

Department of Social Services

Supported School Transport and transition to the National Disability Insurance Scheme

**Children and Young People with Disability Australia
Submission – July 2018**

INTRODUCTION

Children and Young People with Disability Australia (CYDA) welcomes the opportunity to provide feedback on the *Supported School Transport and the National Disability Insurance Scheme Discussion Paper* (Discussion Paper).

The current school transport system for children and young people with disability has been of significant concern to CYDA for many years. School transport systems vary between individual states and territories. There have been numerous incidents nationally where children have experienced abuse, violence and other harm when accessing current school transport systems. CYDA is of the view that many of the conditions imposed on children with disability who utilise these transport systems, violate and deny rights afforded under the *United Nation Convention on the Rights of the Child 1989*¹ (CRC) and the *Convention on Rights of People with Disabilities 2006*² (CRPD).

The most prominent concerns relate to the length of travel, pre-employment and ongoing screening of staff, limitations imposed on children in relation to time available to play and spend time with family, qualifications and professional development of bus personnel and widespread inadequate or non-existent policies and procedures. The direct experiences of children with disability and related inquiries, including the Royal Commission into Institutional Responses to Child Sexual Abuse, demonstrate that existing school transport systems are highly problematic, inadequate, and dangerous. It is clear that significant reform is needed. CYDA therefore strongly opposes the continuation of current transport arrangements for students with disability.

Due to limitations on organisational capacity and the Department's inability to vary consultation processes for CYDA, this submission does not include a detailed assessment or proposal for an alternative model. However, in this submission comment is provided on the key issues that must be addressed and resolved, and the principles that should inform future action.

CYDA would welcome the opportunity to discuss the issues raised in this submission further and work with the Department of Social Services and the National Disability Insurance Agency on developing an alternative model that ensures the rights of children and young people with disability are upheld.

CHILDREN AND YOUNG PEOPLE WITH DISABILITY 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 and a growing social media presence with 22 500 followers across the three major platforms of Facebook, Twitter and LinkedIn.

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 appreciation 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.

¹ United Nations General Assembly 1989, *Convention on the Rights of the Child*

² United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*

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.

HUMAN RIGHTS FRAMEWORK

Australia has signed and ratified both the CRC and the CRPD. This clearly demonstrates Australia's commitment to protect and respect the rights, standards and obligations contained in both of these international human rights treaties which pertain to children and young people with disability, with many articles being of relevance to the provision of Supported School Transport to students with disability.

Children and young people with disability have the right under the CRC to *"enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community"*³. The right of children and young people with disability to fully enjoy the rights and freedoms on an equal basis to children without disability is reiterated in the CRPD⁴. This includes the right to life⁵, the right to be free from violence, injury or abuse, neglect, maltreatment or exploitation⁶, the right to be free from torture or other cruel, inhuman or degrading treatment or punishment⁷ and the right to play and enjoy family time⁸.

Australia as a State Party to both Conventions and its resulting obligations are fundamental informants for action in both the National Disability Strategy⁹ and the *National Disability Insurance Scheme Act 2013 (NDIS Act)*¹⁰.

Ensuring that Australia is compliant with its obligations under the CRC and CRPD, and other United Nations Conventions of relevance, is an essential consideration when analysing the existing school transport system/s and a critical consideration when establishing and evaluating any proposed alternative.

³ *Convention on the Rights of the Child*, Article 23

⁴ *Convention on the Rights of Persons with Disabilities*, Article 7

⁵ *Convention on the Rights of the Child*, Article 6

⁶ *Convention on the Rights of the Child*, Article 19

⁷ *Convention on the Rights of the Child*, Article 37

⁸ *Convention on the Rights of the Child*, Article 31

⁹ Commonwealth of Australia 2011, *National Disability Strategy 2010-2020*, p. 9 & 16

¹⁰ *National Disability Insurance Scheme Act 2013 (Cth)*, Part 2, s. 3(1)a

DIRECT EXPERIENCE

Education and Transport: A Broader Context

Any proposed school transport arrangement must be informed by the lived experience of children and young people with disability. Accordingly, it is important to understand the current context in which specialised school transport for students with disability is provided and accessed.

The breadth of disadvantage students with disability must contend with in the current education system is profound. CYDA is inundated with reports of poor and shameful education experiences. A typical school experience for students with disability involves discrimination, limited or no funding for support and resources, inadequately trained staff, a systemic culture of low expectations, exclusion and bullying. There are increasing incidents of restraint and seclusion reported to CYDA, which are seen as a clear consequence of a system in crisis. Failings have become entrenched in the education system and the urgency of delivering system wide solutions is now acute.

Despite the high value and strong evidence base linking educational attainment and improved life outcomes, students with disability are frequently denied educational opportunities. Even though there have been significant advances in recognising and affording people with disability rights and equal opportunities, ableist attitudes are still entrenched in the Australian community and very much shape the typical school education experiences of students with disability.

As detailed in many previous CYDA submissions on education, students and families must contend with a broad range of discrimination relating to school attendance and access. While the ability of all children to attend their local school is an embedded value within the Australian community, it is routinely denied to students with disability. School choice for students with disability is typically extremely limited due to a number of factors.

The following experiences, known as gatekeeping, encapsulate the multifaceted discrimination faced by students with disability when looking to attend school:

My son was expelled from our only zoned school in Grade One. The next two closest schools refused to accept him. I then began ringing around and more than 40 government primary schools refused to take him or said they would only if...compelled to. In the end the education department said I could choose any school and they would compel the school to take him. I chose the least resistant school, which is a 30-45 minute drive from home.

When deciding on an appropriate mainstream school in Prep, six out of the seven schools I interviewed for my son told me that they wouldn't be able to 'provide' my son with the necessary resources to benefit from enrolment at their school. This was straight from the principals – Parent.

A smaller independent school told us they would not be able to accommodate our son before they met him or saw any reports. We stated that he was incredibly bright but needed support with social skills. They told us not to waste our time.

The school appeared keen to accept my son's enrolment until I informed them that my son was vision impaired. The school then advised me that their school was not suitable due to stairs to access the classrooms. I informed the school that I was aware that all classrooms were at ground level, with the exception of senior year level classrooms to which the school had an elevator for access...(They) continued to state that their school was not suitable.

We wanted (our son) to go to our local Catholic school as I went there as a child. They weren't interested in having him there, said they wouldn't have the funding needed to support him and that we should put him in the public system.

My daughter has been declined placements over 10 times in all school settings, including a special school and both government and non-government. They just refuse to support her.

I tried enrolling (my son) into several local primary schools, which they were happy to do until I mentioned he had a disability. Then they told me they didn't have the resources. We didn't fit in anywhere and this had a huge impact on all of our family. We were desperate for a place and (the only school that would accept our son) was an hour travel each way.

When transitioning from a special school to mainstream school I phoned about 15-20 schools in our area. Most of these either made poor excuses as to why they couldn't accommodate our son or flat out said that due to his needs they couldn't accommodate him. Most of these were government schools.

"We can't help," "(this is) not an appropriate setting" and "(we) can't give you what he needs" were some of the discriminatory comments handed out by principals of local government schools in my area when seeking information on selection of a primary school to cater for my son. The entire experience was very upsetting and unlawful.

If every school you approach says the burden is too great - where do you take your child for education?

(My child attended a) small government rural school (and) did well for a couple of years with aide support...Eventually the teacher said "we have done we can for your son".

After six months there and doing well they said he was "too autistic"...Despite the \$10,000 a year fee and that we were happy with his progress, we were told not to come back!

(My child was) refused entry to a (religious) school as they felt they had their 'quota' of students (with disability).

(My child's) school requested that we terminate the enrolment on the basis of having "too many special needs children".

My mainstream local school said it wasn't their role to take (my daughter) and that I should go to my public special school.

I was urged to put my son into a special school because I was told he would not get a unit in high school that would be suitable for him. They said if I didn't take the special school placement he would have no high school placement.

Not one school would take (my son) as they said "he's 16 and legally doesn't have to be at school." This was despite my son wanting an education.

Nine schools denied access to (my son). I did not expect this as I wanted to return to work. (Reasons cited included) "lack of resources," "we don't take 'them' here" (regarding students with disability), "not enough fencing" or they would take an application and then send a letter saying there were no places.

The above experiences reflect the systemic barriers to school attendance that many students with disability and families experience. In summary these are:

- Some schools offer only conditional enrolment to students with disability. For example, it has been reported to CYDA that enrolment has been contingent on families paying extra fees or students being excluded from certain activities. These conditions of enrolment would be completely unacceptable if the child involved did not have a disability;
- Frequently, students with disability are not explicitly denied enrolment, however families are made to feel so unwelcome or that their child would be such an 'inordinate burden' that they are deterred from pursuing enrolment. This represents a less overt but equally harmful form of discrimination that has the effect of denying educational access;
- In other instances, students have such a poor experience at a particular school that leads to changing schools. In these cases, there is little choice, despite students not being formally denied enrolment;
- It is frequently reported to CYDA that students with disability are unable to attend school full time. Schools often cite having limited resources or 'capacity' to educate students full time; and
- Physical accessibility of a school premises is also a clear area where discrimination in enrolment and/or participation is experienced.

These factors often force children and young people with disability to schools outside their local area or to a school different to their siblings thus creating specific and additional considerations regarding school transport. Apart from the rights based imperative, there is a strong cost savings argument for ensuring inclusive education is afforded to all. By ensuring children and young people with disability are able to attend their local school or the same school as their siblings, extended travel and associated costs would most likely be minimised.

CURRENT TRANSPORT ARRANGEMENTS

Allowing the current arrangements to continue for children and young people with disability is not an acceptable option.

As mentioned previously, school transport has been a particular concern of CYDA's for a number of years. Policy and procedures vary in each jurisdiction. The most prominent concerns relate to the length of travel, pre-employment and ongoing screening of staff, qualifications and professional development for bus personnel and widespread inadequate policies and procedures. Further, for children with high health and physical care needs, the long periods spent travelling to and from school inhibits the provision of necessary support.

In many instances the families must utilise school transport because of work or other family commitments so it is not simply a preferred choice of families but the only transport option. The extensive travel time immediately denies many children significant opportunities and experiences of play, recreation, extracurricular activities and family time. All are specific rights outlined in the CRC¹¹.

Many families also report to CYDA the social exclusionary impacts of long travel times and being forced to attend school outside their local area¹². These experiences show that children are often left tired and stressed and have limited opportunities to know children in their local area, go to the park or shops, and are more likely to be seen as different or other by the local community. Systems

¹¹ *Convention on the Rights of the Child*, Article 31

¹² Children and Young People with Disability Australia 2012, *Enabling and Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*

which exclude children and young people with disability from social interaction reduces the visibility and acceptance of disability in the community. This directly stymies the progress towards a truly inclusive society.

My daughter goes to school an hour away from our home because there is no school closer that can meet her needs. I love her school, but hate the 1-1.5hr trip each way for her.

This problem is in every state. I fought the Department in NSW because I wanted my son to at least travel in the direction to my home. Their route was for him to go 10km in the opposite direction and then head my way which was already 14km from the school. The only reason they need to provide transport is because they don't allow our kids to go to school at their local school and meet their needs there.

Some families speak openly about the use and reliance of school provided transport as a much needed form of out of school hour care, particularly because many special schools do not provide an out of school hours program. Families should not be forced to rely on this as a default option for out of school hours care so they can meet employment or other obligations. It is vital that other options be established for children and families in these circumstances.

Students with high physical and medical needs often enrol at special settings so that they can access therapies to address their functional needs. Sitting strapped into a bus seat for four hours a day negates the intention of these therapies and is especially problematic for these children. Medical and behavioural issues have also been attributed to these inhumane conditions.

Victorian Supported School Transport – An example

The Victorian supported school transport system where government funded transport is available to students enrolled in special schools. It is an example of a current transport system which CYDA believes needs to be vastly improved or replaced. CYDA has raised significant concerns about the provision of bus transport to students with disability in Victoria for a number of years, particularly in relation to length of travel, inadequate policies and procedures and breaches of human rights.

Presently the policy is that the travel time for each journey can be up to two hours for a student to travel to or from school – a potential of four hours per day.¹³ In some circumstances this involves additional travel time to and from a designated 'pick up' point.

CYDA is aware that children from as young as five years of age, are spending four hours a day or more traveling to and from school. In some cases this involves very short distances of less than 10km. In many instances the families must utilise school transport because of work or other family commitments so it is not simply a preferred choice of families but the only transport option.

It is the view of CYDA that this travel frequently involves children being subjected to breaches of human rights. The extensive travel time immediately denies many children significant opportunities and experiences of play, recreation, extracurricular activities and family time. Further, for children with high health and physical care needs, the long periods spent travelling to and from school inhibits the provision of necessary support.

¹³ Victorian Government Department of Education and Training 2016, *Students with Disabilities Transport Program*, State of Victoria, Melbourne, p. 23.

In addition, students with disability experience abuse on school transport, including treatment which fits within United Nations' definitions of torture, cruel, inhuman or degrading treatment or punishment.¹⁴ Examples include students being restrained, abused and sexually assaulted during bus trips and denial of food, drink and the opportunity to use toilets also occurs.

It is the view of CYDA that limited and inadequate policies and procedures regarding school transport are key contributors to these shameful experiences of students with disability. For example, aside from criminal checks, there is minimal requirements or procedures for staff who drive or chaperone transport services in relation to qualifications and provision of professional development. There are also limited and inadequate policies regarding provision of specialised support for students with communication support needs and medical care needs.

Lack of supervision is another important issue. In many cases there is one driver and one chaperone supervising up to 50 students. A lack of appropriate supervision is a known key risk factor for abuse.

CYDA also has concerns in relation to policies and guidelines regarding restraint of students with disability. It is believed that present policies do not provide sufficient safeguards and do not ensure provision of evidence based behaviour support to prevent the use of physical, mechanical, chemical or psychosocial restraint. For example, the Victorian Government 'Restraint of Student' policy contains no reference to school transport settings.¹⁵

The following Victorian experiences reported to CYDA demonstrate these significant concerns:

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

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

The many attributes associated with longer travel time (for my son to and from school) are:

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

¹⁴ United Nations General Assembly 1984, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

¹⁵ Victorian Government Department of Education and Training 2016, *Restraint of Student*, State of Victoria, Melbourne, viewed 8 August 2016, <http://goo.gl/OZ6bCw>.

- Miss out on...after school therapies;
- The emotional toil and stress on families due to having more meltdowns; and
- Teachers at (school) would find that these children are less attentive during the day and possibly more disruptive – Parent.

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

In 2013 an 11 year old student who attended a special school in regional Victoria who was tied up by a bus driver during trips to and from school.¹⁶

In June 2015, a student who attends a special school in Melbourne was left on a locked bus for five hours because the driver failed to check that all students had exited. The student had fallen asleep when the other students exited the bus at 9am and was not found until 2.30pm.¹⁷

In 2010 CYDA and the Disability Discrimination Legal Service made representations to the Federal Attorney-General regarding breaches of human rights conventions in school transport for students with disability in Victoria. The letter informed of breaches of the *Convention on the Rights of the Child*, *Convention on the Rights of Persons with Disabilities* and *Victorian Charter of Human Rights and Responsibilities*. Since this time there has been no discernible change and students with disability continue to experience abuse and violation of rights due to lengthy school bus rides.

This shameful treatment demonstrates a critical need in Victoria for reform of policies and procedures regarding school transport provision for students with disability, with a focus on developing robust safeguards.

CYDA is of the view however that all supported school transport systems in Australia should be thoroughly reviewed as given the experiences of students reported to CYDA, findings of related education reviews and media reporting (examples below) it would appear that in some jurisdictions similar issues of concern which pertain to Victoria also exist.

¹⁶ J Topsfield 2013, 'Tough Discipline on the School Bus,' *The Age*, 8 April 2013, viewed 8 August 2016, <http://goo.gl/GIUpEs>.

¹⁷ M Calligeros 2015, 'Bulleen Heights Special School Student Left on Locked Crown Coaches School Bus,' *The Age*, 11 June 2015, viewed 8 August 2016, <http://goo.gl/kcyRx5>.

IN THE MEDIA...

2011 – *Bus driver may escape child sex charges*¹⁸

2013 – *VCAT damages bid after disabled child tied up on bus*¹⁹

2013 – *Mum pleads for help to keep daughter safe from bullying on school bus*²⁰

2016 – *Disabled teen commanded to perform sex act on bus by student*²¹

2016 – *Forgotten special needs child spent 31-degree day locked inside bus depot*²²

2017 – *Boy, 10, with disability left on school bus at depot near Wollongong, driver stood down*²³

2018 – *Concerns over revelations a third of specialist school buses in Ballarat not wheelchair-accessible*²⁴

VIOLENCE AND ABUSE – CRITICAL CONSIDERATIONS FOR QUALITY AND SAFEGUARDING FOR SUPPORTED SCHOOL TRANSPORT SYSTEMS

CYDA is frequently informed of children and young people with disability experiencing abuse, most often in education settings. This includes blatant examples that are clearly defined as abuse, such as physical assault. However, students with disability also experience incidents that are often not considered abuse because the child involved has a disability. Students being restrained to ‘manage behaviour’ or being denied access to food and drink during long bus rides to and from school are examples of this.

¹⁸ N Haxton 2011, ‘Bus driver may escape child sex charges’, *Australian Broadcasting Corporation*, 8 December 2011, viewed 20 July 2018, <http://www.abc.net.au/news/2011-12-07/sa-bus-driver-may-escape-child-sex-charges/3718520>

¹⁹ J Topsfield 2013, ‘VCAT damages bid after disabled child tied up on bus’, *The Courier*, 7 April 2013, viewed 20 July 2018, <https://www.thecourier.com.au/story/1415058/vcat-damages-bid-after-disabled-child-tied-up-on-bus/>

²⁰ J Kennedy 2013, ‘Mum pleads for help to keep daughter safe from bullying on school bus’, *Herald Sun*, 28 December 2013, viewed 20 July 2018, <https://www.heraldsun.com.au/leader/south-east/mum-pleads-for-help-to-keep-daughter-safe-from-bullying-on-school-bus/news-story/c5d7972e69cbec8aa40b0193e356e22e>

²¹ L Milligan 2016, ‘Disabled teen commanded to perform sex act on bus by student’, *7.30 Report*, 20 December 2016, viewed 20 July 2018, <http://www.abc.net.au/7.30/disabled-teen-commanded-to-perform-sex-act-on-bus/8136922>

²² A Dow 2016, ‘Forgotten special needs child spent 31-degree day locked inside bus depot’, *The Canberra Times*, 25 November 2016, viewed 20 July 2018, <https://www.canberratimes.com.au/national/victoria/forgotten-special-needs-child-spent-31degree-day-locked-inside-bus-depot-20161124-gsx3vz.html>

²³ ABC News 2017, ‘Boy, 10, with disability left on school bus at depot near Wollongong, driver stood down’, *Australian Broadcasting Corporation*, 3 March 2017, viewed 20 July 2018, <http://www.abc.net.au/news/2017-03-03/investigation-after-boy-left-on-bus-for-hours-near-wollongong/8322174>

²⁴ C King 2018, ‘Concerns over revelations a third of specialist school buses in Ballarat not wheelchair-accessible’, *Australian Broadcasting Corporation*, 5 April 2018, viewed 20 July 2018, <http://www.abc.net.au/news/2018-04-05/parents-angry-over-ballarat-specialist-school-buses-with-stairs/9618338>

Of concern is that abuse of students with disability is often not recognised or acknowledged. Rather it is common for abuse to be renamed or excused as ‘behaviour management’ or an ‘incident,’ rather than being seen as abuse and responded to as such. In other cases, abuse is justified as necessary in order fit in with existing models of service delivery. In these cases, the resource constraints and processes of service providers are prioritised above the rights of children and young people with disability. An example is being denied access to a toilet on two hour bus journeys.

In 2012, CYDA released an issues paper, entitled *Enabling and Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*, which discussed existing research about abuse and neglect of children and young people with disability. It identified a number of key risk factors for abuse to occur, including:

*Where (children and young people) have little choice or control over their lives; have multiple care providers, and little or no choice over who provides that care; rely on others for intimate personal care; live or spend significant time in settings where they are expected to be always compliant and well behaved; rely on alternative forms of communication; are viewed negatively by others; and are less able to be able to name abuse.*²⁵

The paper also found that high risk environments “emphasise control; isolate children and young people, cluster people with the greatest risk together, and reinforce compliance.”²⁶ Further high levels of worker casualisation have been associated with an increased risk of client abuse.²⁷ Research has found that the “increasing number of short term and casual staff has serious implications for the recognition and response to patterns of abuse and neglect in particular, as there is a dearth of long-term moral witnesses to note the cumulative effect of this maltreatment.”²⁸

Concerns regarding safety of students with disability on school transport were highlighted by sexual abuse experienced by two students with disability in South Australia in 2011.²⁹ The abuse was perpetrated by the students’ school bus driver, who was minimally supervised.

The known risk factors for abuse of children with disability are key characteristics of many existing school transport systems.

A number of federal, state and territory inquiries have previously addressed abuse on supported school transport. For example, the Senate Committee on Community Affairs recognised, in their 2015 inquiry into abuse of people with disability, that transport to and from school was a common place for abuse of children and young people with disability to occur³⁰. The final report recommended that the Australian Government work with states and territories to address the needs

²⁵ Children and Young People with Disability Australia 2012, *Enabling and Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*, p. 12.

²⁶ Ibid, p. 12.

²⁷ S Robinson et al. 2010, ‘Preventing Abuse in Accommodation Services: From Procedural Response to Protective Cultures,’ *Journal of Intellectual Disabilities*, Vol. 15, No. 1.p. 65.

²⁸ Ibid, p. 65.

²⁹ N Haxton 2011, ‘Bus Driver May Escape Child Sex Charges,’ *Australian Broadcasting Corporation*, 8 December 2011, viewed 8 August 2016, <http://goo.gl/VovQwW>.

³⁰ Community Affairs References Committee 2015, *Report: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, p. 63

of students with disability, including ensuring adequate funding for improved disability transport and a maximum school travel time limit for students with disability³¹.

Abuse of children and young people with disability accessing supported transport was also a focus of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission). This included a public hearing into St Anne's Special school where a bus driver employed by the school sexually abused as many as 30 students during his time working at the school³². Being the bus driver with no supervision meant he was able to groom and abuse the children without scrutiny for years. A number of individual direct experiences shared during the Royal Commission also related to supported transport, including taxi services³³.

The resulting Royal Commission report included recommendations which have direct relevance to supported school transport. This includes the recommendation that all institutions uphold the rights of the child in line with Article 3 of the CRC by implementing the Child Safe Standards identified by the Royal Commission³⁴. The Child Safe Standards require that '*staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training*'³⁵ and cover services for children with disability and transport services for children³⁶. These recommendations have been accepted by the Australian Government³⁷.

Therefore, given the heightened risk of violence and abuse faced by children and young people with disability, the characteristics of the current arrangements which compound that risk and the extensive evidence of abuse under the current system, CYDA strongly advises that any future model needs to include and enforce the maximum quality and safeguard mechanisms. Ensuring the safety of students with disability that are provided with supported school transport under the NDIS must be a fundamental and critical consideration informing all aspects of a future model.

While safety is mentioned briefly in the Discussion Paper, CYDA notes future safety mechanism will rely on the NDIS Quality and Safeguards Commission and commonwealth and state governments to ensure a high quality and safe school transport system³⁸. CYDA does not believe that current arrangements are sufficient for the reasons set out above. Further, CYDA queries why the Discussion Paper contains no reference to the relevant state Child Safe Standards, National Principles for Child Safe Organisations or any substantive information regarding **how** safety will be ensured and **who** will be responsible.

³¹ Community Affairs References Committee 2015, *Report: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, R 23, p. xxii

³² Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Report of Case Study 9: The responses of the Catholic Archdiocese of Adelaide, and the South Australian Police, to allegations of child sexual abuse at St Ann's Special School*

³³ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Private Sessions: Clarice's Story*, viewed 20 July 2018, <https://www.childabuseroyalcommission.gov.au/narratives/clarices-story>

³⁴ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report Recommendations*, R 6.4, p. 6

³⁵ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report Recommendations*, R6.5 (5), p. 6

³⁶ Royal Commission into Institutional Responses to Child Sexual Abuse 2017, *Final Report Recommendations*, R 6.9(h) & (i)

³⁷ Attorney Generals Department 2017, *Australian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Part 1, p. 3-4, 8

³⁸ Department of Social Services 2018, *Discussion Paper: Supported School Transport and the National Disability Insurance Scheme*, p. 15

It is critical that the Australian Government and the NDIA do not allow the current situation, characterised by high rates of abuse and rights violations, to continue under the existing arrangements or under a new model. Significant further work needs to be undertaken to develop safeguards, practices, procedures and enforcement mechanisms to prevent abuse.

CYDA would welcome the opportunity to discuss these issues further.

REASONABLE AND NECESSARY – CONTEXTUAL CONSIDERATIONS FOR A NEW FRAMEWORK

As discussed previously in this submission, there are a number of barriers facing students with disability and their families when it comes to accessing education which impact decisions around transport to and from school. This includes gatekeeping which may force a student with disabilities to attend school outside their local area, a lack of outside school-hour care and employment and other responsibilities of parents and caregivers.

CYDA is concerned that NDIS planners currently do not have the expertise or knowledge to make informed decisions about what is ‘reasonable and necessary’ when it comes to supported school transport. In particular CYDA has grave concerns about the Discussion Paper’s apparent preference for public transport and parental responsibility³⁹. There is scant information on who and how assessments will be made regarding whether a student should be provided with ‘independent travel training’.

It is therefore critical that in developing and evaluating a new model of supported school transport, specific consideration is given to how ‘reasonable and necessary’ decisions are going to be made and how the NDIA will ensure that those making decisions have a full understanding of the contextual issues around education and students with disability.

CYDA recommends that further work is undertaken to ensure any new model and associated decision making processes incorporate appropriate and transparent guidelines and professional development to ensure educational and other barriers are taken into account. CYDA notes that this should include consideration of issues discussed in this submission’s section on abuse.

FURTHER CONSULTATION

As discussed at the beginning of this submission, due to limitations on organisational capacity and the Department’s inability to vary consultation processes for CYDA, this submission does not include a detailed assessment or proposal for an alternative model.

Of particular concern to CYDA was the Department’s response to a request for extension. The Department advised that CYDA should just ‘provide a few sentences’ as ‘most submissions have been 1 or 2 paragraph(s)’⁴⁰. This statement raises questions for CYDA regarding the depth of departmental consultations.

In addition, CYDA wishes to express its concerns in relation to the 2017 targeted consultations. The Discussion Paper does not include any specific information about the makeup of these consultations, whether diversity of disability was a consideration or whether any students with disability were consulted. CYDA notes that it was not invited to participate in the 2017 consultations, or outside the

³⁹ Department of Social Services 2018, *Discussion Paper: Supported School Transport and the National Disability Insurance Scheme*, p. 3

⁴⁰ Email from Departmental Officer, available upon request.

public feedback process. Given that CYDA is the national disability representative organisation for children and young people, primarily funded through the Department of Social Services, this is extremely concerning.

It is critical that reforms which affect the lives of children with disability are informed by direct experience. Once again, CYDA would welcome the opportunity to discuss the issues raised in this submission and work together on an improved alternative model.

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