gotlib
Chief Executive Officer
20 Derby Street, Collingwood VIC 3066
Phone 03 9417 1025 or 0425 724 23
stephanieg@cda.org.au

Summary of recommendations

Recommendation 1: Funding of research that reliably identifies the scale and prevalence of all types of abuse and neglect of children and young people with disability in Australia. This may include collection of data regarding personal safety and experiences of abuse that disaggregates age and disability.

Recommendation 2: Commissioning of research into the emotional and mental health impacts of chronic diminishing and low expectations arising from entrenched ableism within the Australian community on children and young people with disability and implications for policy and practice.

Recommendation 3: Commissioning of research regarding the barriers to recognising abuse of children and young people with disability in institutional settings, why definitions of abuse differ between institutional and familial settings and implications for policy and practice.

Recommendation 4: Commissioning of research into experiences of abuse of children with disability in education settings.

Recommendation 5: Collection of national data on the use of restrictive practices on children and young people with disability in all contexts, including education settings.

Recommendation 6: Commissioning of national research regarding the experiences of children with disability utilising out of home care services and implications for policy and practice.

Recommendation 7: Commissioning of national research regarding the experiences of children with disability in juvenile justice facilities and implications for policy and practice.

Recommendation 8: Review of practices, policies and procedures by education authorities with the aim of clearly defining and eliminating abuse of students with disability. The completion of this should be a pre-condition of education authorities gaining state or commonwealth government funding.

Recommendation 9: All personnel who are associated with the provision of education for students with disability, including from state, territory and Commonwealth education departments and those who work directly in schools in any capacity to receive ongoing professional development on inclusive education. This should aim to enable and facilitate the establishment of a new culture which values the contribution of children with disability and ensures meaningful participation.

Recommendation 10: The establishment of an independent mechanism for complaints regarding education settings which allows disputes to be resolved in a timely manner.

Recommendation 11: Legislation of a regulatory framework mandating organisational responsibility for the safety of people with disability accessing services, including criminal sanctions for serious breaches in duty of care regarding abuse of clients.

Recommendation 12: National legislation that criminalises, except where there is a serious threat to life, the sterilisation of children (regardless of disability).

Recommendation 13: Future implementation plans for National Disability Strategy include clear targets, measures and outcomes aimed at preventing the abuse of children and young people with disability.

Recommendation 14: Work within state, territory and Commonwealth commissions for children and young people to ensure experiences of children and young people with disability are a core focus of advocacy work.

Recommendation 15: Development of an 'anti-ableism' policy for schools by state and territory education departments providing clear objectives, the legislative context and rights imperatives, responsibilities and monitoring and evaluation. Examination of state based anti-racism and anti-sexism policies may be relevant to inform the policy.

Recommendation 16: Increased resourcing of existing organisations to provide formal advocacy for children and young people who have experienced abuse.

Recommendation 17: Funding of disability advocacy organisations to provide ongoing systemic advocacy concerning experiences and protection of people with disability from abuse.

Recommendation 18: Training for staff working with children and young people with disability to uphold rights to safety and recognise abuse. This should include ensuring organisational practice is focused on upholding respect and valuing and acknowledging the contributions people with disability make to the community.

Recommendation 19: Introduction of legislation that replicates the recently passed South Australian *Statutes Amendment (Vulnerable Witnesses) Bill 2015* across each state and territory.

Recommendation 20: Training and professional development for criminal justice agencies around the rights of children and young people with disability who are victims of crime and to support children with disability who are victims of abuse in making statements.

Recommendation 21: Development of mechanisms to regularly assess and monitor the accessibility of justice procedures nationally.

Recommendation 22: Consideration of ways to better support institutions and organisations in developing frameworks and policies to prevent abuse and protect children and young people with disability.

Recommendation 23: Mandatory requirements to ensure all organisations providing services to children implement child safe policies and accreditation.

Recommendation 24: Availability of education that teaches and reinforces the development of healthy and respectful relationships that are accessible to children with disability.

Recommendation 25: Establishment of a national oversight body for the use of restraint and seclusion that alone is charged with the power to authorise the use of restrictive practices beyond a first unplanned emergency. This body should also record national data on the use of restraint and seclusion regardless of setting.

Recommendation 26: Development of policy and/or legislation mandating the development and implementation of Positive Behaviour Support plans, ensuring that adequate training has been undertaken by those developing plans.

Recommendation 27: Development of policy mandating notification of families within an identified time period if their children are subjected to restraint and seclusion by an institution or residential setting.

Recommendation 28: Consideration of requirements for services working with children and young people with disability regarding minimum employment standards for staff supervision, training and working conditions. One option could be limiting the number of casual staff employed.

Recommendation 29: Development of mandated pre-employment screening processes for people working with children, people with disability and other vulnerable people.

Recommendation 30: Development of a national working with children check and a national barred person list prohibiting certain offenders from working with people with disability.

Recommendation 31: Establishment of an independent national oversight body to monitor quality and safeguards in disability services. The body should have jurisdiction over supports that are funded through the National Disability Insurance Scheme and those that are not.

Bibliography

Attorney General's Department 2014, *Disability Justice Plan 2014-2017*, Government of South Australia, Adelaide.

Attorney General's Department 2014, *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best practice*, Government of South Australia, Adelaide.

Australian Bureau of Statistics 2012, *Disability, ageing and carers, Australia: Summary of findings, 2012*, Commonwealth of Australia, Canberra.

Australian Human Rights Commission 2013, *Access to justice in the criminal justice system for people with disability*, Sydney.

Australian Human Rights Commission 2014, *Equal before the law: Towards disability justice strategies*, Sydney.

Australian Human Rights Commission 2014, *The forgotten children: National inquiry into children in immigration detention*, Sydney.

Australian Institute of Health and Welfare 2015, *Child protection Australia 2013-2014*, Canberra.

Australian Institute of Family Studies 2014, *Effects of child abuse and neglect for adult survivors*, Commonwealth of Australia, Canberra, viewed 24 July 2015, <https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-adult-survivors>.

Australian Institute of Family Studies 2014, *Effects of child abuse and neglect for children and adolescents*, Commonwealth of Australia, Canberra, viewed 21 April 2015, <https://www3.aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolesce>.

Australian Institute of Family Studies 2013, *Risk and protective factors for child abuse and neglect*, Commonwealth of Australia, Canberra, viewed 22 July 2015, <https://aifs.gov.au/cfca/publications/risk-and-protective-factors-child-abuse-and-neglect>.

Australian Institute of Family Studies 2012, *What is child abuse and neglect?*, Commonwealth of Australia, Melbourne.

Australian Psychological Society 2011, *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector*, Melbourne.

R Baker, N McKenzie 2013, 'Yooralla senior executives accused of ignoring warning signs on rape claims,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/yooralla-senior-executives-accused-of-ignoring-warning-signs-on-rape-claims-20131120-2xvin.html>.

E Baldry, J Bratel, J Breckenridge 2006, 'Domestic violence and children with disabilities: Working towards enhancing social work practice,' *Australian social work*, Vol. 59, No. 2.

A Blackwood 2014, 'Yooralla failings: No more excuses,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/comment/yooralla-failings-no-more-excuses-20141125-11t5cl.html>.

F Briggs 2005, 'Personal safety issues in the lives of children with learning disabilities,' *Children Australia*, Vol. 30, No. 2, p. 21.

D Brown 2010, 'Autistic kids 'caged' at school,' *the Mercury*.

D Brown, C Lewis 2013, 'Competence is in the Eye of the Beholder: Perceptions of intellectually disabled child witnesses', *International journal of disability development and education*, Vol. 60, No. 1.

I Brown, A Schormans. 2014, 'Quality of life, children with intellectual and developmental disabilities and maltreatment,' *International public health*, Vol. 6, No. 2.

R Brown 2015, 'Children with autism caged and abused at school,' *Sydney Morning Herald*, viewed 22 July 2015, <http://www.smh.com.au/nsw/children-with-autism-caged-and-abused-at-school-20150402-1mbt48.html>.

M Calligeros 2015, 'Bulleen Heights Special School student left on locked Crown Coaches school bus,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/bulleen-heights-special-school-student-left-on-locked-crown-coaches-school-bus-20150611-ghlayw.html>.

Child Welfare Information Gateway 2015, *Understanding the effects of maltreatment on brain development*, United States of America Department of Health and Human Services, viewed 3 July 2015, https://www.childwelfare.gov/pubPDFs/brain_development.pdf#page=5&view=Effectsofmaltreatmentonbraindevelopment.

Child Wise, *Choose with care: 12 steps to a child safe organisation*, South Melbourne, viewed 11 April 2015, <https://www.dcp.wa.gov.au/servicescommunity/information/Documents/Service%20Excellence/Choose%20with%20Care%20Manual%20-%20Child%20Wise%2012%20Steps.pdf>.

Children with Disability Australia 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Melbourne.

A Cooper 2013, 'Autistic boy's carer had no experience with children,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/autistic-boys-carer-had-no-experience-with-children-20130625-2ouk8.html>.

Council of Australian Governments 2011, *National Disability Strategy 2010-2020*, Commonwealth of Australia, Canberra.

Council of Australian Governments 2009, *Protecting children is everybody's business: National framework for protecting Australia's children 2009-2020*, Commonwealth of Australia, Canberra.

Council of Australian Governments 2012, *Protecting Children is Everybody's Business: National Framework for protecting Australia's children 2009-2020, Second three-year action plan 2012-2015*, Commonwealth of Australia, Canberra.

CREATE Foundation 2015, *Submission to the Community Affairs References Committee Inquiry into the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*, South Brisbane, viewed 6 July 2015,

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Young_people_in_aged_care/Submissions.

Department of Justice and Regulation 2015, *Key statistics on the Victorian prison system 2009-2010 to 2013-2014*, Victorian Government, Melbourne.

Department of Social Services 2015, *A Framework for Information, Linkages and Capacity Building*, Commonwealth of Australia, Canberra.

Disability Reform Council 2015, *Consultation paper: Proposal for a National Disability Insurance Scheme quality and safeguarding framework*, Commonwealth of Australia, Canberra.

J Flanagan 2014, *The plight of people living with disabilities within Australian immigration detention: Demonised, detained and disowned*, National Ethnic Disability Alliance, Civic Square.

R Gilbert C Widom, K Browne, D Fergusson, E Webb, S Janson 2008, 'Burden and consequences of child maltreatment in high-income countries,' *The Lancet*, Vol. 373.

L Haysom, D Indig, E Moore, C Gaskin 2014, 'Intellectual disability in young people in custody in New South Wales, Australia – prevalence and markers,' *Journal of intellectual disability research*, Vol. 58, No. 11.

House of Representatives 2015, *Official Hansard, No. 1, 2015, Tuesday, 10 February 2015*, viewed 24 July 2015, <http://goo.gl/LHq9gY>.

S Lillebuen 2014, 'Mother wants answers after teenage daughter's armpits were shaved by teacher,' *The Age*, viewed 22 April 2015, <http://www.theage.com.au/victoria/mother-wants-answers-after-teenage-daughters-armpits-were-shaved-by-teacher-20140529-396jg.html>.

Ministerial Council for Education, Early Childhood Development and Youth Affairs 2011, *National Safe Schools Framework resource manual*, Commonwealth of Australia, Canberra.

G Mitchell 2013, *Children with disabilities using child and family welfare services, Melbourne*, OzChild, South Melbourne.

National Disability Insurance Scheme Act 2013 (Cth).

News.com.au 2010, 'Outrage over Seven Hills West Public School putting autistic children in cage,' viewed 22 July 2015, <http://www.news.com.au/national/outrage-over-seven-hills-west-public-school-putting-autistic-kids-in-cage/story-e6frfkvr-1225839691640>.

P Nolan 2014, 'Police taser teen in second Ballarat incident,' *The Courier*, viewed 22 April 2015, <http://www.thecourier.com.au/story/2085062/police-taser-teen-in-second-ballarat-incident/?cs=62>.

Parenting Research Centre 2015, *Scoping review: Evaluations of out-of-home care practice elements that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Commonwealth of Australia, Canberra.

Parenting Research Centre 2014, *Scoping review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, Royal Commission into Institutional Responses to Child Sexual Abuse, Commonwealth of Australia, Canberra.

Productivity Commission 2011, *Disability care and support: Productivity Commission Inquiry report overview and recommendations*, Commonwealth of Australia, Canberra.

Productivity Commission 2015, *Report on government services 2015 - Child protection*, Commonwealth of Australia, Canberra.

S Robinson, L Chenowith. 2010, 'Preventing abuse in accommodation services: From procedural response to protective cultures,' *Journal of Intellectual Disabilities*, Vol. 15, No. 1.

S Robinson 2014, 'Preventing abuse of children and young people with disability under the National Disability Insurance Scheme: A brave new world?,' *Australian Social Work*.

S Robinson, D McGovern 2014, *Safe at School? Exploring safety and harm of students with cognitive disability in and around school*, Centre for Children and Young People, Southern Cross University, Lismore.

Royal Commission into Institutional Responses to Child Sexual Abuse 2014, *Interim report volume one*, Commonwealth of Australia, Canberra.

Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Report of case study number nine: The responses of the Catholic Archdiocese of Adelaide and the South Australian Police, to allegations of child sexual abuse at St. Ann's Special School*, Commonwealth of Australia.

D Scott 2014, *Understanding child neglect*, Australian Institute of Family Studies, Melbourne.

Senate Community Affairs Reference Committee 2013, *Report into the involuntary or coerced sterilisation of people with disabilities in Australia*, Commonwealth of Australia, Canberra, viewed 5 August 2014.

D Skarbek, K Hahn, P Parrish 2009, 'Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education,' *Sexuality and disability*, Vol. 27.

P Sullivan, J Knutson 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child abuse and neglect*, Vol. 24, No. 10, p. 1257.

J Topsfield 2013, 'Tough discipline on the school bus,' *The Age*, viewed 22 July 2015, <http://www.theage.com.au/victoria/tough-discipline-on-the-school-bus-20130407-2hewi.html>.

K Tyler 2015, 'Shining a light into the shadows: The hidden health needs of juveniles in detention,' *Alternative law journal*, Vol. 30, No. 2.

J Tucci, J Mitchell, D Holmes, C Hemsworth, L Hemsworth 2015, 'Constructing a child protection policy to support a safeguarding children culture in organisations and institutions,' *Children Australia*, Vol. 40, No. 1.

United Nations Committee on the Rights of Persons with Disabilities 2013, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013)*.

United Nations Children’s Fund 2014, *Hidden in plain sight: A statistical analysis of violence against children*, New York.

United Nations Children’s Fund 2013, *State of the world’s children 2013: Children with disabilities*, United Nations, New York.

United Nations General Assembly 1989, *Convention on the Rights of the Child*.

United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*.

Victorian Equal Opportunity and Human Rights Commission 2014, *Beyond doubt: The experiences of people with disabilities reporting crime*, Melbourne.

Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate measures: The relinquishment of children with disability into state care in Victoria*, Carlton.

Victorian Equal Opportunity and Human Rights Commission 2012, *Held back: The experiences of students with disabilities in Victorian schools*, Melbourne.

Victorian Ombudsman 2010, *Own motion investigation into Child Protection –out-of-home care*, Melbourne.

K Wild 2015, ‘NT Government sought advice on abortion for teenager in care without her knowledge,’ *ABC News*, viewed 22 April 2015, <http://www.abc.net.au/news/2015-03-30/nt-govt-planned-abortion-for-teen-in-care/6358372>.

I Wissink, E van Vugt, X Moonen, G Stams 2015, ‘Sexual abuse involving children with an intellectual disability (ID): A narrative review,’ *Research in developmental disabilities*, Vol. 36.

Women with Disabilities Australia 2013, *Dehumanised: The forced sterilisation of women and girls with disabilities in Australia*, Rosny Park.

Yooralla 2015, *How we’re upholding safeguards*, Melbourne, viewed 24 July 2015, https://www.yooralla.com.au/_data/assets/pdf_file/0017/21833/How-were-upholding-safeguards_web.pdf.

Yooralla 2012, *The Joyce Report*, viewed 22 July 2015, <https://www.yooralla.com.au/about/Custom-wellbeing-and-safeguards/the-joyce-report>.

Yooralla 2014, *Statement from Yooralla CEO Sanjib Roy*, Australian Broadcasting Corporation, viewed 22 July 2015, http://www.abc.net.au/reslib/201411/r1359820_19109021.pdf.