



people with disability

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Royal Commission into Institutional Responses to
Child Sexual Abuse
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Dear Policy team/Counsel assisting the Royal Commission:

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As you are aware, People with Disability Australia has supported the Royal Commission's investigations thus far, particularly providing information specific to the experiences of children with disability in institutional settings, and those of survivors of child sexual abuse with disability.

We are pleased to see that the Royal Commission will be holding Case Study 51 into the Commonwealth, State and Territory governments, particularly in to their response to some of the key policy discussions led by the Royal Commission. This is a key moment of accountability, and will provide an excellent foundation for post-Royal Commission developments, and help to set an agenda for the way forward. We commend the Royal Commission for its far-sighted approach in this matter.

To support this, we would like to highlight for the Royal Commission some of the key priorities we can see for people with disability in relation to the public hearing's topics, scope and purpose.

1. The response of the Commonwealth government to the recommendations of the Child Protection Panel in its report dated 11 May 2016, 'Making Children Safer – the wellbeing and protection of children in immigration detention and regional processing centres'.

In relation to this report, the ongoing problems for children with disability in detention may warrant specific attention. Without appropriate disability supports – as flagged in the report itself – children with disability may be placed at higher risks of violence, including sexual violence. Additionally, without appropriate supports and education, children with disability (especially those who are survivors themselves) may be at higher risk of perpetrating violence against others. We would emphasise that a forensic approach to these matters should not be the initial approach, especially in the absence of appropriate disability supports.

3. The responses of the States and Territories to the Commonwealth Redress Scheme for survivors of institutional child sexual abuse, announced on 4 November 2016.

With a representative of PWDA a member of the Redress Advisory Council, we will be particularly interested to hear about the state and territory responses to the Commonwealth Redress Scheme. The barriers that survivors with disability face when attempting to access justice through the justice system are substantial, as demonstrated particularly in the Criminal Justice Report from the Royal Commission. However, we would also highlight that many similar factors impede survivors with disability from accessing compensation through civil litigation. In this context, we would be interested to hear how states and territories who are not 'opting in' to the Commonwealth Redress Scheme intend to ensure that survivors with disability access the justice to which they are entitled.

4. The recommendations concerning civil litigation made in the Royal Commission's Redress and Civil Litigation report.

While the recommendations concerning civil litigation made by the Royal Commission are welcome, and if implemented would increase access for survivors with disability, it must be noted that many of the specific barriers experienced by survivors with disability were not addressed in this report. It would be of interest to us how states and territories might take the Royal Commission's recommendations as a starting point for addressing barriers experienced by survivors with disability. Some of these barriers have been a focus for the criminal justice investigations of the Royal Commission (for example, how to ensure that courts are provided with adequate communication support to engage directly with people with disability).

5. The recommendations contained in the Royal Commission's Working with Children Checks report.

While we support the recommendations made in the Working With Children Checks report, we are also mindful that there are a number of screening arrangements either in development (such as the NDIS worker screening arrangements as part of the Quality and Safeguarding Framework recently released) or being investigated in other sectors (such as in the aged care sector, as suggested in the Australian Law Reform Commission's Inquiry into Elder Abuse consultation paper). These proposed arrangements are likely to also move towards nationalisation of the screening process. Additionally, there is evidence to suggest that perpetrators frequently move between providing services to children, people with disability and older people.

This makes the current policy landscape ripe for consideration of how these three sectors and their screening arrangements can and ought to intersect, and how this might impact on the list of offences or disciplinary actions considered to demonstrate undue risk and result in denial of a WWCC (or any other kind of check).

6. Nationally consistent data collection in relation to child sexual abuse in out-of-home care.

PWDA has raised with the Royal Commission a number of times the problems with accessing data regarding children with disability in out-of-home care, and resultantly, the numbers of children with disability who experience sexual abuse in these settings. We would remind the Royal Commission that it was a commitment under the National Framework for Protecting Australia's Children First Action Plan to ensure that the Child Protection National Minimum Data Set, used to collate administrative data, contained information regarding the prevalence of disability amongst children in the Child Protection system. This commitment appears to have fallen by the wayside under pressure from states and territories wishing to maintain their existing definitions of disability, which are not comparable, and according to the Australia Institute of Health and Welfare, cannot therefore be reported on.

7. Reportable conduct schemes and mandatory reporting requirements.

As highlighted in our submission to the Royal Commission regarding reportable conduct schemes, problems can and have arisen, especially where 'Class or Kind' determinations are developed without awareness of both the heightened risk of violence experienced by children with disability and how disability may be used to justify or excuse such violence. In NSW, the Reportable Conduct Scheme involves a Class or Kind determination developed with the education sector which in practice has enabled the exclusion numerous instances of violence against children with disability, including the use of restrictive practices (such as seclusion or solitary confinement and physical restraint). Despite the problems with the Class or Kind determination and the exclusion of some cases from consideration as a result, the NSW Ombudsman's data reveals that children with disability experience higher levels of violence than other children.

PWDA has provided information regarding the NSW scheme to governments in the ACT and Victoria concerning these problems, to support their respective development of a fully disability-inclusive and disability-responsive scheme. In both cases, the NSW scheme has acted as something of a model, so it is

our hope that our participation in the consultations for each scheme has ensured the enhanced safety of children with disability. However, it is unclear whether these two states have developed their schemes with specific attention to the heightened risk of children with disability. PWDA would like to see each state and territory seeking to implement a reportable conduct scheme provide an account of how they have ensured the safety of children with disability.

8. Nationally consistent approaches to child safe standards.

The NDIS Quality and Safeguarding Framework has been only recently released. It provides very minimal specific coverage of children with disability. Indeed, it appears to rely heavily on state and territory child safety arrangements to ensure the safety of children in service settings, meaning that these mainstream child safety arrangements must be fully disability-inclusive and disability-responsive, which in most cases they are not currently. PWDA would like to see each state and territory, and the Commonwealth, specifically address how they will ensure the child safe standards fully respond to the situation of children with disability.

Additionally, the NDIS Quality and Safeguarding Framework is designed to operate as a whole, covering issues from risk assessments in planning processes, through to complaints about services and responding to restrictive practices. However, the reliance on state and territory based child safety arrangements means that numerous aspects of the Framework are not responsive to children or reflective of how their needs differ to those of adults.

We thank the Royal Commission once again for the opportunity to highlight the particular barriers experienced by children with disability, the ways that they can heighten the risks of sexual violence they face, and most importantly, the pathways to safety for them.

Sincerely,



Dr Jess Cadwallader

ADVOCACY PROJECTS MANAGER, VIOLENCE PREVENTION
