



Institutional responses to child sexual abuse in out-of-home care

National Disability Services (NDS) is pleased to have this opportunity to respond to the *Royal Commission into Institutional Responses to Child Sexual Abuse* regarding Institutional Responses to Child Sexual Abuse in Out-of-Home-Care (OOHC). Given the comprehensive paper developed by the Royal Commission and NDS's role as the national peak body for disability services providers, we have focused on the experiences of children with disability placed in out-of-home care and their families.

The Royal Commission's work is timely because the National Disability Insurance Scheme (NDIS) has the potential to significantly improve outcomes for these families, given the right design and implementation decisions. It is important that all governments give priority to designing how the NDIS can interface with other sectors such as family support and child protection systems.

Providers report an overuse of crisis responses resulting from missed opportunities to intervene with the right support at the right time. This is often caused by pre-NDIS system design issues, such as unclear funding responsibilities for early intervention and a lack of sufficient flexibility or expertise to allow the models of support that address disability issues and specific family needs and circumstances.

The current focus on crisis management makes it hard to plan for better responses. NDS urges all policy makers to take a broader view of the relationship between disability and out-of-home care, and to make strategic recommendations that will address the fundamental challenges and funding boundary issues. Investment should be linked to effective cross-system collaboration to improve the experiences of young people with disability and families and reduce risk of harm to people in the OOHC system.

Some out-of-home care placements are due to inadequate disability support

NDS recognises that the Royal Commission is addressing the abuse of children already in the OOHC system. However, to be truly preventative we strongly advocate that the Royal Commission consider and make recommendations to government which aim to reduce the number of children with disability entering OOHC in the first instance.

Lack of support for families is often the main factor in children with disability being placed in out-of-home care. Raising children with disability and high care needs can be difficult

and access to support can be complex and crisis-driven. The resulting strain leads some parents to decide to give the day-to-day care of their child to someone else.

Without adequate access to disability supports, many families end up in crisis. A 2012 study in Victoria called '*Desperate Measures*'¹ estimated that 50 or more families surrender the day-to-day care of their child with disability to the state each year. Most commonly, children are not collected from facility-based respite services, but they are also surrendered at school, government department offices, hospitals or by calling the police or other emergency services. The study found that there is no typical family that surrenders care. The common feeling families described was of coming up "against a brick wall" when asking for help.

The NSW Office of the Children's Guardian publishes data on voluntary out-of-home care.² This shows in 2012-13 that 2,176 children with a disability (out of a total of 2,364 children) accessed voluntary out-of-home care services.

Disability service providers report that sometimes intensive support attempts end in families surrendering their children to a disability service. A key issue is challenging behaviour related to autism as the child grows. Western Australia has seen a 33 per cent growth since 2011 in 'specialised and individualised' placements of children with complex and challenging behaviours. These services cater for children who cannot safely use foster care or residential care. In 2013/14, nine WA community organisations supported 189 children with these complex needs. An additional 89 young people were supported to transition to adult disability services

Providers believe that where intensive support fails to prevent a relinquishment, it is often because it happened too slowly and too late. Lack of expertise and understanding of disability among child protection services can delay interventions, which in turn delays necessary therapeutic disability services – often compounding trauma.

Sometimes these children are already in the child protection system but their disability needs have not been fully understood. This is unfortunate, as timing for some positive behaviour support and other early interventions can make a big difference for children with disability, and not all families are able or willing to provide the required therapeutic environment without intensive support.

A relatively high proportion of families with a parent with a learning disability also come to the attention of child protection agencies due to allegations that a child has been or is at risk of abuse or neglect. In some cases, prejudice and lack of understanding have contributed to these increased rates, as well as other factors such as lack of support.³

¹ Victorian Equal Opportunity and Human Rights Commission, 2012

² www.kidsguardian.nsw.gov.au/Out-of-home-care/Voluntary-out-of-home-care/voohc-billboard

³ Lamont, A., & Bromfield, L. 2009. Parental intellectual disability and child protection: NCPC 31, 1-16.

Invest in early outreach with disability expertise

There is significant consensus about the practice reforms necessary to prevent relinquishment. Principal among these is a consistent and flexible response to the whole family's needs, with a much stronger emphasis on early intervention. Shared care is often mentioned as an effective prevention model, although it is not always appropriate.

The NDIS will enhance the opportunity for many families at risk to receive early and effective support that builds resilience and prevents deterioration in relationships. However, for some families with complex needs it may require a proactive approach to ensure adequate support is in place. This can occur when a risk is identified by any agency that might be involved with the family. It requires greater understanding of disability issues and options for support by family services and child protection workers. It often requires a key worker who works with many agencies, not just disability.

Disability service providers are concerned that governments may look to the future system under an NDIS and forget about current need, and about the responsibility family services have to children with disability. There is urgent demand right now and NDS urges governments to invest in:

- building expertise among family services and child protection workers in disability issues; and
- early outreach to families at risk with members with disability and complex needs. This may include coordinating access to disability support, among other support requirements.

Improve data collection and reporting

We do not have comprehensive data on children or parents with disability in the child protection system. This is partly because not all child protection systems identify disability in their record keeping. It is also because some children with disability, who live outside their family home, do so as part of the disability support system, without the formal legal processes associated with protective services.

AIHW data on out-of-home care does not include children outside the child protection system, such as placements made in disability services, justice, medical or psychiatric services. Many people are not even aware that children are living in residential facilities. There is an urgent need to build a better understanding of this group, the size and the outcomes.

Despite data gaps, we know that both children with disability and parents with learning difficulties are disproportionately represented in the use of out-of-home care. For children with disability there also appears to be a disproportionate use of residential placement options rather than foster and kinship care. About one third of children under 12 in

Llewellyn, G., & McConnell, D. 2010. You have to prove yourself all the time: People with learning disabilities as parents. In G. Grant, P. Ramcharan, M. Flynn, M. Richardson, (Eds.), *Learning disability: A life cycle approach* (pp. 311-328). Berkshire: Open University Press.

residential care placements in NSW have a diagnosed disability, and the majority of these have challenges related to behaviour management⁴. In Victoria in 2011, about 20 per cent of children in residential care were considered to have disability, compared with 11 per cent of children in all types of care with disability⁵.

Child sexual abuse by carers and staff

Children with disability are more likely to experience abuse and neglect. Evidence suggests the prevalence of maltreatment among children with disability is 3.4 times higher than among children without disability⁶. It is also likely that abuse is under-reported, for reasons including lack of support to make a complaint, feeling they would not be believed, not having the vocabulary or communication skills to name the harm they are experiencing, and feeling the intimidation commonly experienced by abused and neglected children.

Many of the factors associated with the abuse of children with disability are linked to the complex, societal drivers of abuse. Demographically, children with disability often fall into categories more strongly associated with abuse. These include exposure to poverty, underemployment, inadequate housing, poor-quality health care, exposure to domestic violence, and social stereotypes of vulnerability at higher levels than other populations.

Children with disability are more dependent on specialist supports than other children of a similar age. Reliance on others for intimate personal care increases risk of abuse. Use of alternative forms of communication can also make it harder for children and young people to report or make complaints, an issue compounded by complaints processes and criminal justice systems that do not see children and young people with disability – particularly cognitive disability and communication needs - as reliable witnesses or adequately support provision of their testimony. For young people with disability and multiple or unstable relationships, finding a trusted person with whom to share experiences and speak up about abuse can also be a significant challenge.

Capacity building to empower young people can assist. This can include education on rights, safe relationships, access to communication support, and increased connections with external advocacy and informal supports can reduce risk.

For children and young people who are reliant on specialist disability services, there is a responsibility on organisations and those they employ to create environments where children are safe and feel safe. NDS supports the Royal Commission's proposed elements that contribute to creating 'child safe organisations'. These have strong parallels with NDS's *Zero Tolerance Initiative* which uses a human rights approach to build the capacity of disability service providers to safeguard the rights of all people with disability

⁴ NSW Community Services, Intensive Services Placement Data, April 2012: in Fahey, L. 2014.

⁵ Victorian Equal Opportunity and Human Rights Commission, 2012, *Desperate Measures: The relinquishment of children with disability into state care in Victoria*. p 8

⁶ Robinson, S. 2012. *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*. Children with a Disability Australia. Sydney University Australian Family & Disability Studies Research Collaboration

using their services. It emphasises the responsibility of organisations to be proactive in ensuring that:

- staff understand the rights of the people they support and have an awareness of abuse, neglect, exploitation and violence as a breach of human rights
- they have abuse prevention strategies in place including person centred policy and practice, support empowerment of people they support,
- they take measures to ensure adequacy of recruitment processes which prioritise values with experience and include appropriate background and reference checks, in addition to appropriate induction, supervision and staff deployment
- there are accessible and positive feedback and complaints cultures in place
- there is recognition of the increased risk of abuse faced by some cohorts of people with disability including women and girls, children and young people, people with cognitive disability, people with complex communication support needs, people from CALD and indigenous backgrounds, people with complex behaviour and people with no or limited support networks
- there is understanding of the increased risk of specific service settings, including larger supported accommodation settings, group settings with a closed culture and prioritisation of work routines over individual rights, and remote or unsupervised settings
- staff have training to recognise signs and signals of abuse, and act quickly to respond, with a focus on the specific needs of victims (and their families) as individuals, whilst meeting any and all statutory, legislative and organisational requirements including to the police and criminal justice systems
- organisations have a continuous improvement practice and cultures which analyse and learn from incidents and patterns of incidents to improve systems

NDS is leading *Zero Tolerance* as a national initiative, working with all providers for all cohorts of people with disability. The approaches described are holistic and universal and based in a human rights approach to preventing and responding to abuse. There is clear need to address children as a specific at risk cohort (as defined above) and NDS has worked collaboratively with the Royal Commission to share and hear about specific risks for children with disability in a range of settings. This has led to refinement of *Zero Tolerance* and its resources to ensure lessons and information are promoted widely. There is notable overlap between *Zero Tolerance* and the elements described by the Royal Commission for 'child safe organisations'.

Child-to-child sexual abuse

The issue of abuse perpetrated by one service user to another is complex and not limited to children in out of home care. The now-discredited medical model of support (which saw people with disability as patients) combined with historic underfunding in the disability sector has seen over-investment in group and segregated service settings.

Prioritisation of quick, cost-effective solutions over individual needs and choice has led to inappropriate groupings of people in accommodation and centre-based environments. This can lead to increased risk of abuse, especially when combined with personal trauma, insufficient or inappropriate behaviour support and social isolation.

It is anticipated that the NDIS will increase choice and control for people with disability and their families, with more in-home supports, choice of accommodation providers and increased support to access the community. However this will take time and may not solve all related issues. Indeed children with behaviours of concern and/or trauma will still be the most likely to require OOHC supports in their lives.

In addition to implementation of organisational approaches advocated by *Zero Tolerance*, future planning for OOHC approaches should support systems which take into account a person's individual needs, including support for any trauma or behaviours of concern. Home-like options which reduce the need for children with disability to live in specific accommodation with other children with disability should be prioritised. Where such accommodation is required it should be designed to minimise risk of harm. Planning should take into account the balance of needs across all residents.

Strengthen regulation and oversight mechanisms

NDS concurs with the need for improved collaboration, consistency and information sharing as a mechanism to reduce risk of abuse within the OOHC system. This mirrors our previous advice to the Royal Commission on working with children checks, and how the development of national systems can plug gaps in systems that might otherwise be exploited by predators.

There is currently little consistency in OOHC mechanisms across Australia. A striking area of difference across jurisdictions is whether the child protection system must be involved if out-of-home care is arranged. Views on this vary. Some feel it can result in punitive and unhelpful interventions that may reduce the chance of reunification. This is usually a concern when they feel the child protection services have insufficient disability expertise. However, others consider statutory oversight of out-of-home care placements as an important protection for both providers and children. Western Australia developed detailed guidance on information-sharing across agencies. This has improved the overall level of expertise in disability concerns in at-risk families, and also the quality of communication and cooperation between agencies.⁷

Disability providers report that placement arrangements for a child with disability can depend on what region they are in, or 'who answers the phone,' rather than the particular circumstances of the child and family. They report that there are different levels of understanding of disability among child protection workers. For example, they may not understand the seriousness and resulting deprivation of neglecting to provide adequate therapy, or inappropriate placement in adult disability services. The lack of disability

⁷ www.dcp.wa.gov.au/childprotection/documents/workingtogetherforabetterfuture.pdf

specialisation among child protection services is reported to result in discriminatory and inappropriate responses to both children and parents with disability⁸.

With the introduction of a national system for funding disability support, there is both an opportunity and a challenge to improve this interface between disability support services and state-funded family services and child protection systems.

Improve support for children and carers

Excluding where a child is in a dangerous or abusive home environment, it is broadly recognised that outcomes are better if the level and flexibility of support enable children with disability to stay in their family home, at least part-time. Making this possible can require intensive support coordination, outreach services and specialist advice for families as well as regular respite or shared care arrangements. However, this level of specialisation, resourcing and cross agency collaboration is rarely available.

No one support model suits all people and situations. Some children with disability require stability, so shared-care or changing environments do not work well and can exacerbate challenging behaviour. In-home support and therapy work well for some families but some only managed to make this work after specialist residential intervention.

The incidence of foster and kinship care families surrendering children with challenging and complex behaviours is also high. This is not surprising, given they often do not receive additional disability support and may even have less support than the natural families received. Providers also report that when families involved in voluntary out-of-home care are asked whether they would prefer foster care or residential care for their child, they mostly suggest residential care. Families believe residential care is more likely to be successful because if they could not manage in the home, why would another family manage? The reality is that all care arrangements for children with high support needs can benefit from extra disability support and therapeutic interventions.

There are also concerns about the resilience and support needs of foster carers. A recent study highlighted both the vulnerabilities and strengths of carers who are charged with looking after the most distressed and challenging children in our community. The not-for-profit sector plays a key role in supporting these carers, including kinship carers, in addition to natural families.⁹

Prioritise improvements to the interface between service systems

The introduction of the NDIS provides an opportunity to improve the interface between disability support and the state-funded family and child protection systems. This should be built on best practice; in particular, there is a need to identify at-risk families early and

⁸ McConnell, D., Llewellyn, G. 2000. Disability and Discrimination in Statutory Child Protection Proceeding. *Disability & Society*. Vol 15, Issue 6, 883-895.

⁹ Fahey, L. 2014. Who Cares": The impact of carer trauma and resilience profiles on capacity to support young people with complex support needs. A PHD Thesis at University of Western Sydney -unpublished.

to ensure an effective 'triage' system so that responsibilities for ongoing support coordination are established in a timely and effective manner.

To achieve this, the NDIA, states and territories need to agree on:

- common understanding of care, support and protection for children with disability and threshold of abuse and neglect at which statutory oversight should be called for;
- identification of at-risk families with disability-related concerns where support and interventions may be necessary;
- the mechanism for raising flags if risks are evident;
- the early identification of the need for intensive case management and how to make a decision about what agency will fund this; and
- mechanisms for resolving interagency disagreements swiftly – including escalation

The NDIA will be responsible for funding disability support. In some cases this will involve complex support coordination. However, when there are many contributing factors in a family crisis, such as unstable housing and alcohol problems, it may be more appropriate for child and family services to fund case management. It is important that the funding responsibility is decided early and allows a stable ongoing service.

Other issues of note

Volunteers and informal community networks are a key source of foster carers. Some organisations base their OOHC services around volunteers. These valuable services also create and nurture natural support relationships for young people with disability and volunteers. This assists in the creation of community networks that support families at risk, and provides a recruitment ground for shared care and foster arrangements. With the transition to the NDIS, organisations will lose block contracts and operate under a unit price which may restrict capacity to identify, vet and train volunteers safely. This raises further concerns about the processes through which volunteers are background checked.

There are few stable out-of-home care options for children with disability. When OOHC is required for children with disability, providers report that finding appropriate kinship or foster care is very difficult or even 'non-existent'. The supply of foster care options is not keeping pace with the growth in demand. There is also a sense that more children are being housed in longer-term residential respite, transitory or emergency services. This creates a cycle of crisis by reducing support options for families not [yet] in crisis. It can also exacerbate problems for the child and family in crisis, as it is often an inappropriate placement. In the 'Desperate Measures' study, a quarter of the children placed in respite facilities were still there six months later.

Providers also report that they often have to move children around to find sufficient accommodation. For example, a child may be supported and housed between three different services. This level of change reduces the sense of belonging and increases behaviour problems, reducing the chance of family reunification. It is particularly bleak for people with autism, who benefit from a highly stable environment. Two thirds of the children in the six-month period of the 'Desperate Measures' case studies moved through several respite or transitional house settings, or out-of-home residential care.

Promote the multiple ways governments support families living with disability. Many government-funded sectors have a role in providing support for children or parents with disability, and all governments need to ensure their services are fully inclusive of people with disability, consistent with the requirements in the National Disability Strategy. Better access to education, health, justice, employment, housing and transport services, will reduce stress on families, foster carers and services for families at risk.

An example of another sector with a key role in supporting children with disability was recently explored by the Productivity Commission in its review of Childcare and Early Childhood Learning¹⁰. Its draft report, released in August 2014, calls for considerable increases in the funding available for children with disability and/or at risk. The Commission notes that while most government assistance for childcare services has increased with demand, the amount of block funding that assisted children with additional needs has been stagnant. The resulting gap not only threatens the wellbeing of many families, it put extra pressure on other government services.

Develop effective support for older children with severe challenging behaviour. Many providers want to see more innovation and evaluation to develop and extend successful support models for older teenagers with challenging behaviour. Often the behaviours causing the most challenges are related to autism, acquired brain injury and intellectual disability. There are concerns that bureaucrats are over-focussed on early intervention under the NDIS to reduce the pressure on the system. However, there are children now who need somewhere to go that is more appropriate and positive for families than hospital or emergency residential care.

Investment is needed urgently and should pay off quickly, as many current support models are very expensive. Sometimes improved support models are not all about money. The innovation required could be as much about changing attitudes and system demarcation as more intensive planning and therapy.

Build social capital and communities

Engagement with families and communities affected by out-of-home care is an important way to find out what is working and what is not. NDS hears from some of these people, and the stories can be distressing as well as a catalyst for action. What is very clear is that families and children with disability need supportive communities. Whatever services are developed, they can never – and should not – fully replace natural support networks for families. Strong communities and support networks can be facilitated at local levels by supporting the not-for-profit sector with funding for volunteer coordination, community engagement and disability inclusion. All governments have a role.

¹⁰ Australian Government Productivity Commission. 2014. Draft Report of the Review into Childcare and Early Childhood Learning. Commonwealth of Australia.

April 2016

Contact: Dr Ken Baker
Chief Executive
National Disability Services
Ph: 02 6283 3200



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 over 1000 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.