

Committee on the Rights of the Child

General Comment on the Rights of Adolescents

CDA Submission - April 2015

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CONTENTS

INTRODUCTION	3
CHILDREN WITH DISABILITY AUSTRALIA	4
CURRENT LEGISLATIVE & POLICY FRAMEWORK	5
GENERAL COMMENTS	7
SPECIFIC AREAS	10
<i>ATTITUDES</i>	10
<i>EDUCATION</i>	10
<i>INADEQUATE SERVICES & SUPPORTS</i>	11
<i>VIOLENCE & ABUSE</i>	11
<i>ACCESS TO JUSTICE</i>	12
<i>MEANINGFUL PARTICIPATION & REPRESENTATION</i>	13
<i>POST SCHOOL TRANSITION</i>	14
<i>EMPLOYMENT</i>	14
CONCLUSION	15

INTRODUCTION¹

Adolescents with disability in Australia face profound disadvantage. The typical experience of too many adolescents with disability involves missing out on many opportunities afforded to their peers without disability. This includes the denial of social, educational, recreational and employment opportunities. Adolescents with disability also face marked discrimination in relation to justice and have notably higher risks and experiences of abuse.

It is frequently reported to Children with Disability Australia (CDA) that adolescents with disability contend with discrimination, inadequate services and supports and a culture of low expectations.

A young person spoke of his personal experience of disability at the launch of a CDA report on inclusive education. His experience typifies the breadth of barriers facing many adolescents in Australia and highlights the entrenched ableism within the Australian community with which many adolescents must constantly contend.

"I'm 15 years old and a student with a disability. I'm in Year 9 at a government school. Kids with disability will continue to be disadvantaged unless we really start thinking and changing our attitudes about disability.

I have experienced a lot of discrimination and I'm only young. I notice this at school. Comments are made on the streets and even in the media.

In our society there are many ways kids with disability are discriminated against. This can happen inside schools and outside schools. For example, if I was in a wheelchair I wouldn't be able to catch public transport to my school because my tram is not accessible.

The launch of the report is an important start. It shows that really including and accepting students with disability in the schooling system is not just good for the students who have a disability, it is good for everybody. In fact, there is no research that says that segregated schooling is better than inclusive education. None.

...When I first started high school, bullying was a big issue, but it has eased off throughout the years. I think it has got better as I have kept away from the bullies and my friends have got to know me. I think bullying is an issue for kids with disability because of attitudes to difference.

I think kids with disability are bullied more often than other kids because of discriminatory attitudes about difference. I think many kids with disability are seen as easy targets. I think I have taught my peers how terrible it is to be called the 'R' word. I asked to speak at a year level assembly for International Day of People with Disability when I was in Year 7. I simply said it felt terrible when people used the 'R' word and everyone needed to stop presuming disability is a bad thing. I think it helped my friends and others in my year learn about disability.

¹ CDA would like to note that it is difficult to disaggregate the experiences and data of children and young people with disability to focus solely on the experiences of adolescents as defined within the Outline Scoping Document for the General Comment on the Rights of Adolescents. CDA uses the same definition of young people as the United Nations, as people aged 15-24. References to young people in this submission therefore include the experiences of adolescents as will be defined in the General Comment.

Disability is a different ability. School would be a much better place for kids with disability if everyone thought about their attitude to disability. Disability doesn't mean 'not normal' and it does not mean less ability. It's just a different ability. We are all different so it shouldn't be such a big deal.

So, I just wanted to take this opportunity to try and encourage everyone to think about disability and to recognise disability as being an important and enriching part of the community. In your school, in your workplace, in your home - think before you act. Think before you talk. Don't bully or disrespect someone with disability. Look at things from another perspective. Celebrate everyone in your community. It will enrich us all. Schools are a great place to start."

CDA welcomes the opportunity to provide a submission to the Committee on the Rights of the Child for the General Comment on the Rights of Adolescents. This submission focuses on the unique experiences, opportunities and challenges facing adolescents with disability in Australia.

In this submission CDA discusses the experiences of adolescents with disability and outlines the legal and policy framework that supports the human rights of adolescents with disability in Australia. General comments are made about the broader context in which adolescents with disability live before specific areas of concern regarding the experiences, opportunities and challenges with which adolescents with disability typically contend are considered.

CHILDREN WITH DISABILITY AUSTRALIA

CDA is the national disability representative organisation for children and young people aged 0-25 years. CDA presently has a national membership of 5000 and a social media following of over 10,000 across the major platforms. CDA is primarily funded through the Department of Social Services. The organisation also presently receives project funding from the Australian Government Department of Education.

CDA provides a link between the direct experiences of children and young people with disability and their families to federal government and other key stakeholders through:

- Participation and representation of children and young people with disability;
- Development and dissemination of expert advice;
- Implementation of high impact national advocacy campaigns to positively influence policy, practice and attitudes of the Australian Government, key stakeholders and the wider community;
- Delivery of strategic projects that support the Australian Government to reform its policy and practice; and
- Partnership approach with its membership, non-government, government and philanthropic partners.

VISION

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.

ROLE

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.

GUIDING PRINCIPLES

The work of CDA is guided by the following principles:

- **Fundamental rights:** the rights and interests of children and young people with disability are CDA's highest priority consistent with Australia's obligations under the United Nations Conventions on the Rights of the Child and the Rights of Persons with Disabilities.
- **Having a childhood:** children with disability are children first and foremost and have a right to all aspects of childhood that children without disability are afforded.
- **Participating in decision making:** children and young people with disability have the right to participate, in whatever capacity, in decisions that impact on their lives.
- **An inclusive approach:** children and young people with all types of disability, from all cultural and religious backgrounds, living with all types of families and in all geographic locations are supported by the work of CDA.
- **Valuing families and care givers:** for the contributions made by families and care givers to support the rights and interests of children and young people with disability.
- **Working in partnerships:** CDA works collaboratively with relevant government, non-government, private sector agencies and the broader community to promote the rights and interests of children and young people with disability.
- **Being accountable:** CDA operates accountably, effectively and ethically as the national peak body charged with the mandate of advocating for children and young people with disability.

Further information about CDA is available at www.cda.org.au.

CURRENT LEGISLATIVE & POLICY FRAMEWORK

The legislative and policy context relevant to adolescents with disability is extremely comprehensive. Australia has signed and ratified both the United Nations' *Convention on the Rights of Persons with Disability 2006* (CRPD) and the *Convention on the Rights of the Child 1989* (CRC). Their ratification demonstrates Australia's commitment to protect and respect the rights, standards and obligations contained within these treaties.

The primary legislative means which promotes the rights and entitlements of people with disability in Australia is the *Disability Discrimination Act 1992*. It has the related aim of eliminating discrimination. Further state and territory legislation exists with similar objectives.

In accordance with the *Disability Discrimination Act* (DDA), the Australian Government formulated the Disability Standards for Education in 2005. These Standards provide a framework to ensure

students with disability are able to access and participate in education on the same basis as other students. The DDA makes it unlawful to contravene a disability standard, and compliance with a disability standard is taken to be compliance with the DDA.

In 2011 the Council of Australian Governments (COAG) endorsed Australia's first *National Disability Strategy* to show their commitment to providing a unified, national approach to improving the lives of Australians with disability, their families and carers. 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 will ensure that mainstream services and programs including healthcare, housing, transport and education, are accessible and address the needs of people with disability. The strategy will play a role in ensuring that the principles of the CRPD are integral to the policies and programs which affect people with disability in Australia. Six outcome areas were identified as requiring policy action due to evidence of inadequacies or inequalities for people with disability:

- Inclusive and accessible communities
- Rights protection, justice and legislation
- Economic security
- Personal and community support
- Learning and skills
- Health and wellbeing

The Strategy makes few specific references to adolescents with disability. One area of policy direction under the 'Economic Security' outcome area identifies the need for improved access to housing for young people with disability to be supported in their economic transition to adulthood. While the policy directions identified under the 'Learning and skills' outcome area focus on a commitment by the Australian Government to improve educational programs and outcomes for children and young people with disability.

In 2009 COAG initiated the *National Framework for Protecting Australia's Children 2009-2020*, the first long term national approach to ensuring the safety and wellbeing of Australia's children. The Framework utilises the same definition of 'child' (anyone under the age of 18 years) as that of the CRC. 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. 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 to 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.²

However, there are minimal initiatives and policy actions in the Framework that refer specifically to children with disability. This was particularly the case in the first action plan. Although the second action plan identifies disability as a 'new priority' for the Framework, CDA is concerned that children with disability are afforded minimal focus in the Framework, are segregated out from broader concerns about child welfare and that actions around disability are not child-centred.

² Department of Social Services 2014, *National Framework for Protecting Australia's Children, 2009-2020*, Commonwealth of Australia, Canberra, viewed 31 March 2015, <http://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>.

In addition, the rights and welfare of adolescents in Australia are supported by the work of specific bodies dedicated to strengthening the wellbeing and advocating for the rights of children and young people. The majority of states and territories in Australia have either specific commissions or advocates for children and young people, which are generally independent bodies although can be embedded within a regional human rights institution. Nationally and more recently, the Australian Human Rights Commission now also includes a National Children's Commissioner. The roles and power of these bodies are variable across each jurisdiction.

GENERAL COMMENTS

To be a young person in Australia today can be a challenging and difficult time. Adolescents are facing an uncertain future as the youth unemployment and underemployment rate grows alongside mounting costs of living, increasingly unaffordable housing, education and health care. For example, recent statistics highlight a growing youth unemployment rate of 13.8 per cent in December 2014, up from 12.5 per cent in December 2013.³

Increasingly these issues are occurring in a context where adolescents and young people are reportedly feeling disenfranchised from the broader community, with a lack of political participation and representation. The current political-social context for many young Australians is one in which there is significant emphasis to either 'earn' or 'learn' as a result of federal government policies which seek to encourage young people to either undertake education or employment. It also coincides with significant welfare reform in which there is a focus on reducing the rate of youth unemployment and decreasing the number of young people accessing welfare.

Recent amendments to the Australian welfare system include reassessment of all people under 35 years of age receiving the Disability Support Pension (DSP), and compulsory work-focused activities such as work experience, job searching and education and training for people receiving the DSP who are assessed as being able to work more than 8 hours per week. Other proposed amendments yet to be passed by the Australian Parliament include tighter eligibility criteria for unemployment benefits for young people aged up to 30 years old. This includes a six month waiting period to receive the welfare payment for young people who are unemployed and are able to work full time. After the six months, young people will be eligible for income support for six months of a twelve month period, if they are not studying.

In addition, adolescents are facing challenges relating to the use of online technology, the internet and social media – and are the first generation of young people to experience these challenges. Despite the increased accessibility of information, for many adolescents the digital age is accompanied by issues concerning online safety and privacy. These include bullying and abuse, as well as navigating the eternal online footprint each individual leaves and the future ramifications of its contents.

These challenges face all adolescents. However they can be heightened for adolescents with disability as a result of additional barriers which stem from the entrenched and systemic low expectations, inadequate levels of services and support, discrimination, abuse and the denial of opportunities for full participation and inclusion in social and economic life as experienced by adolescents with disability.

³ Australian Bureau of Statistics 2015, *Labour Force Australia Cat. 6202.0: Table 17. Labour force status by Sex - Persons aged 15 to 24 years - Trend, Seasonally Adjusted and Original*, Commonwealth of Australia, Canberra, viewed 31 March 2015, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0Dec%202014?OpenDocument>.

Available statistics and research demonstrate the level of need and stark gaps in educational attainment, performance, access and outcomes for adolescents with disability in Australia.

Prevalence

- 8.8% of children aged 5-14 and 7.8% of young people aged 15-24 have disability.⁶

Requiring Assistance

- 67% of children with disability aged 0-14 years require specific assistance with daily activities.⁷
- 48% of children with disability aged 0-14 years require specific assistance with cognitive or emotional activities.⁸
- 52% of children with disability aged 0-14 years who need assistance report having their needs only partially met.⁹

Education & Employment

- 26% of people with disability do not go beyond Year 10, compared to 18% of people without a disability.¹⁰
- 36% of people aged 15-64 years with reported disability had completed Year 12 compared to 60% of people without a disability.¹¹
- 38% of young people aged 15–24 years with disability either work, study, or do a combination of both on a full time basis compared to 56% of young people without disability.¹²
- 42% of young people with disability neither work nor study¹³. (No comparative data available for young people without disability).
- 20% of young people with disability either work or study on a part time basis.¹⁴ (No comparative data available for young people without disability).
- 15% of people aged 15-64 with disability had completed a bachelor degree or higher compared to 26% of people without disability.¹⁵

⁶ Australian Bureau of Statistics 2013, 'All persons: Disability Status by age and sex – 2012,' Survey of Disability Ageing and Carers, Commonwealth of Australia, Canberra.

⁷ Australian Bureau of Statistics 2012, Australian Social Trends, 'Children with a Disability,' Commonwealth of Australia, Canberra, viewed 18 August 2014, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Jun+2017>

⁸ Australian Bureau of Statistics 2012, Australian Social Trends, 'Children with a Disability,' Commonwealth of Australia, Canberra, viewed 18 August 2014, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Jun+2018>

⁹ Australian Bureau of Statistics 2012, Australian Social Trends, 'Children with a Disability,' Commonwealth of Australia, Canberra, viewed 18 August 2014, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Jun+2021>

¹⁰ ABS 2009, 'Persons Aged 15-64 years, selected characteristics – by level of highest educational attainment', *Survey of education training and experience 2009: State and Territory Australian tables*, Commonwealth of Australia, Canberra.

¹¹ Australian Bureau of Statistics 2012, *Disability, Ageing and Carers, Australia: Summary of Findings*, 'Disability - Education and Employment,' Commonwealth of Australia, Canberra, viewed 31 March 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument>.

¹² Australian Bureau of Statistics 2012, *Australian Social Trends*, Commonwealth of Australia, Canberra, viewed 31 March 2015, [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/LookupAttach/4102.0Publication04.04.121/\\$File/41020_ASTMar2012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/LookupAttach/4102.0Publication04.04.121/$File/41020_ASTMar2012.pdf).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Australian Bureau of Statistics 2012, *Disability, Ageing and Carers, Australia: Summary of Findings*, 'Disability - Education and Employment,' Commonwealth of Australia, Canberra, viewed 31 March 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument>.

CDA is aware that a causal link exists between poor early childhood and education outcomes and underemployment/unemployment in adulthood which can result in a lifetime of dependence on income support and social services.

- People aged 16-24 make up 25.5% of the total number of people receiving the DSP due to intellectual/learning disability recorded as primary medical condition.¹⁶
- The current employment rate of people with disability in Australia is low against the OECD average. People with disability in Australia are only half (50%) as likely to be employed as people without disability.¹⁷
- 45% of people with disability in Australia live in or near poverty, more than double the OECD average of 22%.¹⁸
- Australia has a relative poverty risk (i.e. people with disability compared to people without a disability) of 2.7, against the OECD average of 1.6.¹⁹

Bullying & Abuse

- Children with disability, regardless of age, education setting, gender or type of disability, experience more school bullying than peers without disability.²⁰
- Children with disability are 3.4 times more likely to be abused than their peers without disability.²¹
- Children with communication difficulties and high behavioural support needs have a further heightened risk of abuse.²²

These issues are echoed by CDA members who when asked in a recent survey to identify what the organisational priorities of CDA should be raised the following:

- Adequate services and supports for young people transitioning to adulthood.
- Supporting young people to participate in decisions that impact on their lives.
- Focusing on prevention, like building child safe organisations, to prevent abuse and neglect for young people with disability.
- Ensuring that young people with disability who most need support can access the National Disability Insurance Scheme.
- Ensuring that teachers and school staff have appropriate training so that students with disability can participate at school.

Furthermore, it should be noted that adolescence as defined in the Outline Scoping Document for the General Comment as from puberty until 18 is an incredibly large and diverse cohort. Experiences, challenges and opportunities are not typical for all adolescents, including adolescents with disability. In addition, it is important to recognise that the experience of disability is not

¹⁶ Australian Government Department of Social Services 2013, Characteristics of Disability Support Pension Recipients, June 2013, Commonwealth of Australia, Canberra, viewed 31 March 2015, http://www.dss.gov.au/sites/default/files/documents/01_2014/dsp_characteristics_report_2013_final.pdf, p. 27.

¹⁷ PricewaterhouseCoopers 2012, *Disability expectations: Investing in a better life, a stronger Australia*, PwC, Australia, viewed 31 March 2015, <http://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Sally Robinson & Julia Truscott 2014, *Belonging and Connection of School Students with Disability*, Children with Disability Australia, Melbourne, Children with Disability Australia, Melbourne, viewed 31 March 2015, <http://www.cda.org.au/cda-issue-papers>.p.33.

²¹ P. Knutson and J. Sullivan 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child Abuse and Neglect*, Vol. 24, No. 10, p. 1257.

²² Sally Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Children with Disability Australia, Melbourne, viewed 31 March 2015, <http://www.cda.org.au/cda-issue-papers>. p.10.

unanimous for all adolescents with disability. Representation of adolescents and the realisation of their rights must therefore acknowledge this diversity within and among the cohort of adolescents.

SPECIFIC AREAS

ATTITUDES

Negative attitudes, discrimination and low expectations are frequently experienced by adolescents with disability in Australia. Historical and culturally entrenched attitudes in the Australian community position disability as an inability rather than a positive attribute of a diverse culture. It is commonplace for adolescents with disability to be referred to as a burden, problem, broken or sick. Further, disability is often seen as the defining feature of a child or young person's life with it being presumed that the impairment associated with their disability is at the centre of their life. Their identity first and foremost as a child or young person is often denied.

A key example of a setting where discriminatory attitudes toward disability are typical is education. Students with disability are too often seen as a burden to a school community, rather than as learners who have a right to a quality education on an equal basis with their peers. Research clearly shows that an inclusive education system where students with disability are valued and included benefits both students with and without disability in terms of learning and social outcomes.²³ However, this is rarely acknowledged.

Another critical issue is the ongoing segregation of adolescents with disability in a range of settings. Examples include special schools or special classes in mainstream schools, segregated employment and disability specific services and supports. If this segregation were experienced by children and young people without disability there would be significant community outcry. Unfortunately, attitudes about disability allow these practices to frequently occur without question.

EDUCATION

CDA believes that the education system does not adequately meet the needs of students with disability in Australia. CDA hears daily of experiences where students with disability must contend with limited opportunities, low expectations, exclusion, bullying, discrimination, failure to recognise human rights and inadequate funding. The long term impacts of this inadequate education on the life experiences of people with disability are profound, as demonstrated by the statistics listed in the General Comments section of this submission.

The quality of inclusive education across Australia is variable and is not yet a systemic expectation of every school. There is often a mistaken perception that a student with disability's enrolment in a mainstream setting automatically means they are receiving an inclusive education. CDA members frequently report examples of students with disability who attend school in 'specialist units', an unmistakable example of segregated education that is occurring within mainstream settings.

Further information is available in CDA's issues papers *Inclusion in Education: towards equality for students with disability* and *Belonging and Connection of School Students with Disability*.²⁴

²³ K Cologon 2013, *Inclusion in Education: Towards Equality for Students with Disability*, Children with Disability Australia, Melbourne, p. 23.

²⁴ Available at: <http://www.cda.org.au/cda-issue-papers>.

INADEQUATE SERVICES & SUPPORTS

CDA hears daily of the exasperation that children and young people with disability and their families experience due to the constant and often insurmountable barriers within the disability service system to receiving adequate services and supports. While the service usage of each young person will differ, there may be a broad range of specialist interventions required, such as allied health, aids and equipment and accessible transport.

Prolonged advocacy and community action from people with disability, families and advocates led to the Productivity Commission undertaking the Inquiry into Disability Care and Support. The Inquiry 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.”²⁸ This Inquiry led to a remodelling of the disability services system through the establishment of the National Disability Insurance Scheme (NDIS) in 2013.

The NDIS involves a completely new system of funding disability support, focused on the needs and choices of people with disability. The NDIS is a shift from block funding, where service providers are funded to provide disability supports, to portable and individualised funding. The NDIS is being progressively established and will be fully implemented by 2019.

While the NDIS is a significant reform, it is important to note only 410,000 people with ‘severe and profound’ disability will meet the eligibility criteria for accessing the Scheme through having an Individual Funding Package (IFP). The vast majority of people with disability in Australia will not access services and supports through the NDIS. Most adolescents with disability are not eligible for the NDIS and will therefore continue to experience barriers to accessing adequate disability services and support.

Further, adolescents with disability experience significant barriers in accessing services, supports and programs that their peers without disability take for granted. For example, many public and private buildings and spaces are not fully accessible. In addition, it can be highly challenging for adolescents with disability to access programs or extracurricular activities such as sports lessons, because including adolescents with disability is seen as a burden. Again, adolescents with disability are denied opportunities for participation and inclusion due to the inadequacy of services and supports.

VIOLENCE & ABUSE

CDA members often report incidents of abuse (including sexual abuse, physical abuse, emotional abuse and neglect) in a variety of settings and circumstances.

In 2012, CDA published an issues paper, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*.³¹ The paper includes a comprehensive literature review of recent research about abuse, protection and children and young people with disability. The paper made several key findings in relation to the prevalence of the abuse and neglect of children and young people with disability:

- Children and young people with disability experience abuse and neglect at rates considerably higher than their peers who do not have disability (the prevalence of abuse);

²⁸ Productivity Commission 2011, *Disability Care and Support: Productivity Commission Inquiry Report Overview and Recommendations*, Commonwealth of Australia, Canberra, p. 2.

³¹ Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*

- Children with communication impairments, behaviour difficulties, 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 with disability are often abused on multiple occasions (the incidence of abuse);
- This maltreatment is significant (the impact of abuse).³²

Abuse can include actions that are often seen as acceptable because the young person involved has a disability.³³ Examples from an education setting reported to CDA include the denial of the opportunity for students to go to the toilet when on excursions or travelling home on school buses; or the placement of a student's desk in the sick bay for when 'individual learning space' was needed. More blatant examples could arguably breach the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*. Reports of students being locked in 'time out' rooms come uncomfortably close to false imprisonment. Reports of physical restraint and manhandling approach assault, and do not seem to be supported by departmental policy. If a young person without disability was involved in these same situations these actions would be automatically deemed as unacceptable and there would be significant uproar from the community.

The *Royal Commission into Institutional Responses to Child Sexual Abuse* is currently underway in Australia. The Commission has included a focus on the sexual abuse of children with disability in institutions and this work is to be commended. However, there are significant barriers that have limited the input of people with disability into the work of the Commission to date, particularly for people with significant behaviour and communication support needs.

ACCESS TO JUSTICE

An overwhelming concern of CDA is that 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. As previously discussed, there are many circumstances where actions and behaviours are not classified as abuse or identified properly as crimes, such as abuse in school settings.

CDA is highly conscious of the issues faced by adolescents with disability in relation to the justice system, as victims and as offenders of abuse and crime. These issues have been detailed by the Australian Human Rights Commission who found that, "(whether) a person with disability is the victim of a crime, accused of a crime or a witness, they are at increased risk of being disrespected and disbelieved and of not enjoying equality before the law."³⁴ The aggregate effects of these failures of the justice system to provide access and support for people with disability compound the disadvantage faced by people with disability and increase the risk of experiencing violence and abuse.³⁵

There are a number of factors that inhibit the reporting of crime by victims with disability generally, including 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 being unreliable or unable to make

³² Robinson 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 10.

³³ Ibid.

³⁴ Australian Human Rights Commission 2014, *Equal before the law: Towards disability justice strategies*, viewed 31 March 2015, https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf, p. 5.

³⁵ Ibid., p. 5.

statements.³⁶ CDA members have reported that police will not take a statement from a child or young people with disability based on the assumption that they do not have the capacity or because there is no communication support available for victims who require it. This can stem from a limited understanding of different communication abilities, minimal experiences of working with people with disability and an ableist institutional culture.

The refusal of police to take statements from adolescents with disability contravenes Articles 62 and 63 of the CRC that specifies the rights of the child victim and the child witness. The refusal of police therefore constitutes a violation of human rights.

Rather than a view of disability that makes assumptions about the competence of adolescents with disability, police and other criminal justice agencies should focus on providing supports for young people with disability to make statements. This requires police and criminal justice workers to treat allegations of abuse, including sexual abuse, from children and young people with disability as serious crimes and strive to uphold the procedural and human rights of children and young people with disability in these circumstances.

MEANINGFUL PARTICIPATION & REPRESENTATION

Adolescence involves developing skills for independence and decision-making responsibilities, regarding both personal concerns and broader issues that impact on young people's lives. Policy makers, service providers and legislators increasingly recognise that adolescents have a legitimate perspective, a right to have their voices heard and make decisions about their lives. Nevertheless, opportunities for meaningful participation often do not occur. Frequently adolescents do not participate at all, or opportunities for input are tokenistic.

Significant barriers exist for adolescents with disability to engage in meaningful participation for issues of relevance and interest to them. These include stereotypes, low expectations, assumptions about competency and inaccessible processes. To create meaningful opportunities for participation and representation, these barriers must be addressed.

Furthermore, representation and participation needs to be recognised as multifaceted. Adolescents with and without disability choose to participate in a variety of ways. For example, CDA welcomes the contribution of children and young people with disability through informal contact with our organisation or through more formal channels such as forums and surveys designed to facilitate children and young people to share their direct experiences. CDA is currently undertaking significant work to strengthen the participation of children and young people with disability within the organisation and in advocacy more broadly.³⁷ Further information is available in CDA's issues paper *Strengthening Participation of Children and Young People with Disability in Advocacy*.³⁸

It is also important to acknowledge that a balance is required between empowering participation and the developmental considerations that all adolescents have. All adolescents need support in becoming independent and in forming and voicing their perspectives. This may involve supporting skill development among adolescents and the adults who work with them and developing creative communication strategies to ensure adolescent voices are heard.

³⁶ Australian Human Rights Commission 2013, *Access to justice in the criminal justice system for people with disability*, Sydney, pp.2-3.

³⁷ Catharine Simmons & Sally Robinson 2014, *Strengthening Participation of Children and Young People with Disability in Advocacy*, Children with Disability Australia, Melbourne, viewed 31 March 2015, <http://www.cda.org.au/cda-issue-papers>.

³⁸ Available at: <http://www.cda.org.au/cda-issue-papers>.

POST SCHOOL TRANSITION

Post school transition should be a time when adolescents are supported in planning and preparing for and making decisions about post school life. This can include opportunities for adolescents to think about their skills and interests and how to pursue them after school, for example through further study or employment.

At present however post school transition is a fraught time for most students with disability, who are being let down and are unable to access the life experiences and opportunities typically afforded to young people. Unemployment, disengagement and exclusion from society continue to be common experiences for many students with disability upon finishing school.

CDA members frequently report that post school transition is an ad hoc experience where adolescents with disability encounter a number of common barriers. These include scant or no information provision in school to students and families about the range of post school opportunities, which is usually difficult to locate and access. Similarly, school staff typically lack knowledge and expertise about post school options and available pathways.

A major barrier which permeates post school transition is systemic low expectations which undermines the opportunities presented to adolescents with disability. These low expectations often result in presumed future pathways for adolescents to segregated settings, such as supported employment or day programs. Adolescents with disability are typically offered narrow pathways that do not consider the strengths, skills and interests of the individual.

In addition, CDA is concerned about the impact on the mental health of adolescents during this fragmented post school transition experience. Data regarding this particular area of life does not appear to exist. However, anecdotal evidence shared by CDA members suggests that many adolescents with disability are experiencing anxiety and other mental health issues as a result of a process which is not providing the necessary support, guidance and information as adolescents' transition to post school life and adulthood.

This inadequate transition from school to post school life for adolescents with disability has long term ramifications for their future ability to meaningfully participate and become contributing adults in society.

EMPLOYMENT

The inadequate education being offered to many adolescent students with disability impacts on the long term ability for young people with disability to undertake and pursue meaningful employment. This is compounded by the fragmented post school transition experience previously discussed.

For adolescents with disability, the denial of opportunities to pursue part time employment or work experience placements has been repeatedly shared with CDA by our members. These opportunities are typically experienced by many adolescents without disability throughout Australia, providing a chance for individuals to not only strengthen their skills and explore their interests, but to gain confidence within themselves and their abilities.

When work experience is offered by schools to adolescents with disability it is often tokenistic. For example, young CDA members have shared experiences of only being able to undertake a work experience placement at their school, in a separate classroom or in the school office or library. Similarly, there is often a presumption that adolescents with disability should be prepared for a

future of segregated employment options. CDA is aware that it is standard practice for some special schools to arrange work experience at supported or 'sheltered' employment.

Given the Australian context of rising youth unemployment and underemployment combined with the Federal Government's efforts to reduce the number of people accessing welfare, the employment opportunities for adolescents with disability is of significant concern. Without opportunities for part time employment and work experience during their teenage years, the ability for adolescents with disability to gain work post school is being significantly undermined.

Conclusion

Adolescents with disability are denied many social, economic, educational and recreational opportunities due the significant systemic and structural barriers which still exist within the Australian community. Consequently many adolescents with disability must contend with an inadequate education system, limited access to services and supports, minimal opportunities to participate, barriers to accessing justice, economic disadvantage and restricted employment opportunities. The disadvantage facing adolescents with disability is profound and it is paramount that these experiences and circumstances are given specific consideration in the discussion which occurs regarding the rights of adolescents and the resulting General Comment.