**Senate Community Affairs Legislation Committee**

**National Disability Insurance Scheme Amendment**

**(Quality and Safeguards Commission and Other Measures) Bill 2017**

**Submission – August 2017**

**Children and Young People with Disability Australia**

**INTRODUCTION**

Children and Young People with Disability (CYDA) supports the establishment of a robust quality and safeguarding framework for the National Disability Insurance Scheme (NDIS). The *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017* (the Bill) provides for a nationally consistent approach to setting and maintaining obligations and standards for NDIS providers and workers, including through the creation of the NDIS Quality and Safeguards Commissioner (the Commissioner) with overarching responsibility for regulating the new quality and safeguarding mechanisms.

CYDA frequently hears of experiences of abuse in a range of settings. These include children being subjected to violence; seclusion; and chemical, mechanical and physical restraint. This is reflected in available research which shows that children and young people with disability are three times more vulnerable in this respect than their peers without disability.[[1]](#footnote-1) Children with disability are a particularly vulnerable group where abuse and neglect is concerned. Thus the Commissioner has a significant role to play in affording protections under the quality and safeguarding framework.

CYDA acknowledges that it has had considerable opportunities to provide feedback on the development of the legislation to date and acknowledges the significant work and responsiveness to feedback of the Department of Social Services.

**CHILDREN AND YOUNG PEOPLE WITH DISABIILITY AUSTRALIA**

CYDA is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services and is a not for profit organisation. CYDA has a national membership of 5300.

CYDA 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 understanding of the experiences and challenges faced by children and young people with disability.

CYDA’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.

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

**GENERAL COMMENTS**

Feedback is provided on issues considered to be of key relevance to children and young people with disability. Many of the detailed arrangements for quality and safeguarding under the scheme will be prescribed by the *National Disability Insurance Scheme rules* (NDIS rules) and associated standards and policies. It is therefore difficult at this stage to provide informed feedback on some aspects of the proposed framework. Accordingly some of CYDA’s comments relate to specific provisions of the Bill, whereas others reflect CYDA’s views about preferable approaches to arrangements to be dealt with by the NDIS rules.

Comment is provided on:

* functions of the NDIS Quality and Safeguards Commissioner;
* monitoring and reporting of restrictive practices;
* complaints management;
* worker screening and monitoring;
* reportable incident investigations;
* participants as commissioners of their own services and information about NDIS providers; and
* consultation with people with disability and representative organisations.

**SPECIFIC FEEDBACK**

**Functions of the NDIS Quality and Safeguards Commissioner**

CYDA welcomes the inclusion of a preventative focus in the Commissioner’s registration and reportable incident and complaints functions. CYDA is of the view that the preventative aspects of safeguarding should also be incorporated in the Commissioner’s core functions. Ongoing quality assurance, education and capacity building for the disability service sector are critical measures to prevent instances of exploitation, violence and abuse and ensure the provision of high quality services and supports.

CYDA is of the view that the Commissioner’s core functions should also include developing a workplace culture amongst disability service providers that values and is inclusive of people with disability. Organisational culture within service providers that positions children and young people as inferior, helpless and dependent increases their vulnerability to abuse.[[2]](#footnote-2)

CYDA’s issues paper, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of people with disability,* summarises research about environments where abuse of children and young people with disability was more likely to occur:

*[These] 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. Finally, these environments have a strong power imbalance between workers and people using the service (children and their families).*[[3]](#footnote-3)

**Monitoring and reporting of restrictive practices**

The Commissioner’s proposed behaviour support function to provide leadership in the reduction and elimination of the use of restrictive practices by NDIS providers is an important means of progressing the implementation of the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

Under section 73Z any uses of restrictive practices which are not in accordance with a State or Territory authorisation relating to the person receiving supports will be ‘reportable incidents’. CYDA supports the strict regulation and monitoring of restrictive practices *in all instances* where they currently occur. In CYDA’s view, the NDIS rules and associated standards and policies should ensure that all uses of restrictive practices are strictly recorded and monitored, including those that are in accordance with an authorisation.

**Complaints Management**

It is frequently reported to CYDA that complaints about disability services do not always lead to a resolution or shared understanding of events. CYDA sees it as important to have acknowledgement and recording of the range of outcomes for complainants, including where complaints do not result in conciliation or resolution.

**Worker screening and monitoring**

CYDA believes that there should be a nationally consistent system requiring NDIS providers to undertake screening and monitoring of workers to provide the same level of protection for people with disability across Australia.

CYDA also supports the option of a nationally consistent system of worker registration, including an independent risk-based assessment of whether a potential employee poses a risk, for those working with children with disability (option B4 in the Explanatory Memorandum). In CYDA’s view this additional measure is vital to ensure the safety of children with disability.

**Reportable incident investigations**

Reportable incident investigations should be conducted in a transparent way that ensures accountability. It is important that complainants are able to obtain information about the progress of investigations and that investigation reports are made accessible to interested parties and, where appropriate, the public. If an independent investigation is conducted by a registered NDIS provider as envisaged by section 73Z, this should not compromise the transparency of the investigation process.

**Participants as commissioners of their own services and information about NDIS providers**

NDIS participants now act as commissioners of their own services. CYDA supports the submission of the Young People in Nursing Homes Alliance on this issue:

*Because scheme participants are commissioners of their own services, it is important that the Quality and Safeguarding framework enables participants to be comprehensively informed about the behaviour and ratings of providers, including the commission’s upholding of a complaint about a provider; or the provisional and final outcomes of audits undertaken by it.*[[4]](#footnote-4)

The ability for participants to exercise choice and control over service provision and self-manage plans is fundamental to the scheme. For this reason it is critical that participants are able to access information about the conduct of NDIS providers, including sanctions imposed, to enable them to make informed decisions about services and supports.

**Consultation with people with disability and representative organisations**

CYDA is concerned that the requirement in section 181D(4) for the Commission to ‘endeavour’ to ‘provide opportunities’ for people with disability to participate in certain matters does not impose a stringent enough obligation to consult with people with disability and representative organisations.

This approach is inconsistent with clause 3 of the Bill, according to which ‘[p]eople with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity’, and Article 4(3) of the United Nations Convention on the Rights of Persons with Disabilities, which states:

*In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*

CYDA recommends changing the wording of section 181D to be more consistent with a positive obligation to consult with and actively involve people with disability in matters concerning them.

Thank you for the opportunity to provide feedback on the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017.* Please do not hesitate to contact CYDA if you would like to discuss further any aspects of this submission.

**CONTACT**

Stephanie Gotlib

Chief Executive Officer

20 Derby Street, Collingwood VIC 3066

03 9417 1025

stephaniegotlib@cyda.org.au

[www.cyda.org.au](http://www.cyda.org.au)

**BIBLIOGRAPHY**

Maclean, M et al. 2017, ‘Maltreatment Risk among Children with Disabilities,’ *Paediatrics,* Vol. 139, No. 4

Robinson, S 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Children with Disability Australia

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

Young People in Nursing Homes National Alliance, Submission to the Inquiry into the NDIS Amendment (Quality & Safeguards Commission & Other Measures) Bill 2017, August 2017

1. P Sullivan et al. 2000, ‘Maltreatment and disabilities: A population-based epidemiological study,’ *Child abuse and neglect,* Vol. 24, No. 10, p. 1257; M Maclean et al. 2017, ‘Maltreatment Risk among Children with Disabilities,’ *Paediatrics,* Vol. 139, No. 4. [↑](#footnote-ref-1)
2. S Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,* p. 12. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Young People in Nursing Homes National Alliance, Submission to the Inquiry into the NDIS Amendment (Quality & Safeguards Commission & Other Measures) Bill 2017, August 2017, p. 3. [↑](#footnote-ref-4)