



Children and Young People
with Disability Australia

Submission to the Joint Standing Committee on the National Disability Insurance Scheme:

Inquiry into the NDIS Quality and Safeguards Commission

**Children and Young People with Disability Australia
August 2020**

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Introduction

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0-25 years. CYDA has an extensive national membership of over 5,000 young people with disability, families and caregivers of children with disability, with the majority of our members being families.

CYDA'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. To do this, we focus on the following:

- Listening and responding to the voices and experiences of children and young people with disability
- Advocating for children and young people with disability for equal opportunities, participation and inclusion in the Australian community
- Educating national public policy-makers and the broader community about the experiences of children and young people with disability
- Informing children and young people with disability, their families and caregivers about their citizenship rights and entitlements
- Celebrating the successes and achievements of children and young people with disability.

Our work includes specific funding and activities around the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, as well as the National Redress Scheme supporting survivors of child sexual abuse. As such, abuse and neglect form a significant part of our policy and advocacy work, as do questions of what constitutes a 'good quality' disability service.

CYDA appreciates the opportunity to provide this submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS), outlining our concerns with the current safeguarding and rights-protection environment for children and young people with disability across Australia. We have provided similar information to the SA Safeguarding Taskforce¹ and the independent review of the NDIS Quality and Safeguards Commission being undertaken by Mr Alan Robertson.

¹ See notes from CYDA's meeting with Task Force co-chairs ([Attachment 9.5.28](#)).

Our recommendations

- Address oversight gaps between national and state/territory systems, including the NDIS Quality and Safeguards Commission
- Harmonise legislation and practice to protect the rights of children and young people with disability, without losing current pockets of good practice
- Deliver assertive outreach and community engagement about the NDIS Quality and Safeguards Commission, and ensure communication is targeted to service users
- Implement the recommendations of the Australian Human Rights Commission's 2018 report, *A Future Without Violence*.
- Invest in long-term prevention work to change community attitudes towards people with disability and stop violence and abuse before it starts.

Key concerns and areas for action

Urgent changes need to be made to the way that the rights of people with disability – including the rights to be free from violence, abuse and exploitation² – are upheld and protected the country. This includes the way that current safeguarding arrangements are overseen and implemented.

The gaps in the current approaches have been brought to the community's attention once again following the tragic death of Ms Ann-Marie Smith in South Australia earlier this year. Like many others, CYDA was incredibly saddened to hear of Ms Smith's passing and how she had been treated leading up to her death. This points to a significant failure of various service systems and oversight mechanisms, and we are pleased there are a number of inquiries and reviews currently examining these systems.

CYDA has serious concerns about the implementation of the United Nations Convention on the Rights of Persons with Disabilities and the systemic frameworks supporting the rights of children and adults with disability across Australia. For example, we do not have harmonised legislation about who provides safeguarding and protections for children and young people with disability against violence, abuse and neglect. There is also significant variation between jurisdictions with regards to complaints, reporting, and investigation mechanisms.

We are concerned about the current lack of clarity and other issues around intersections between the NDIA, the NDIS Quality and Safeguards Commission, and other systems affecting children and young people with disability, including education, health, justice, and child protection. Continuing interface issues for children and young people and their families/caregivers navigating these systems lead to poorer outcomes and can contribute to tragic outcomes for children who fall through the cracks between systems, as we saw in Queensland recently with the terrible treatment and death of Willow Dunn and the shocking abuse experienced by two autistic brothers.³

We know that children and young people with disability are over-represented in child protection, services, out-of-home care and youth justice, but there is insufficient monitoring and oversight or accountability for reporting to identify the systemic abuse and neglect that has either led them to these systems or is an outcome of their involvement in the systems.

There is considerable risk that further harm will occur to children and adults with disability without change to the ways that safeguarding mechanisms are currently implemented and overseen.

In terms of the specific role of the NDIS Quality and Safeguards Commission, CYDA considers there is a strong need for the Commission to undertake more assertive outreach and proactive community education around its role and powers. This could include, for instance, providing examples of what an individual is likely to expect if they make a complaint or report to the Commission.

We are concerned that much of the Commission's external communications work focuses on informing providers rather than people with disability and their families, caregivers and advocates (service users). We are also concerned about lack of monitoring, oversight and assertive outreach

² United Nations Convention on the Rights of Persons with Disabilities, Article 16.

³ Roberts, G. & Swanston, T. (2020), 'Death of 4yo Willow Dunn came after 'sustained mistreatment', Brisbane detective alleges,' *ABC News* (29 May), available: <https://www.abc.net.au/news/2020-05-29/willow-dunn-death-mistreatment-alleged-child-family-commission/12300306>; Smith, R. (2020). 'Neighbours repeatedly warned authorities about two teens kept in squalid Brisbane room,' *news.com.au*, (29 May), available: <https://www.news.com.au/national/queensland/news/neighbours-repeatedly-warned-authorities-about-two-teens-kept-in-squalid-brisbane-room/news-story/5dfc3245eb0f82734e6c9f9fe2dadaa8>.

for children and young people with disability who may be more vulnerable to violence and abuse during the COVID-19 pandemic and associated lockdowns.

There has already been much work examining the key elements of effective quality, safeguarding and oversight mechanisms in the disability sector, as well as other sectors including aged care. CYDA draws the Committee's attention to the 2018 report from the Australian Human Rights Commission, *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings*;⁴ and in particular, to two of the report's recommendations:

- Quality, safeguarding and oversight mechanisms in the disability and mainstream sectors should incorporate and implement the essential elements of a quality, safeguarding and oversight system identified in Chapter 2 of this report
- The NDIS Commission should work with the [Australian Human Rights] Commission within 18 months of the release of this report to identify the extent to which the essential elements identified in Chapter 2 have been implemented through the Safeguarding Framework and NDIS Commission...

The 'essential elements' identified by the Commission's report are:

- a human rights-based approach
- a connected and integrated system
- independent oversight and monitoring
- robust prevention and response elements
- accessibility for people with disability
- continuous systems improvement through data.

Clearly significant work is required to ensure these elements are embedded in current safeguarding approaches across Australia. This report was released over two years ago, and few changes have been seen since then. We urge the Committee to consider re-emphasising the recommendations made by the Australian Human Rights Commission in 2018. This must include clear accountability from the NDIS Quality and Safeguards Commission, and the Australian Government, where relevant, about which of the above elements have been implemented, and how this has been done.

At a fundamental level, CYDA is very concerned that we will not see the reduction and prevention of violence, abuse and neglect against people with disability until there is a change in community attitudes towards disability, until people with disability are valued and included in the same ways as non-disabled people, and until there are effective mechanisms to support and enable the human rights of all people with disability to be upheld.

While the Disability Royal Commission offers a considerable opportunity to shine a light on these areas, and to recommend comprehensive change, we must not wait for the Commission's final report to implement the changes that have already been identified and that are immediately needed to deliver greater rights protections for people with disability.

⁴ Australian Human Rights Commission (2018), *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings*. Available: <https://humanrights.gov.au/our-work/disability-rights/publications/future-without-violence-2018>.