



Best practice principles in responding to complaints of child sexual abuse in institutional contexts:

Response to a consultation paper issued by the Royal Commission into Institutional Responses to Child Sexual Abuse

National Disability Services (NDS) is pleased to comment on the Royal Commission's consultation paper. The work of the Royal Commission continues to be of great interest to the disability sector. The National Disability Insurance Scheme (NDIS) has the potential to significantly improve the lives of people with disability, their families and carers, given the right design and implementation decisions. There is much identified by the Royal Commission in this paper that has deep relevance to preventing and responding to abuse, including that experienced by children and adults with disability. Our comments reflect on contemporary practice in management of complaints generally, complaints in a disability context and, more specifically, complaints involving children with disability.

General Comments

The Commission's paper strongly aligns with NDS's approach to safeguarding through the *Zero Tolerance* initiative insofar as it focuses on 'best practice approaches' that sit outside local legislative contexts. In the context of the NDIS – a national system of disability support – we see value in increased consistency across the country. This paper affirms that even across multiple community services sectors this is a useful approach.

We welcome the approach not to focus purely on traditional views about what constitutes a complaint. We endorse the view that this is a broad issue encompassing positive complaints cultures (p20, section 4.1), early warning signals (p22, section 4.4.) and intersection with the criminal justice system (p23, section 4.5). The approach also includes the complex area of investigations which NDS members report can be a confusing process with a dearth of consistent advice.

NDS has been engaged in lengthy national consultation on establishing best practice guidelines for investigations. This has been challenging, involving state and territory governments, statutory bodies and the police. The investigations process cannot be treated separately from other elements of complaints or incidents management. From the moment an organisation becomes aware of an incident, whether observed, reported or disclosed, the chain of events which follow are inextricably linked. The Commission's reflections on this matter are welcome.

Recent inquiries into abuse in the disability sector have consistently raised the issue of 'complaints.' They identify that, too often, people with disability have been let down by unclear processes, a fear of speaking up, a general sense of disempowerment, lack of feedback and action and ultimately a lack of justice. The regulation of safeguarding in the disability sector will be set by the impending national quality and safeguarding framework, but ways to strengthen practice across each of these areas will be required.

Information is available through various bodies on making complaints. However the move from policy to practice is lacking. On this basis, NDS is unconvinced that the language of 'complaints' is achieving its aim. We have seen anecdotal support for the language of 'speaking up'. This is about seeking information or asking for assistance, not just about a threshold of negative experiences or discontent. This strongly ties in with people with disability speaking up through self-advocacy and peer support groups. It is also cognisant of the negative cultural associations of 'complaints', such as a worry about 'rocking the boat', 'causing a fuss' or being perceived as 'a whinger' or a 'dobber'.

People with disability using disability services told NDS that the number one factor in feeling safe was being listened to. If people feel they are generally not listened to about anything, they are even less likely to be in a position to 'complain' (see NDS *Speaking up about Safety*, 2014).

Organisations which set and reinforce feedback cultures are likely to have success in meeting people's needs and preventing abuse in the first instance.

Matters on which submissions are sought

1. Best practice principles

Responses to complaints and reports of abuse vary significantly across institutions. No single policy or guideline can be applicable to all institutions. Best practice principles offer a useful approach to stimulating thinking within organisations on how best to develop complaint handling policy. The principles are broadly supported, although we would like to see emphasis on strengths-based approaches, with less focus on vulnerability and more on risk mitigation. Use of case studies and evidence-based stories would illustrate how the principles are implemented.

1) *An institutional culture that makes decisions based on the best interests of the child and is aware of the inherent vulnerability of children in their care*

Zero Tolerance advocates universal human rights and safeguarding approaches, but understands there are inherent and unique risks for children and young people using services. A 'best interests' approach (which can be subjective) and focus on 'inherent vulnerability' are not always appropriate. Organisations must recognise that children and young people have differing capabilities and capacity for self-expression as they mature and develop.

2) **A child-focused complaint handling policy** NDS understands this to mean policy which is accessible and clearly understood by the children and young people who need it. We endorse this view and welcome advice and resources that demonstrate best practice in this area such as development of 'child friendly' information. NDS does not advocate a separate parallel child-focused policy, rather one that is accessible and responsive to individual need.

Zero Tolerance draws together cross-sector best practice as a foundation for better organisational cultures generally. It also understands that some cohorts – such as children – require additional supports, such as information, time, demonstrated empathy and understanding etc. There are unique risks for children, exacerbated by disability. Systems should be accessible and transparent for all, but also understand and mitigate these specific age and disability-related risks.

3) **A process that is clear and accessible to children and adults, and emphasises responsiveness and accountability** We strongly support the focus on policy and practice which emphasises responsiveness and accountability. This will contribute to addressing the barriers to speaking up identified in this paper. Organisational cultures should encourage early intervention, speaking up by all without fear of reprisals (including staff speaking up about other staff) and actively demonstrate that complaints will be taken seriously, acted upon swiftly and managed appropriately. In the case of abuse and neglect this means reporting to, and actions from, the CEO and board. Age and disability accessibility is paramount and should recognise the ways that people feel comfortable speaking up about concerns. This should include a 'no wrong door' approach. The need for discretion, transparency and independence should be reinforced.

4) **Protocols are in place for managing relationships and sharing information with other agencies** NDS supports this principle strongly; the need to work closely with external agencies is reflected within the *Zero Tolerance* framework. Practice and requirements vary across jurisdictions with regards to responsibilities to statutory bodies, funding agencies and government. Members experience varied interactions from the police, often dependent on local relationships and capacity.

5) Where local authorities are strong and clear on requirements and support capacity building within the sector – such as through the training and resources provided by the NSW Ombudsman and Victorian Office of the Disability Services Commissioner – accountability is strengthened. However mainstream services are also historically poor at making their services accessible to people with disability.

6) **Training is provided about the complaint handling process** We support this principle in the context of a broader human rights abuse prevention agenda. Key to this is creating cultures whereby all people using services are encouraged and supported to speak up through a range of mechanisms. Staff should have training on how to respond to this and take steps to respond where a person is reporting abuse or making a disclosure.

Resources and training from external statutory bodies, such as disability complaints offices, contribute to better sector outcomes. NDS is developing such resources as part of *Zero Tolerance* and will continue to do so. Under the NDIS there is potential to partner with a future national independent complaints authority in a shared educational role that simplifies and reinforces approaches in a way that is accessible to disability workers and builds their capacity to be responsive to the needs of children and young people.

- 7) **An ongoing audit process is in place.** This principle is supported and reflected in *Zero Tolerance* as “*learning, analysis and continuous improvement*”. This can be done through policy and practice ‘audits’ but implies that this is a bureaucratic process undertaken from a back-of-house perspective. *Zero Tolerance* advocates action and responsibility at all levels of an organisation: what can be learned; what can be done better, what happened within our organisation that allowed this to happen; how can we prevent it happening again? Contributions to these questions should come from everyone; from people who use services through to boards (who have ultimate accountability) and should not be restricted to an audit process.
2. **“The value of independent oversight mechanisms such as reportable conduct schemes. We welcome submissions about whether similar schemes should be established in all Australian states and territories. We also seek submissions about what features an independent oversight scheme should include and whose conduct should be subject to its oversight.”**

NDS supports the establishment of a national independent oversight body for the disability sector. This must provide people with disability and their families with assurance that there is an external mechanism by which complaints can be managed. Such a mechanism should not be seen as the only pathway for resolution of complaints. Organisations’ own systems should be transparent, accessible and to the greatest extent possible provide people with the support and response they require.

Discussions with disability complaints handling bodies nationally have revealed that they devote considerable efforts to supporting the resolution of complaints that could have been managed locally through better information, quicker responses, person-centred approaches or use of mediation or conciliation.

The development of a new national body under the NDIS is an opportunity to signal clearly to disability service organisations the importance of investing in their own complaints handling processes. This would drive better outcomes and free the independent oversight body to manage more complex, serious and challenging complaints. Industry bodies are well placed to support organisations to instil effective approaches to complaints handling.

NDS supports a national code of conduct for organisations and staff, monitored through co-regulation, with the peak body having delegated responsibility for low level complaints and sector education and training, with the availability of the independent

oversight body as required. These mechanisms should naturally deliver better understanding of complaints and drive reporting in the sector. Further work is required to explore the industrial implications of such an approach. The introduction of a disability worker exclusion scheme in Victoria without appropriate legislation has placed a great deal of responsibility on service providers to appropriately investigate and manage disciplinary cases, increasing their exposure to charges to unfair dismissal.

Where reportable conduct schemes exist – such as that introduced in 2014 by the NSW Ombudsman – they play an important role in increasing the understanding of the nature and prevalence of abuse. NSW has seen a significant increase in reports of disability abuse and is using this information with providers to explore areas for training. One such area is training for conducting disciplinary investigations, which is highly specialised and involves huge risks for contamination of evidence if done badly. It should be noted that this scheme has been heavily resourced within a well-established statutory body. Replicating the scheme nationally would have significant resource implications. Further, some NDIS prices do not reflect the investment in human resources required to support a reportable conduct scheme.

3. We also welcome submissions on how to improve institutions' access to advice and support when responding to complaints of child sexual abuse, especially for smaller institutions.

- a) **“Options for consideration include a possible increased role for peak bodies”** As a national peak body, NDS has a unique perspective on the issues facing disability providers as they transition to the NDIS. We are active across a number of domains to support this transition and maintain a viable, diverse disability market. This includes a leadership role with regard to safeguarding and demonstrated through the *Zero Tolerance* initiative, and the advice NDS provides to government and the NDIA.

Zero Tolerance offers a useful and important insight into how a peak body can play a role in providing advice to all organisations – regardless of size or location. It was developed through a national consultation aimed at developing practical resources for disability service providers in all locations and with varying capacity. Even large well-resourced organisations may need advice and support to improve safeguarding systems and cultures.

We have also hosted sessions on safeguarding in our national and state conferences, contributing to a growing awareness of safeguarding across the sector.

- b) **“Government agencies that may be able to provide resources for smaller institutions, such as preparing policy templates”** NDS believes that a range of players can be involved in ensuring organisations have access to relevant information and support, including peak bodies, government agencies, private service providers and oversight bodies. A multi-layered approach will ensure all parties – large and

small - have many opportunities to access information in ways to suit their organisation, client and staff needs.

The NDIS will change regulatory and funding responsibilities across governments. There is concern in the disability sector about the potential loss of behaviour support teams, with trained clinicians minimising use of restrictive practices. NDS is exploring ways to capture legacy work and incorporate it into *Zero Tolerance* through templates and train-the-trainer work. There is an urgent need to describe the functions required in the future and then consider who is best placed to deliver them.

The NDIA is differentiating its responsibilities from those of state-based community services in relation to child protection matters. Service providers are unable to use NDIS funds in relation to care and protection matters for children.

- c) **“Private service providers that may provide a fee for their services”** We are aware that some private organisations have been funded to provide background police checks. Other private consulting firms offer risk-based safeguarding training, risk audits, and even specialist psychometric testing on prospective employees. Such services incur cost and highlight that a genuinely strong safeguarding approach does not come for free.

Access to a range of appropriately skilled services in a varied market should be encouraged. This can help drive down costs for some services (such as police and background checks), reduce waiting times and offer services in thin markets. Our preference would be to see these opportunities open to service providers who can bring their expertise and sector knowledge. There should be stipulations on the involvement of people with disability as employees and/or as paid experts.

- d) **“Which oversight bodies would be best placed to advise and support institutions”** Through *Zero Tolerance*, NDS has reinforced its strong relationship with the various Australian disability complaints bodies including national bodies such as the Australian Human Rights Commission and the Commonwealth Ombudsman. Each makes an important contribution to safeguarding in their jurisdiction, using analysis of complaints received to drive actions. Over the past 12 months NDS has worked closely with HADSCO in Western Australia, the Victorian Disability Services Commissioner and the NSW Ombudsman on a range of activities including forums, resource development, training for organisations and sharing of feedback. Other bodies such as the Offices of the Public Advocate in Victoria and Queensland and the Health and Community Services Complaints Commissioners in South Australia and the Northern Territory have also helped inform *Zero Tolerance* resources.

Relevant to this paper, each of the complaints bodies has developed instructions for people with disability and families on how to make complaints, as well as practical advice for organisations on developing their own complaints processes in a manner which this consultation paper seeks to address. The critical issue is that their legislative platforms are not consistent, which could be problematic in the context of

the NDIS which is expected to be national and portable in scope. There are also service gaps, with no independent disability-focussed complaints body in Tasmania or Queensland. Whatever structure is responsible for the national oversight body under the NDIS will need to be nationally available and operate consistently.

- e) **Any other issue or topic which is not addressed.** Although we have focused on disability in our response, NDS recognises that disability is only a part of a person's life. Children with disability are children first and should be supported as widely as possible to access channels used by other children, with staff skilled and trained to support people in all circumstances.

With regard to investigations, NDS advocates consideration of four elements: criminal, disciplinary, organisational and person-focused. Each is important in its own right. Whilst criminal proceedings are rightly prioritised, a disciplinary proceeding (in the case of staff perpetrated abuse) must also occur, with due procedural fairness built in. This is challenging for providers, since police advice varies from region to region, and in some cases from station to station. We urge the Royal Commission to consider best practice approaches by police and promote for further discussion.

An organisational investigation should be reflective and seek to establish 'what about our organisation allowed this to happen' and take corrective actions. Finally, but critically, a person-focused should explore the events from the perspective of the victim(s) and seek to understand what circumstances specific to their own lives can ensure that this never happens again.

The issue of adequate funding for facilitating best practice in responding to complaints is significant. Workforce development, system development and maintenance, and increased advocacy support all require significant investment to be effective. For service providers under the NDIS this means a unit price that is adequate. More broadly, it requires funding for sector development that sets a high benchmark.

Oversight bodies must also be well-resourced, with funding not wasted by unnecessary duplication and red tape.

Although the design of the NDIS quality and safeguarding regulatory framework is still being decided, measures to promote good practice should be proceeding now. Sector development initiatives to strengthen the prevention and response to abuse should proceed in advance of the full scheme rollout of the NDIS.

May 2016

Contact: Dr Ken Baker
Chief Executive
National Disability Services
Ph: 02 6283 3200
Mob: 0409 606 240
ken.baker@nds.org.au

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1110 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.