



## Response to issues paper on the need for a nationally applied Working with Children Check

National Disability Services (NDS) is pleased to provide the following comments to the Royal Commission into Institutional Responses to Child Sexual Abuse on *Issues Paper 1* regarding the need for a nationally applied Working with Children Check.

### Policy and Legislation context

The right of people with disability to live free from abuse is enshrined in disability policy and legislation across Australia and internationally. The United Nations *Convention on the Rights of Persons with Disabilities* requires signatories to have legislation and policies which '*ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.*'<sup>1</sup> Specific focused strategies are required for women and children with disability at risk.

The *National Disability Strategy 2010-2020* – a COAG-endorsed framework for improving the lives of people with disability, their families and carers – contains specific actions to '*develop strategies to reduce violence, abuse and neglect of people with disability*'<sup>2</sup> including children.

States and Territories have in place a range of legislated policies, procedures and guidelines for managing and reporting incidents of abuse, neglect and exploitation of people with disability. State-specific complaints mechanisms complement these policies, some supported by independent monitoring through Ombudsmen and Disability Services Commissioners' offices.

Despite this there is evidence that people with disability continue to be at greater risk of neglect and abuse than people without disability. This reinforces the need identified by the Commission to improve responses to abuse, as well as methods to reduce the risk of abuse occurring in the first instance.

### Introduction of the National Disability Insurance Scheme

The introduction of the National Disability Insurance Scheme (NDIS) as *DisabilityCare Australia* represents the single biggest reform to the way services are delivered to Australians with disability in a generation. Launched in July 2013 it will result in a move from disability support systems that vary markedly across Australia to a national approach where individuals with disability have their own portable funding allocation and increased choice and control over the supports they purchase.

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<sup>1</sup> Article 1: United Nations *Convention on the Rights of Persons with Disabilities*

<sup>2</sup> *National Disability Strategy 2010-2020* - Outcome 2, Action 2.5 (p41)

There are significant workforce implications from the introduction of the NDIS. Projections indicate the demand for disability support workers is likely to double. This is at a time of similarly increasing demand for workers in the aged-care sector, intensifying the competition for skilled staff. Where workforce demand cannot readily be met, organisations will be under pressure to be less stringent in their recruitment processes, including those related to background checks and core values required in the delivery of human services.

Workers will need to develop the skills required to support the move to individualised planning, funding and supports. The NDIS will see increased delivery of services to people in environments that are hard to regulate, such as people's own homes or community settings. Such environments may offer increased opportunity for abuse and exploitation of vulnerable individuals and reinforce the need to build safeguards into the system at all levels to minimise risks.

### **Services for children with disability**

The ratio of government to non-government delivered services for children with disability varies greatly across States and Territories. Some are actively moving towards greater delivery of services by non-government organisations as they seek to move away from the funder-provider model.

NDS represents non-government organisations delivering services to people with a disability of all ages. Services commonly delivered to children with disability include therapy, recreation (with increased demand during school holidays) and all forms of respite. There is growing demand for 'out-of-home care' – where children and young people are unable to live with their birth families.

The level of risk associated with these services varies. Risk is influenced by factors such as where services are delivered; existing personal relationships with staff; and the number of people present when services are delivered. In this context, therapy services - typically delivered in short periods in busy environments – present less opportunity for abuse than services where providers have unique access to people's home environments, their physical and emotional space and their possessions.

### **Value of a national approach**

NDS supports the introduction of a national approach to Working with Children Checks. It represents a welcome additional safeguard in the service sector, but is also aligned with the need for greater national coordination required to support the introduction of the NDIS.

Existing approaches to Working with Children Checks vary across states and territories. Although the majority of states have developed specific systemic responses, they vary from each other. Tasmania has no specific legislated requirements for working with children whilst South Australia requires a more generic Police Clearance check. The introduction of a national process would provide clarity for providers about their requirements in each state and consistency for national or multi-state providers.

A national approach would also provide an opportunity for better monitoring of incidents across the states. Significantly, it would boost providers' confidence that job applicants from other states had appropriate backgrounds without having to rely on interstate systems they are not familiar with or that can take time and resources to investigate. It should also reduce waiting times for checks.

Reports from NDS members suggest that some applications can take up to three months, forcing providers to balance their workforce needs with the risk of a new employee commencing without full clearance.

A national approach would offer a more cost-effective and timely way of managing background checks for recent migrants to Australia who are attracted to work in the disability sector but come from countries with less rigorous approaches to police checks and records.

### **Cost Management**

The issue of cost – actual and related to time spent – is significant for non-government organisations, particularly with the launch of DisabilityCare. The move to individualised funding is positive but will raise systemic challenges for many organisations. In particular, it is not yet clear if and how some critical functions typically provided by non-government organisations will be built into pricing.

A national Working with Children Check approach supports DisabilityCare's individualised funding model. Not only is it likely to be more effective and streamlined than the current system, but it could place responsibility on individuals to demonstrate they are suitable for employment with children rather than requiring providers to use part of a service user's funding to cover the related administration costs.

### **Currency of Information**

NDS views a national approach as an essential component of managing the risks posed by individuals who actively seek to exploit or abuse children with disability. Maintenance of separate state systems exposes organisations to risk if there is a significant delay in systems communicating with each other. Interstate reviews can be lengthy, depending on which states are involved.

A review period should be built into any system to ensure its currency. However, more significant is ensuring that any new incidents or relevant information are recorded in real time so that people are not able to work unsupervised whilst related legal processes are in train.

Having confidence that clearance checks are up-to-date removes the potential for providers to maintain their own shadow-systems where individuals of concern might be unjustly labelled based on unproven rumour.

### **Other Comments based on Issues Paper**

- NDS supports the need for Working with Children Checks (WWCC) for all adults living with children in out-of-home care. The issue of parent-volunteers is less clear-cut and needs to be considered in context of the nature of the event. For example, an outdoor sports event might require significant adult supervision to proceed. Enforcing WWCC could mean that such events hardly ever take place. Risk of abuse at such an event is reduced by the presence of multiple adults in an outdoor setting. However specific volunteer roles – driving a child or young person home afterwards – might require additional safeguards.

- NDS supports the inclusion of an appeals process for workers who believe they have been unjustly labelled as unsuitable to work with children and young people. Guidelines should incorporate opportunities for people to give evidence on their behalf.

### **NDS Abuse and Neglect project**

NDS believes that a national Working with Children Check would be a welcome safeguard to accompany other strategies to prevent abuse and neglect of children and young people with disability. NDS is well positioned to contribute to action in this area, particularly in supporting and guiding disability services providers.

This has led to the development of NDS's *Preventing and Responding to Abuse and Neglect of People with Disability accessing Services* project, which commenced in July 2013. The project will see the development of a practical framework, with resources for providers, based on prevention, early intervention and remediation of cases of abuse and neglect involving people with disability.

The project will seek to increase service providers' understanding of best practice in recognising, preventing and responding to abuse and neglect of people with disability. Study of the types of abuse perpetrated as well as the environments and relationships which increase risk of abuse will be explored. Risk environments well-documented in the literature will be investigated, as well as emerging risk settings.

It is anticipated that this project will contribute to the development of national approaches to safeguards within the disability sector that better protect the rights of children, young people and adults with disability, as well as their families and carers.

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### **About National Disability Services**

**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 820 not-for-profit 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.