

The National Framework for Protecting Australia's Children (2009-2020)

**Developing the Third Action Plan
(2015-2018)**

Driving change: Engaging the community

Children with Disability Australia
Submission – April 2015

INTRODUCTION

Children with Disability Australia (CDA) joined the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children in 2009. It is the view of CDA that at the outset there was limited recognition or understanding of the significant and specific issues relevant to children with disability regarding child safety, wellbeing and abuse. Further, CDA believes that to date there has been little progress in ensuring children with disability are 'core business' in the National Framework for Protecting Australia's Children (the Framework).

Presently, there appears to be broader recognition and consideration of children with disability but this has not translated to specific areas of work within the current or previous Framework action plans. CDA is concerned that the safety and wellbeing of children with disability is still largely positioned as the work and responsibility of the disability sector when it should also be embedded and central to the work of children and family services.

This submission focusses primarily on the issues and actions relevant to children with disability relevant to the Framework. It also contains information provided by CDA in a scoping paper prepared for consideration by the Royal Commission into Institutional Responses to Child Sexual Abuse.

CHILDREN WITH DISABILITY AUSTRALIA

CDA is the national representative persons 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. Additional project funding is also currently received by the Australian Government Department of Education. CDA has a national membership of 5000 with the majority being families.

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. This link is essential for the creation of a true appreciation of the experiences of and challenges for children and young people with disability and their families.

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.

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.

THE EXPERIENCES OF CHILDREN WITH DISABILITY

In Australia 7.0% of children and young people aged 0-17 years have a disability. Children with disability are still very much on the periphery in the Australian community. At CDA we hear constantly of significantly compromised experiences in development, play, education and social and recreational opportunities. Frequently children with disability are excluded and/or segregated from experiences and opportunities routinely afforded to their peers without disability. Examples of this include: attending school assemblies or excursions; accessing the local playground; participating in a recreational swimming or dance class; enrolment at their local school; the opportunity to attend the same school as their siblings; joining a local sporting club; or accessing community services and supports.

It is important to recognise that the inequality of experiences and opportunities for children with disability occurs because of barriers within the community with the most significant being: a culture of low expectations; inadequate availability of services and supports; and entrenched discrimination.

Disability has historically been seen as a problem and as something that should be hidden. This view underpinned service models prior to the 1970's, when institutional residential care was the major service option for children with disability in Australia. In addition, disability was previously predominantly situated within a medical framework as a 'sickness' requiring cure. This combination of institutionalisation and the medical model produced a view of people with disability as objects of pity and charity. This still overhangs community attitudes and practices of today despite the occurrence of an effective international movement to advance human rights and equal opportunities for people with disability.

Over the last 40 years there has been a shift to a de-institutionalised, community-based service model for people with disability, although this has been implemented with varying degrees of success. This has involved a fundamental shift to a rights-based and social model of disability. The social model sees disability as not in bodies but in society and "seeks to change society in order to

accommodate people living with impairment rather than people with impairment changing to accommodate or 'fit in' to society. It supports the view that people with disability have a right to be fully participating citizens on an equal basis with others."¹

The legacy of historic understandings of disability is entrenched discriminatory attitudes which position disability as an inability rather than a positive attribute of a diverse culture. It is common place for children with disability to be referred to as a 'burden,' 'problem,' 'broken' or 'sick.' Families often speak of their 'grief' associated with having a child with disability, clearly equating disability with loss.

The overarching attitude that constructs people with disability as inferior is known as ableism. Ableism has been defined as "discriminatory and exclusionary practices that result from the perception that being able-bodied is superior to being disabled, the latter being associated with ill health, incapacity, and dependence. Like racism, ableism directs structural power relations in society, generating inequalities located in institutional relations and social processes."²

The dehumanisation inherent to ableism contributes to a social context in which children with disability are devalued. A critical effect of ableist attitudes is that people do not see the child first, but focus on disability.

Children with disability continue to use services and institutions much more frequently than children without disability. These include a range of generic areas which are typically accessed throughout childhood including: early childhood and school education; health; community services; sporting clubs; and religious and cultural organisations. Children with disability also access services over and above those typically utilised throughout childhood. These include: early intervention; community care; allied health professionals; health; out of home care; child and family services; and personal care attendants.

Published data paints a clear picture of the high utilisation of services and support by children with disability:

- 67% of children with disability require specific assistance with daily activities;³
- 48% of children with disability require specific assistance with cognitive or emotional activities;⁴ and
- 95% of children with disability who require specific assistance with daily activities receive some form of assistance.⁵

Abuse is a significant issue and is sadly a common experience of children with disability in Australia. CDA is frequently informed of a range of incidents of violence, abuse and neglect experienced by children with disability. Often though, these incidents are not defined as abuse, but seen as

¹ People with Disability Australia 2014, *The Social Model of Disability*, viewed 11 August 2014, <http://www.pwd.org.au/student-section/the-social-model-of-disability.html>.

² M McLean 2008, 'Teaching about disability: An ethical responsibility?' *International Journal of Inclusive Education*, Vol. 12, No. 5, p. 607.

³ Australian Bureau of Statistics 2012, 'Children with a Disability,' *Australian Social Trends*, Commonwealth of Australia, Canberra, viewed 30 April 2015, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Jun+2012#Need>

⁴ Ibid.

⁵ Ibid.

justifiable or acceptable practice because a child has a disability. The use of restrictive practices within schools is a common example of this.

Presently there is no national data on the prevalence of abuse and neglect of children with disability in Australia. What is clear however, is that children with disability are an extremely high risk group where child abuse and neglect is concerned. International research has found that children with disability are approximately 3.4 times more likely to be abused than other children.⁶ Children with communication difficulties and high behavioural support needs have a further heightened risk of abuse and are up to seven times more likely to experience certain forms of abuse than children without disability.⁷ Society's attitudes and assumptions, inadequate services and factors associated with impairment have been shown to make children with disability more vulnerable to abuse.

These factors when combined with the known high service utilisation of children with disability make children with disability extremely vulnerable to abuse and neglect. Children with disability should therefore be afforded a level of attention and protection commensurate with this known level of increased vulnerability. CDA strongly advocates that the Third Action Plan (2015-2018) needs to include a key focus on children with disability.

DISCUSSION QUESTIONS

1. Are there any particular achievements and/or challenges with working together to deliver the Second Action Plan that you would like to highlight? How do you think we can learn from what worked or what didn't work?

- The fundamental mechanism through which the Framework operates is a tripartite approach to responsibility for protecting Australia's children. This is a key achievement in itself and driver of the Framework's success. CDA is of the view that the complexity and breadth of issues and considerations regarding child wellbeing and protection are best progressed effectively through this collaborative and cross jurisdictional approach.

With this comes frustrations that nationally consistent approaches cannot be achieved in specific areas despite the establishment of this partnership. The development of a national working with children check is an example of this.

- The expertise and professionalism provided by Families Australia in convening the work of the Coalition should be acknowledged and is a major contributing factor to the successes of this initiative to date.
- CDA acknowledges the key achievements in the Second Action Plan, as identified in the discussion paper, have relevance to children with disability. However, there has been minimal progress in the areas of action that specifically pertain to children with disability.

2. Are there any specific projects under the Second Action Plan that you felt were particularly successful or problematic? Why?

- The consideration of children with disability has increased throughout the life course of the Framework. In the First Action Plan there was only an explicit reference to disability under

⁶ P. Knutson and J. Sullivan 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child Abuse and Neglect*, Vol. 24, No. 10, p. 1257.

⁷ Ibid, p. 1266.

supporting outcome 3 titled 'risk factors for child abuse and neglect are addressed.' This section stated that disability among parents is a known risk for abuse and neglect of children.⁸ The strategy for addressing this issue identified the following areas of action:

Enhance support for children or parents with disabilities such as

- *Evolve therapeutic and behaviour support services to support specialist disability assessments with complex needs (QLD);*
- *Develop a Statement of Principles for working with children with a disability and their families (VIC);*
- *Implement a new assessment tool for Carer Payment (child) to support more carers of children with disabilities (Commonwealth);*
- *Measures to support early intervention for children with autism (Commonwealth)*
- *Develop safeguards for children including strengthening availability of disability support services for children and their families (NSW).⁹*

In the Second Action Plan there are a number of references and actions which specifically relate to children with disability. The Plan states that it "places a new focus on children with disability."¹⁰ Further it identifies the need to link with the National Disability Insurance Scheme (NDIS) and the National Disability Strategy (NDS) under 'Linkages with other major reforms.'¹¹

Additionally within the section 'Building on the first three years,' the plan identifies the aim of "improving the evidence base about Indigenous children, culturally and linguistically diverse children and **children with disability**, including disaggregating indicators by these statuses wherever possible."¹²

Finally, the Second Action Plan identifies disability as a new priority area.¹³ It states "in Australia, the population of children with disability in child protection systems is unclear. However, existing international research indicates that children and young people with disability experience abuse and neglect at rates higher than their peers who do not have disability."¹⁴

The Second Action Plan states that work will be undertaken to:

- *Explore the interface between disability, child protection, and primary service systems, including through the National Disability Insurance Scheme launch sites;*
- *Review the service response for children with disability in the out-of-home care system; and*

⁸ Council of Australian Governments (COAG) 2009, *Protecting children is everyone's business: The national framework for protecting Australia's children 2009–2020*, Commonwealth of Australia, Canberra, p. 21.

⁹ *Ibid*, p. 22.

¹⁰ COAG 2012, *Second three-year action plan 2012-2015, Protecting children is everyone's business: The national framework for protecting Australia's children 2009–2020*, Commonwealth of Australia, Canberra, p. 17.

¹¹ *Ibid*, p. 10.

¹² *Ibid*, p. 21.

¹³ *Ibid*, p. 27.

¹⁴ *Ibid*, p. 27.

- *Explore evidence-based models of working with families where disability of the child or adult is impacting on the safety and wellbeing of children, including working with adult service providers.*¹⁵

It is the view of CDA that children with disability are not well represented within either action plans and that relevant actions included have had limited progress. This was further demonstrated in the Annual Report to the Council of Australian Governments 2012-13 on the Framework, which has limited reference to the work in this area.¹⁶ It is unclear if the discussed actions and progress contained in the Annual Report refers to work which coincides with the Framework or if it has been coordinated or advanced through their inclusion in this policy initiative. An example of this is the exploration and development of interface areas regarding the NDIS.

None of the key achievements of the second three years of the Framework outlined in the consultation discussion paper have specific relevance to disability nor is CDA aware that the individual initiatives listed contained a specific focus on children with disability.

From the reports available regarding at the time of writing this submission, it is also unclear how the Framework relates and coordinates with the NDS despite it being mentioned as a linked reform.

- CDA is also very aware of the paucity of data and research which exists regarding children with disability in terms of representation in service systems, representation in the child protection system and rates of abuse in both institutional and domestic contexts. Despite the recognition in the Second Action Plan to improve the evidence base where children with disability are concerned, it is unclear as to what progress has occurred in this area.

3. How should these lessons inform the development of the Third Action Plan? What do we need to do differently?

- CDA believes that children with disability need to be identified as a specific focus area within the Third Action Plan. The significant disadvantage experienced by children with disability continues to be unrecognised and addressed within generic initiatives and relevant policy frameworks for children and young people at this time.
- It is believed that the identification and measuring of outcomes specifically for children with disability needs to be clearly identified so they can be better monitored.

4. What Second Action Plan projects would benefit from further national effort in the Third Action Plan?

- The areas identified within the Second Action Plan which pertain to children with disability are seen as having continual national relevance and requiring further action which is consistent with the identified supporting outcomes of the Framework.

¹⁵ COAG 2012, *Second three-year action plan 2012-2015, Protecting children is everyone's business: The national framework for protecting Australia's children 2009-2020*, p. 27.

¹⁶ COAG 2014, *Annual Report to the Council of Australian Governments 2012-13, Protecting children is everyone's business: The national framework for protecting Australia's children 2009-2020*, Commonwealth of Australia, Canberra.

- The establishment of interface areas between the NDIS with a range of other system and policy areas including child protection, education, health, the Family Support Program and children and family service and support systems are only in their infancy. This work is extremely important and it is believed that it should be continued and further defined and progressed through the Third Action Plan of the Framework.

CDA also notes that it is critical that the present development of a quality and safeguarding framework for the NDIS which has specific considerations of children within it is important that linked and progressed through the Framework.

- The work regarding out of home care and its specific consideration of children with disability is understood to require continual input and refinement and is well placed to be continued as an action within the Framework.
- CDA has concern that the action to “explore evidence-based models of working with families where disability of the child or adult is impacting on the safety and wellbeing of children, including working with adult service providers”¹⁷ positions disability as negative. It implies associated actions need to occur to negate disability rather than consideration of the barriers within the community which need to be addressed to ensure a child or person with disability is afforded equal opportunities. It is believed that this area needs to be reviewed to reflect the social model of disability which informs other public policy initiatives in Australia.

5. Do the five draft National Priorities effectively capture the critical focus areas for national collaboration and early intervention and prevention?

- The five draft National Priorities provide a good descriptor of the broad areas which need to be the focus of the Framework.

6. Are there any key focus areas which would benefit from national collaboration that are not represented?

- While the draft National Priorities are seen to encapsulate the core areas requiring national collaboration and early intervention and prevention, as mentioned above it is believed that it is critical that there is a specific focus on children with disability. This could occur by having well defined actions within each of the areas which specifically pertain to children with disability or the incorporation of a sixth priority which is similarly worded to National Priority 5. CDA’s preference would be for each focus area to have a specific focus and well defined actions which pertain to children with disability.

The following is a modified excerpt from a CDA scoping paper provided for the Royal Commission into Institutional Responses to Child Sexual Abuse, which outlines the significant issues regarding abuse and children with disability. It clearly highlights why it is imperative that the Framework must have a specific focus on children with disability.

Research on abuse and neglect experienced by children with disability

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*. The paper includes a comprehensive literature review of recent research about child abuse, child protection and children

¹⁷ COAG 2012, *Second three-year action plan 2012-2015, Protecting children is everyone’s business: The national framework for protecting Australia’s children 2009–2020*, p. 27.

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);
- 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).¹⁸

Enabling and protecting also identified factors that increase the risk of abuse and neglect of children and young people with disability. These include:

- Extended dependence on caregivers (often multiple caregivers);
- A lack of control over their lives;
- Reliance on others for personal care;
- A lack of knowledge about healthy and appropriate relationships and sexuality and an inability to name abuse;
- Social isolation and extended periods of time spent in settings where there is an expectation to be compliant and well-behaved; and
- High social and communication support needs.¹⁹

In terms of institutional factors that increase the risk of abuse, *Enabling and protecting* states:

At a more systemic level, the kinds of environments in which abuse is more likely to occur have a closed culture, and cover up reports of abuse, and/or fail to protect people who report. (Institutions) justify and rename abusive practices (e.g. behaviour management), readily accept excuses for abuse, and have low accountability and little outside scrutiny.²⁰

It is known that children with disability experience higher rates of abuse and have increased vulnerability to abuse compared to their peers without disability. There is a significant gap in research on the prevalence of abuse of children with disability in Australia. There are also barriers to data collection relating to definitional issues, where children may not have a formal diagnosis. CDA is concerned that despite the known risks that children with disability face in relation to abuse, the prevalence is never captured in large studies. This lack of official data contributes to this issue being de-prioritised as an area for action.

Context of children with disability – personal boundaries

Children with disability can have limited opportunities to gain an understanding of healthy relationships, learn to recognise inappropriate behaviour of adults and other children and identify dangerous situations when they arise.²¹

¹⁸ S 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, p. 10.

¹⁹ Ibid, p. 12.

²⁰ Ibid, p. 12.

²¹ 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.

Some children with disability require a high amount of personal care, with a number of different people involved in their day to day care. These children have less opportunity to define and protect their personal space and are more reliant on adults to behave respectfully and with consideration to impart the importance of boundaries.

In addition, there can be a denial or reluctance by families, educators and other service providers to recognise or accept the sexuality of children or young people with disability; thus ignoring the responsibility to provide appropriate sexual and relationship education and leaving these children particularly vulnerable to sexual abuse.

Many children with disability with high care needs have limited privacy. Normal sexual expression such as masturbation may be met with total prohibition because of embarrassment by families or carers, rather than being seen as an opportunity to educate the child about appropriate behaviour, and the need of carers to provide private space. Again, these children are denied access to appropriate education about sexuality.

Context of children with disability – communicating abuse

Barriers to children with disability learning to recognise and communicate instances of abuse is also a significant issue. For many children with disability, difficulty with verbal communication means that communication occurs through behaviour. A change in behaviour may indicate the child's distress, but is often misattributed to their disability, leading to a failure to look at the meaning or reason for behaviour in these instances.

This issue was illustrated in the Royal Commission into Institutional Responses to Child Sexual Abuse's case study into the sexual abuse of students of St. Anne's Special School in Adelaide. One boy who was abused presented increasingly violent and sexualised behaviour, however this was attributed to his disability and the abuse went unknown for some years.²² As Skarbek et al. (2009) report, children with disability "face greater risk of abuse going unnoticed if their behaviour change can be attributed to their disability."²³

Attributing changes in behaviour to the child's disability leads to instances of abuse being overlooked. Further, the attribution of these behaviours to disability also constitutes a form of ableism as all problematic behaviours are deemed to result from disability and abuse is often not considered.

Context of children with disability – out of home care

Children with disability are known to be frequent users of out of home care. There is no official national data regarding the number of children with disability in out of home care, but available research and the experiences of CDA members reflect this high representation. For example, the Victorian Equal Opportunity and Human Rights Commission found that in June 2011, of 4,064 children in out of home care in Victoria, 579 or 14% had a disability.²⁴ This is more than double the prevalence rate of children with disability in the total Australian population (6.8%). The same

²² Four Corners 2011, *St. Ann's Secret*, Australian Broadcasting Corporation, viewed 4 August 2014, <http://www.abc.net.au/4corners/stories/2011/09/22/3323669.htm>.

²³ 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. 160.

²⁴ Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria*, Carlton, p. 7.

research suggests that children with disability are more likely to be in residential care than children without disability in the out of home care system.²⁵

A further point of consideration is that each state and territory has a different definition of disability, making it difficult to collect nationally consistent data regarding the number of children with disability utilising out of home care services.

In addition, CDA believes that any estimates that do exist are likely to underestimate the actual number of children with disability who use out of home care services. CDA is aware that many children with disability are often not recognised as they do not have a formal diagnosis. 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. These factors combined mean that available data most likely underrepresents the prevalence of children with disability using the out of home care system.

Having an unidentified disability means that children may not access specific services and supports which may be of assistance. Further, it may lead to misunderstanding a child's behaviour and inappropriate intervention. For example behaviours may be seen as 'delinquent' rather than a response to unmet disability support needs.

These factors combined – the lack of national data; differing definitions of disability; and the issue of unidentified disability – make it difficult to obtain accurate data about the exact prevalence of children with disability in the out of home care service system. However, there is no doubt that the representation is substantial.

Policy context

As a signatory to both the United Nations *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities*, Australia has committed to upholding the human rights of children with disability under international law. Each Convention provides a framework of expectation that children with disability be free from all forms of exploitation, violence and abuse, torture or cruel, inhumane or degrading treatment and enjoy liberty and security of the person.²⁶

Broadly, concerns relating to children with disability are often segregated from or within policy on abuse or child welfare, so that considerations about disability are not integrated throughout policy frameworks. This usually leaves disability as a silo in the policy context and can exclude children with disability to a large extent from policy considerations. This segregation isolates and clusters children with disability, creating a high risk service environment.²⁷

CDA supports a child protection and wellbeing policy framework in which children with disability are included and considerations for the wellbeing of children with disability are not delegated to the disability service system. This requires policy frameworks to adopt a 'child first' approach.

Service system

As stated above, disability is often segregated from broader policies about child and family welfare. This creates a service system in which disability is seen as completely separate to children and family

²⁵ Victorian Equal Opportunity and Human Rights Commission 2012, *Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria*, p. 7.

²⁶ United Nations General Assembly 2007, *Convention on the Rights of Persons with Disabilities*, United Nations General Assembly 1989, *Convention on the Rights of the Child*.

²⁷ Robinson 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 12.

services. The isolation of disability services increases the risk of a closed culture in which abuse is more likely to occur. This is supported by research, as summarised in *Enabling and protecting*:

There is a strong body of evidence to demonstrate that high risk environments, where violence, abuse, neglect and exploitation are more likely to occur, share some common features. They emphasise control; isolate children and young people, cluster people with the greatest risk together, and reinforce compliance.²⁸

Abuse in educational institutions

It is frequently reported to CDA that students with disability are subjected to abuse in education settings. Examples reported to CDA include the denial of the opportunity for students to go to the toilet when on excursions; or the placement of a student's desk in the sick bay for when 'individual learning space' was needed. More blatant examples include the use of martial arts instructors for 'behaviour management'; the use of physical restraint; the seclusion of students in small rooms for extended periods of time; and the use of chemical restraint without accompanying positive behaviour support strategies. Despite this known occurrence of abuse of children with disability in schools, there is a significant gap in both Australian and international research on this issue.

A key concern is the chronic, ongoing harm caused by bullying. Students with disability (regardless of age, gender, educational setting or type of disability) experience more bullying than their peers without disability.²⁹

A further high risk area is transportation to and from school. Students with disability may need to take the school bus before and after school, often for long periods of time. It has been reported to CDA that due to the lack of toilet facilities, children have had to sit in urine or faeces. Limited supervision or training among staff on buses creates further risk of abuse, harassment and bullying occurring.

Barriers to justice

Another critical issue with regards to the abuse of children with disability is legal responses and 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 with disability and the response and involvement of the criminal justice system. There are many circumstances where actions and behaviours are not classified as abuse, or identified properly as crimes, such as abuse in school or service settings that are mischaracterised as 'poor practice' or justified 'restrictive practice'.

CDA is highly conscious of the issues faced by children with disability in relation to the justice system, as victims of abuse and neglect and also of failures by other service systems that can lead to the justice system becoming involved in the lives of these children. 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."³⁰ The aggregate effects of these failures of the justice system to provide access and support for people with disability

²⁸ Robinson 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 12.

²⁹ S Robinson, J Truscott 2014, *Belonging and connection of school students with disability*, Children with Disability Australia, Melbourne, p. 31.

³⁰ Australian Human Rights Commission 2014, *Equal before the law: Towards disability justice strategies*, Sydney, p. 5.

compound the disadvantage faced by people with disability and increase the risk of experiencing violence and abuse.³¹

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 statements.³² CDA members have reported that police will not take a statement from a child either based on the assumption that they are not capable of making a statement 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 children with disability and an ableist institutional culture.

The refusal of police to take statements from children with disability contravenes the sections of the United Nations *Convention on the Rights of the Child* 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... 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.³³

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

7. What actions could be included in the Third Action Plan that focus on prevention and early intervention and require national collaboration to achieve results?

- Development of a national strategy to address ableism and to aid the development of a culture that values people with disability;
- Nationally consistent approach to supporting organisations in developing frameworks around prevention and protection from abuse for children with disability, in building capacity, and in educating stakeholders;
- Inclusion of disability as a focus in child wellbeing and protection policy frameworks and inquiries. Strategies to promote the rights and interests of children with disability are drawn together coherently and systematically in national and state policy;
- Promotion of data collection and research that reliably identifies the scale and prevalence of abuse of children with disability in Australia, including the collection and analysis of

³¹ Australian Human Rights Commission 2014, *Equal before the law: Towards disability justice strategies*, p. 5.

³² Australian Human Rights Commission 2013, *Access to justice in the criminal justice system for people with disability*, Sydney, pp. 2-3.

³³ *Convention on the Rights of the Child* 1990, Article 62.

statistical information about maltreatment at both state and national levels; and research with children, young people and families about the experience of sexual abuse;

- Improved identification and education regarding entrenched ableism which exists within the community and how it contributes to the increased vulnerability and experience of abuse of children with disability.
- Development of individualised services that reinforce and teach children with disability about healthy and respectful relationships. This should aim to empower “children and young people with disability and those who support them to speak up early about concerns they have about possible and actual” abuse;³⁴
- Education for families to support the learning of children about healthy and respectful relationships;
- Training for staff working with children and young people with disability to safeguard their rights to safety; recognise harm; respond early and effectively to maltreatment; and support recovery of children and young people. This is important across both specialist and mainstream settings;
- Development of mechanisms to monitor and review policies, procedures and practices aimed at preventing and responding to the abuse of children with disability;
- Establishment of strong, embedded safeguards for services funded under the NDIS;
- Development of effective reporting and accountability mechanisms and training of families of children accessing funded services around recognising sexual abuse and grooming;
- Training criminal justice agencies around the rights of children with disability who are victims of crime and to support children with disability who are victims of abuse in making statements; and
- Establishment of clear accountability and reporting procedures for abuse in educational settings.

8. What existing projects are you aware of that could benefit from additional national collaborative effort as part of the Third Action Plan?

The NDS as mentioned above. The NDS was developed by the Commonwealth, State and Territory governments through the Council of Australian Governments (COAG). It sets a 10 year reform plan from 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.

Six main policy outcomes are covered by the strategy: inclusive and accessible communities; rights protection, justice and legislation; economic security; personal and community support; learning and skills; and health and wellbeing. Identified under each of these outcomes are specific areas for future action and policy.

There are many potential links between the NDS and the Framework. A comprehensive analysis of the NDS is required to clearly identify the areas which are complimentary to the Framework what the interface areas are and how they should be best mutually progressed.

9. How can the unique needs of children from culturally and linguistically diverse backgrounds including newly arrived migrants and humanitarian entrants be adequately considered within the Third Action Plan?

³⁴ Robinson 2012, *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, p. 27.

It is important that consideration be given to the need of this cohort who are children with disability. The issues outlined throughout this submission need to be considered alongside those which should be afforded to children from culturally and linguistically diverse backgrounds.

10. How can the unique needs of children and families that are impacted by disability be adequately considered within the Third Action Plan?

This has been the focus of this submission. Additionally, CDA believes that the governance structure of the Framework should consider the development of a working group which could focus on: the application of a disability lens to the Framework; identification of actions which should occur; development of recommendations regarding progressing of actions; and establishment of a clear mechanism of providing feedback to the NGO Coalition.

11. Are there any additional vulnerable groups that would benefit from an increased focus under the Third Action Plan?

It is the view of CDA that the needs of children who identify as Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and Asexual (LGBTIQA) should be considered in the Third Action Plan. It is CDA's understanding that LGBTIQA children experience specific forms of maltreatment, such as chronic bullying and other harms arising from a lack of acceptance or open hostility to their sexual and/or gender identities. Further, work needs to occur to ensure that all protective, children and family services are inclusive of this group. One example CDA is aware of is the CREATE Foundation's CREATEing Equality resource for LGBTIQA children and young people with an out of home care experience, which is currently being developed.

12. Where do we expect to be in three years' time? Where do we hope we will be at the beginning of the Fourth Action Plan?

As outlined above, CDA strongly advocates for the identification and inclusion of specific considerations for children with disability within the upcoming Action Plan. Ideally at the beginning of the Fourth Action Plan we have clearly identified a range of related actions that have been undertaken and appropriate follow up and new actions are included in the upcoming Action Plan.

CDA would welcome the opportunity to discuss further issues relating to children with disability in relation to enhancing and promoting safety and wellbeing and protection from abuse and the specific inclusion of these as focus areas in the Third Action Plan of the Framework. Thank you for the opportunity to provide a submission to this consultation process.

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