



Commissioner for Children and Young People
Western Australia

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To whom it may concern

As Acting Commissioner for Children and Young People in Western Australia I am pleased to provide a submission to the National Disability Insurance Scheme Quality and Safeguarding consultation.

Under the *Commissioner for Children and Young People Act 2006* (the Act) it is my role to advocate for the best interests of all children and young people under the age of 18 years in Western Australia and to promote and monitor their wellbeing. It is also a function of my office to promote the participation of children and young people in the making of decisions that affect their lives; monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and monitor the trends in complaints made by children and young people to government agencies. While the Act clearly states that the Commissioner is not to deal with individual complaints cases, an important aspect of this function is to ensure that all children and young people feel supported in raising a complaint with a government agency.

In undertaking my functions I must also give priority to Aboriginal and Torres Strait Islander children and young people and children and young people who are vulnerable or disadvantaged for any reason. In addition, I must have regard for the United Nations Convention on the Rights of the Child.

It is within the context of my role as an independent, statutory office and the functions outlined above that I provide the following comments, specifically with regard to the development of quality safeguards for children and young people with disabilities under the National Disability Insurance Scheme.

Reliable data on the number of children and young people in Australia who experience abuse and neglect are not available. Existing research however suggests that children and young people with disability experience abuse and neglect at rates higher than their peers without disability. Further, it is suggested that children with communication

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impairments, behaviour difficulties, intellectual disability and sensory disability may experience higher rates of abuse and neglect.¹

I support the need for safeguarding initiatives to be developed across the three broad domains as outlined in the proposed framework in the consultation paper – that is, the developmental domain (recognising the importance of natural safeguards, such as strong personal networks for children and young people with disabilities, along with the provision of information and support for parents and caregivers); the preventative domain (including staff and volunteer screening and training); and the corrective domain (including complaints mechanisms).

With this in mind, I encourage the consultation team to have regard for not only the United Nations Convention on the Rights of Persons with Disabilities but also the United Nations Convention on the Rights of the Child. I believe that both of these conventions should underpin the process of developing the quality and safeguarding framework.

Child-safe principles

Child-safe principles promote a culture where the safety, wellbeing and participation of children and young people are reflected in policies and day-to-day practices across all levels of an organisation.

My office has recently commenced a project to support the development of child-friendly and child-safe organisations. I believe some of the key understandings and developments in supporting child-safe organisations would be helpful to consider in the development of a quality and safeguarding framework for NDIS funded supports for children and young people with disabilities.

In broad terms, a child-safe organisation adopts a range of strategies to:

- promote a culture of prevention and reduce the likelihood of abuse or harm occurring (for example, through recruitment practices and screening)
- create environments where children and young people can speak up about things that make them uncomfortable (children know their rights and know who and how to report concerns)
- have policies and procedures that ensure staff respond appropriately to complaints or disclosures about abuse and neglect (staff training, clear reporting procedures).

According to the Australian Children's Commissioners and Guardians 2013 publication 'Principles for Child Safety in Organisations', child-safe organisations:

- take a preventative, proactive and participatory approach to child safety
- implement child safety policies and procedures which support ongoing assessment and management of risks

¹ Children with Disability Australia (2012) *Enabling and Protecting: Issues Paper*, p. 10.

- value and empower children to participate in decisions which affect their lives
- foster a culture of openness that supports all people to safely disclose risks of harm to children
- respect diversity in cultures and child rearing practices while keeping child safety paramount
- provide written guidance on appropriate conduct and behaviour towards children
- engage only the most suitable people to work with children and have high quality staff and volunteer supervision, and professional development
- ensure children know who to talk with if they are worried or are feeling unsafe, and that they are comfortable to do so
- report suspected abuse, neglect or mistreatment promptly to the appropriate authorities
- share information appropriately and lawfully with other organisations where the safety and wellbeing of children is at risk
- value and communicate with families and carers.²

Applying child-safe principles to a national quality framework will promote a culture where the safety, wellbeing and participation of children and young people are reflected in policies and day-to-day practices at all levels within an organisation.

I believe child-safe principles should be clearly articulated in a national quality framework, underpinning the way in which care and support is provided to children and young people with disability. The National Disability Insurance Scheme's quality and safeguarding framework represents a valuable opportunity to prioritise the principles of child-safety and I urge the consultation team to consider including these in the 'Principles to guide the development of Quality and Safety framework for the NDIS'.

Child-friendly complaints processes

Children and young people themselves seldom make official complaints. Most complaints received by government agencies in relation to children are made on behalf of the child or young person by a parent or another adult. The reasons why children and young people may not report concerns about their treatment include:

- not believing their problem is big enough to warrant an 'official' complaint
- not understanding they are allowed to make a complaint or how to go about it
- concern about not being believed
- fear of getting into trouble or getting others into trouble
- embarrassment or shame
- worry about confidentiality and privacy

² The Commissioner for Children and Young People (WA), accessed 22 April 2015 at www.ccyp.wa.gov.au

- fear of repercussions and that things will get worse (especially about bullying).

Promoting child-friendly complaints systems, in line with my statutory functions, is a priority area of work for my office. One of the ways in which I ensure complaints mechanisms are as child-friendly and accessible as possible is by working with agencies to improve their own systems, helping to address some the barriers that exist for children and young people. This includes providing seminars to promote child-friendly complaints systems and publishing good practice examples of complaints systems within other organisations. I have also produced guidelines on making complaints systems child friendly. *Are You Listening? - Guidelines for making complaints systems accessible and responsive to children and young people* is available for download on my website www.ccyp.wa.gov.au.

A child-friendly complaints mechanism is a vital component of a national quality framework and should be carefully considered when designing the broader system for handling complaints.

As noted in the consultation paper, complaints are an important part of any system which provides care and support to or otherwise deals with children and young people. In some cases, complaints may also be related to more serious matters which involve violence or abuse of a child or young person, along with the potential for more children to be exposed to a similar risk.

I would like to strongly emphasise that while these matters may initially be reported through a complaints process, violence or abuse of children and young people is a criminal matter which should be dealt with immediately by police and/or other relevant authorities.

Participation of children and young people

In undertaking all my work I advocate strongly for the participation of children and young people and promote the engagement of decision makers with children and young people to hear their views and ideas about matters that concern them. Children and young people with disability are no different and are capable of forming views about decisions that impact their lives.

In 2013 my office undertook a consultation with more than 200 children and young people with disability from a broad range of backgrounds. The report³ of that consultation highlights that overwhelmingly, children and young people with disability want the same things as those without disability. In many ways, their concerns, hopes and aspirations are the same as any young person navigating the transition from adolescence into adulthood. Like most children and young people, they rely on the love and support of their family and friends, and want to feel safe in their communities. They want to be understood and accepted, and want adults to listen to them and take their views seriously.

³ Commissioner for Children and Young People (2013) *Speaking Out About Disability: The views of Western Australian children and young people with disability*, accessed 15 April 2015 at www.ccyp.wa.gov.au

I strongly encourage the consultation team to create opportunities to speak with children and young people with disability to hear about their concerns, needs and what is important to their wellbeing.

I appreciate the complexities of consulting with children and young people in these circumstances, and would suggest that organisations specifically working with these groups are well-placed to assist in undertaking consultations that are developmentally appropriate and meet the needs of the children and young people concerned.

My office has also produced guidelines to assist organisations to undertake activities that encourage the participation of children and young people. The *Involving children and young people: Participation guidelines* are available to download from my website at www.ccyp.wa.gov.au.

The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector (National Framework)

I acknowledge that the Australian Government is moving towards a consistent national approach to the use of restrictive practices in the disability services sector, and that a range of options have been put forward as possible approaches. I also note that the National Framework intends to work within existing legislative arrangements to set out the minimum requirements in relation to restrictive practices.

Children and young people are not mini-adults. They have unique developmental needs as distinct from adults and should be recognised in a way that acknowledges this. In developing a national approach to the use of restrictive practices, I feel it is appropriate therefore to include the Rights of the child as a high-level guiding principle, as outlined in the United Nations Convention on the Rights of the Child.⁴ I would also encourage the consultation team to consider using child-safe principles to guide the development of this work.

Part of this commitment should acknowledge children and young people as major users of our educational institutions in particular, settings in which this cohort may be disproportionately exposed to greater risk of harm through the use of inappropriate restrictive practices in such settings.

In summary I provide the following key points for consideration by the consultation team:

- Inclusion of child-safe principles in the 'Principles to guide the development of Quality and Safety framework for the NDIS'.

⁴ United Nations Convention on the Rights of the Child, accessed 15 April at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- Safeguarding mechanisms within the preventative domain to ensure appropriate screening, professional development and ongoing training of people working with children and young people. This should be flexible and responsive to the type and level of care provided to the child or young person and should form part of the funding model for agencies that provide care and other services to children and young people with disability.
- Development of a child-friendly complaints mechanism that articulates and applies the child-safe principles. This should be adopted by all organisations that provide care or services to children and young people with disability.
- Inclusion of the Rights of the child and child-safe principles in the high-level guiding principles that underpin the development of a national approach to the use of restrictive practices.

I appreciate the opportunity to provide these comments and would be happy to provide further information as required.

Yours sincerely



JENNI PERKINS

Acting Commissioner for Children and Young People



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