

The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: Productivity Commission
Topic: Disability Care and Support Draft Support Report
Date due: 13 May 2011

Thank you for the opportunity to provide feedback to the Disability Care and Support Draft Report (the Draft Report).

This submission is made on behalf of the Queensland Commission for Children and Young People and Child Guardian, Western Australian Commission for Children and Young People, Tasmanian Commissioner for Children, Victorian Child Safety Commissioner, South Australian Guardian for Children and Young People and the Northern Territory Commissioner for Children (the Commissioners).

The Commissioners collectively have a legislated responsibility to promote and protect the rights and wellbeing of Australian children and young people under the age of 18. The Commissioners have particular regard for children and young people who are vulnerable or disadvantaged, including very young children, children living in out of home care, Indigenous children and young people, those experiencing poverty and children with a disability or who have a parent with a disability.

Summary of the Commissioners' comments and recommendations:

1. The Commissioners are supportive of the direction of the Draft Report's proposals because of their potential to improve the lives of children and young people who have a disability, or who have a family member with a disability. In particular, the Commissioners support:
 - a no-fault social insurance scheme underpinned by a stable revenue stream
 - the key scheme elements underlying the provision of individual funding
 - the eligibility criteria for individual funding
 - the approach taken to early intervention, and
 - the scope of disability service supports, with an emphasis on having a choice between specialist and mainstream services.
2. The Commissioners seek confirmation that eligible children and young people who enter state child protection or youth justice systems would continue to receive funding under the national disability schemes, and recommend that:
 - children with a disability who are at risk of entering, or are in, child protection or youth detention centres, should be a target group for NDIS intervention
 - where a child is at risk of entering child protection because their parent/carer has a disability, the benefits to the child should be considered when determining if the parent/carer meets NDIS eligibility criteria, and
 - exiting state care or youth detention should be identified as a key transition stage for forward planning and reassessment under the NDIS.
3. The Commissioners agree that the NDIS would be best placed to meet the daily, non-clinical support needs of individuals with a disability arising from dual diagnoses and long-lasting mental health conditions. The Commissioners recommend that:

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- staff at all levels of the relevant agencies be made aware of, and be supported to implement, the intent of any memoranda of understanding between the NDIS and mental health services in each state
 - transition from adolescent to adult mental health services be identified as a key transition stage for NDIS forward planning and early intervention, and
 - mental health case managers take the leadership role when working collaboratively with NDIS case managers.
4. There should be direct dialogue with Indigenous communities before, during and after implementation of the national disability schemes, and an Indigenous representative on any Advisory Council for the NDIS.
 5. The Commissioners are supportive of a national disability service system that is locally delivered and managed. Whilst the final governance arrangements for the NDIS will be a matter for governments, the Commissioners request that the Productivity Commission's final report provide further detail about how the NDIS would operate particularly in relation to existing state initiatives during the staged implementation if control rests with a national agency.
 6. Monitoring instruments established by the national disability schemes should not duplicate or compromise the independence of state-based systemic monitoring mechanisms.
 7. Appropriate employment screening safeguards and risk management practices to ensure the safety of persons with a disability should not be compromised by measures to expand the disability support workforce.
 8. Families with a child with a severe disability should not be required to make any financial contribution to the NDIS.
 9. The Commissioners recommend that:
 - safeguards be put in place to protect the best interests of children and young people with disabilities
 - any taskforce established to implement the national disability schemes engage in a consultative process with children and young people with disabilities, their families and carers to ensure their needs are considered, and
 - children and young people with disabilities be given a voice on any Advisory Council for the NDIS.

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Improving the lives of children and young people

The Commissioners are supportive of the direction of the Draft Report's proposals because of their potential to improve the lives of children and young people who have a disability, or who have a family member with a disability. In particular, the Commissioners support:

- **a no-fault social insurance scheme underpinned by a stable revenue stream**
- **the key scheme elements underlying the provision of individual funding**
- **the eligibility criteria for individual funding**
- **the approach taken to early intervention, and**
- **the scope of disability service supports, with an emphasis on having a choice between specialist and mainstream services.**

No-fault social insurance model and stable revenue stream

The Commissioners concur that a no-fault social insurance model for the provision of care and support is a suitable alternative to the existing disability service system, reflecting the shared risk of disability across the population. Whilst the Commissioners take no position on the funding model, the provision of a stable revenue stream will be essential to support the system's long-term sustainability and meet the reasonable care and support needs of the people it aims to serve.

The Commissioners acknowledge the substantial efforts made by state and federal governments to improve the services and supports provided to people with disabilities. However, there is a need for systemic reform, underpinned by adequate funding to afford people with disabilities the rights to which they are entitled. The legislative framework for any new disability service system would need to articulate those rights, and align with the United Nations Convention on the Rights of Persons with Disabilities.

The deficiencies that exist in the current disability service system are evidenced by the data presented in the Draft Report and the numerous personal stories recounted in submissions received by the Productivity Commission. The Children's Commissions' own research and advocacy work has also highlighted many of these deficiencies.

The Commissioners consider the national disability and injury insurance schemes proposed in the Draft Report should provide a fairer system of funding, more equitable access to services (irrespective of how the disability arose), greater certainty of access to supports for people with disabilities and their families, and a system more responsive to growing demand.

The Commissioners accept the rationale given for proposing two distinct schemes – the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS) – but consider the desired outcomes should be the same for people who receive assistance under either scheme, that is, ensuring their reasonable care and support needs are met.

Key elements, eligibility criteria and early intervention

The Commissioners strongly support an adequately funded NDIS which:

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- provides care and support based on assessed and reasonable need
- is centred on the person with a disability and their family/carers
- is forward-looking, anticipating future needs and responding to key life stages
- specifically considers the needs of informal carers, and
- shifts decision-making to people with a disability and their family/carers.

The benefits of a scheme with these key elements are clearly articulated in the Draft Report. The Commissioners are cautiously optimistic that some of the major issues they have identified and advocated for in relation to the needs and best interests of children and young people will be alleviated if these elements translate into practice. For example, it should:

- reduce the need for parents/carers to consider relinquishing guardianship of their child to an outside agency simply because they cannot access the high level of care required, and
- relieve the burden carried by young people who currently provide substantial care for a parent or family member with a significant disability because they cannot access adequate service supports.

The Commissioners support the criteria for individualised NDIS funding under the NDIS, namely: *“that a person would have a permanent disability, (or if not permanent, expected to require very costly disability supports) and would meet at least one of the following conditions:*

1. *have significant limitations in communication, mobility or self-care*
2. *have an intellectual disability*
3. *be in an early intervention group*
4. *have large identifiable benefits from support that would otherwise not be realised”¹.*

The Commissioners agree the early intervention condition should include: *(i) people for whom there is a reasonable potential for cost-effective early therapeutic interventions that would improve their level of functioning [as in autism, acquired brain injury, cerebral palsy and sensory impairments] and (ii) those with newly diagnosed degenerative diseases, such as Multiple Sclerosis and Parkinson’s disease, for whom early preparation would enhance their lives².*

Support for the eligibility criteria is predicated on there being sufficient flexibility to enable the scheme to provide people with individualised funding when it makes sense to do so. In particular, criterion 3 and 4 would be likely to allow children and young people with less severe disabilities to access support *‘if there is evidence that early intervention will improve their level of functioning, or they have large identifiable benefits from support which would otherwise not be realised’.*

The broad approach taken to what early intervention means is also supported. The Commissioners agree that it should capture not only interventions that occur in the first years of life or when the disability first arises, but also at transition points such as starting school, leaving school or home and entering the workforce³.

¹ Productivity Commission 2011, *Disability Care and Support: Draft Report*, Draft Recommendation 3.2.

² Ibid, Draft Recommendation 3.2.

³ Ibid, page 11.11

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However, early intervention necessitates timely assessments and responses and it is our combined experience that timeliness is often compromised by under-resourcing or unnecessary administrative processes. As the Draft Report acknowledges, developing a pool of skilled assessors and a quick and simple process for determining funding packages will be critical.

Reassessment whenever a person's circumstance changes (and not just at key transition points) is also strongly supported. For children and young people with disabilities, this might occur more frequently than for adults due to natural maturation and the progression of their condition, but also due to changes that impact on the provision of natural supports, such as the birth of a sibling or when parents divorce.

Funded disability supports and mainstream services

The Commissioners concur with the range of disability supports to be funded under the NDIS and particularly welcome the Draft Report's focus on providing supports that "*allow a person to fulfil a range of functions, rather than just responding to what a person cannot do*"⁴. This suggests children and young people with disabilities will have access to funding to engage in a wider range of activities than currently is the case. In the Commissioners' view, funding should extend to enabling children's participation in the normal childhood activities that children and young people without disabilities enjoy such as play and recreation. These are fundamental rights for children and young people.

The Commissioners strongly endorse the proposal that the NDIS "*facilitate the transition of young adults into public or private housing or supported accommodation if they wished to do so in line with community norms*"⁵. As sourcing an accessible property is often a major hurdle, both the NDIS and NIS would have vital roles to play in promoting the value of universal housing design to both the private and public housing sector. If more housing stock was built in accordance with universal design principles, there would be greater housing choices for people with a disability in the future and less of a need for expensive home modifications.

As important immediate objectives, the Commissioners would welcome NDIS funding of specialist housing (encompassing support for activities of daily living), more respite places, and outreach services for homeless young people with disabilities – areas of critical under-met need. With respect to specialist housing, the Commissioners support the Productivity Commission's proposals to explore innovative options. Group homes should not be the only model funded. Young people with disabilities should not have to congregate in order to be housed.

The Commissioners agree with the Draft Report's emphasis on people with a disability having the choice of using mainstream services if they wish, and the call for mainstream services to better meet their obligations to be inclusive. We support the proposal for Memoranda of Understanding (MoUs) to be developed between the NDIS and mainstream services to clarify their respective service provision responsibilities.

⁴ Productivity Commission 2011, *Disability Care and Support: Draft Report Overview and Recommendations*, Commonwealth of Australia, Melbourne, p. 17

⁵ Productivity Commission 2011, *Disability Care and Support: Draft Report*, p. 4.7

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Notwithstanding MoUs, the Commissioners agree that the NDIS should not submit to pressure to provide substitute services where mainstream services are under-funded or lack the expertise to support people with a disability. In the Commissioners' view, education will be a key pressure point, although this pressure may be alleviated by the federal government's recently announced injection of substantial funds into this area⁶.

Intersection with child protection and youth justice systems

The Commissioners seek confirmation that eligible children and young people who enter state child protection or youth justice systems would continue to receive funding under the national disability schemes, and recommend that:

- children with disabilities at risk of entering, or in, child protection or the youth justice system, should be a target group for NDIS intervention
- where a child is at risk of entering the child protection system because their parent/carer has a disability, the benefits to the child should be considered when determining if the parent/carer meets NDIS eligibility criteria, and
- exiting state care or youth detention should be identified as a key transition point for NDIS forward planning and early intervention.

The Commissioners note that the Draft Report discusses how the NDIS would intersect with other systems such as health, housing and education but gives no detail about how the NDIS would intersect with the child protection and youth justice systems.

In his submission to the Productivity Commission's Issues Paper, the Victorian Child Safety Commissioner⁷ called for *"any new disability system to expressly consider the needs of children with a disability who are also clients of the child protection system when considering those most in need of support"*. The Commissions reiterate this view and ask that the Productivity Commission's final report address this issue.

The *National Framework for Protecting Australia's Children*⁸ recognises childhood disability as a risk factor for abuse and neglect. The Commissioners consider that children with disabilities at risk of entering, or in, child protection or the youth justice system should be a target group for NDIS intervention. In addition, if a child is at risk of entering child protection (or the youth justice system) because their parent/carer has a disability, the benefits to the child should be considered when determining if the parent meets NDIS eligibility criteria.

The following Queensland Commission data illustrates the extent of disability among children and young people in residential care and foster care in Queensland:

- one in four survey respondents (26%) in residential care in 2008 reported having a disability, and 9% of these young people indicated that they had unmet support needs in relation to their disability. The most commonly reported disabilities are intellectual or learning disabilities, autism spectrum disorder and ADHD⁹, and

⁶ On 3 May 2011, the Australian Government announced new budget funding of \$200 million to provide extra support for students with disability in Australian schools.

<http://www.pm.gov.au/press-office/budget-provide-more-support-students-disabilities>

⁷ Submission 358: Office of the Victorian Child Safety Commissioner

⁸ FaHCSIA (2009) *National Framework for Protecting Australia's Children 2009-2020*

⁹ The Commission for Children and Young People and Child Guardian (2009) *Views of Young People in Residential Care Queensland 2009*, Brisbane: Author

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- amongst survey respondents in foster care in 2009, 23% of 0-4 years olds, 17% of 5-8 year olds, and 18% of 9-18 year olds report having a disability. Disabilities reported include cognitive/learning disorders, autistic spectrum disorder, Aspergers syndrome, foetal alcohol syndrome and Down syndrome¹⁰.

Where the state has assumed the role of parent for a child with a disability, the Commissioners believe they must have the same entitlement to NDIS or NIIS funding as those who live with their families. Entering state care or youth detention should not mean nationally funded disability supports cease.

Children in state care are there because they have experienced abuse and/or neglect so they will have more intense needs than most children who are living in supportive families. In addition to the challenges of coping with a disability, they must cope with trauma, loss and grief and may experience ongoing social, emotional, developmental and psychological difficulties and behavioural problems. It is important that these difficulties are not compounded by a lack of access to disability support.

The Commissioners expect an NDIS or NIIS funding package would continue to be available to eligible children and young people who enter child protection or the justice system. We ask that this be confirmed in the Productivity Commission's final report.

The Commissioners also urge the Productivity Commission to identify exiting state care or youth detention as a key transition point for NDIS forward planning, reassessment and additional investment if required. Planning must commence early. The Queensland experience is that joint planning between relevant agencies often occurs too late.

Intersection with mental health

The Commissioners agree that the NDIS would be best placed to meet the daily non-clinical support needs of individuals with a disability arising from dual diagnoses and long lasting mental health conditions. We also recommend that:

- **staff at all levels of the relevant agencies be made aware of, and be supported to implement, the intent of any memorandum of understanding between the NDIS and mental health services**
- **transition from adolescent to adult mental health services be identified as a transition stage for NDIS forward planning and early intervention, and**
- **mental health case managers take the leadership role when working collaboratively with NDIS case managers.**

Children and young people with a disability are at higher risk of developing mental health problems than those without a disability.^{11 12} As well as the same day-to-day challenges faced by all children, children with a disability experience additional risk factors that can significantly affect their mental health.

¹⁰ The Commission for Children and Young People and Child Guardian (2010) *Views of Children and Young People in Foster Care Queensland 2010*, Brisbane: Author

¹¹ Australian Institute of Health and Welfare 2006, *Disability updates: children with disabilities*, Issue 42, July 2006, p. 1, viewed 15 February 2011, <<http://www.aihw.gov.au/publications/aus/bulletin42/bulletin42.pdf>>.

¹² KidsMatter 2009, *Understanding the mental health needs of children with disabilities*, p. 3 [website], viewed 15 February 2011, <<http://www.kidsmatter.edu.au/uploads/2009/09/additional-needs-overview.pdf>>.

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It is the Commissions' experience that a dual diagnosis of disability (particularly intellectual disability) and mental illness presents a significant barrier to accessing treatment services. The policy of delivering services based on particular diagnoses and specific criteria across the disability and health sectors is resulting in children and young people in severe need not receiving adequate, or any, service.

This appears to be a common concern across jurisdictions, where children and young people with a dual diagnosis are 'passed' from one agency to another, with agencies assuming the other is better equipped to deal with the issues. In reality, this is a stark example of 'falling through the gap'.

A critical first step to securing the improved services necessary will be achieved in part by improving coordination between agencies. The Commissioners concur with the Productivity Commission's finding that:

*"the boundaries between the mental health sector and the NDIS are blurred for the most severe and enduring mental illnesses. People with these illnesses will sometimes need daily supports that are akin to those of people with a disability generally"*¹³.

The establishment of an NDIS presents an opportunity to implement a more systematic approach to this issue, helping to ensure dual diagnoses are identified and addressed and that processes for providing services are streamlined and appropriate. However, this will not happen by default and considerable planning, consultation and negotiation should occur between the disability and health sectors to enable strong and consistent collaboration.

To this end, the Commissioners concur with Draft Recommendation 3.4, that MoUs should be implemented with the NDIS and the mental health sector to *"ensure that individuals do not fall between the cracks of the respective schemes and have effective protocols for timely and smooth referrals"*.

The Commissioners recommend that staff at all levels of the relevant agencies should be made aware of, and be supported to implement, the MoUs to ensure they result in direct improvements to services. It is the Commissioners' experience that some MoUs have not effected any real change without this awareness and training process also being undertaken.

Transition to adult services

In working with the mental health sector, the NDIS will need to be cognisant that mental health services for children and young people often have 'cut off' points determined by age. That is, at 16 or 18 a young person is required to move to an adult mental health service. This would be a key transition point for NDIS forward planning and/or early intervention investment.

To ensure smooth and seamless transition to adult services, the NDIS will need to work closely with the infant, child, adolescent, youth and adult mental health services and

¹³ Productivity Commission 2011, *Disability Care and Support: Draft Report: Overview and Recommendations*, Commonwealth of Australia, Melbourne, p. 22.

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planning will need to commence early to ensure the young person is not abruptly left without services. In the Commissioners' view, a collaborative case management approach would require one agency to take the lead role. The mental health case manager, rather than NDIS case manager should take the lead as the level of disability supports required will fluctuate with the person's mental health condition.

Disability within the Indigenous community

There should be direct dialogue with Indigenous communities before, during and after the implementation of the national disability schemes and an Indigenous representative on any Advisory Council for the NDIS.

The Commissioners strongly concur with the Draft Report's conclusion that *"supporting Indigenous Australians with a disability should be an important specific goal of the NDIS"*¹⁴.

We agree that a key challenge will be overcoming barriers to service delivery in the NDIS. In this regard we support Draft Recommendation 9.1 which proposes that governments consider the feasibility of overcoming these barriers by:

- *"fostering smaller community based operations that consult with local communities and engage local staff, with support from larger experienced service providers*
- *employing Indigenous staff and*
- *developing the cultural competency of non-Indigenous staff"*.

We also agree with the Draft Recommendation's call that:

"In its initiatives for delivering disability supports to Indigenous people, the NDIS should be mindful of the wider positive measures addressing Indigenous disadvantage being adopted throughout Australia".

The Commissioners consider, however, that the most critical first step should be for the taskforce implementing the NDIS to visit Indigenous communities and sit down with community members to ensure their views on the best approach are considered. Direct dialogue with Indigenous communities should also continue during and after implementation. Further, it is crucial that serious consideration be given to strategic approaches to Indigenous consultation and participations on any advisory mechanisms.

The Commissioners also consider it critical that the NDIS foster interagency collaboration in relation to NDIS service delivery to Indigenous communities, and that this collaboration occur across all agency levels. Presenting at a recent child protection conference¹⁵, the Queensland Family Responsibilities Commissioner¹⁶, David Glasgow commented that there is a great deal of duplication in services provided to Indigenous communities and often agencies don't know what others are offering.

¹⁴ Productivity Commission 2011, *Disability Care and Support: Draft Report*, p. 9.22

¹⁵ Australasian Institute of Judicial Administration Conference: *Child Protection in Australia and New Zealand – Issues and Challenges for Judicial Administration*, 5-7 May 2011

¹⁶ Queensland's Family Responsibilities Commission began operation on 1 July 2008 as a key component of the Cape York Welfare Reform objective of restoring social norms in Indigenous communities.

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How a national scheme would operate at the state level

The Commissioners are supportive of a national disability service system that is locally delivered and managed. While the final governance arrangements for the NDIS will be a matter for governments, the Commissioners request that the Productivity Commission's final report provide further detail about how the NDIS would operate alongside or in place of existing state initiatives during the staged implementation of the NDIS if control rests with a national agency.

A national scheme locally delivered and managed

One of the perceived advantages of a national disability scheme is that it will deliver a consistent approach to disability service provision across Australia, with assessment and funding portable across agencies and state borders. The Commissioners support this aim. However achieving the desired outcomes for people with disabilities will require service provision in the person's local environment. Effective service provision will be dependant on local knowledge, local service capacity, informal local support networks, and linkages with state-based mainstream services.

The Commissioners are strongly supportive of the NDIS provided it is locally delivered and managed. We note and support proposals for having a local presence, with local and regional offices, local assessors and case managers, local area coordination and local disability support organisations to help consumers with planning and advocacy.

At the grass roots level, the Commissioners note that case managers would perform many functions in the NDIS. While we support a case management approach, we caution against making their roles so broad that it results in unsustainable workloads or difficulties finding the right staff.

State or federal control?

The Commissioners note the proposed governance arrangements for the NDIS and the Productivity Commission's preference for one national organising agency – the National Disability Insurance Agency (NDIA) – which “*would replace significant functions in existing state and territory bureaucracies rather than merely adding to or attempting to co-ordinate them*”¹⁷.

We also note the Productivity Commission's arguments against an alternative model that would preserve a degree of control by states and territories and the conclusion that unless certain conditions were met, “*it is doubtful that the way the disability system worked for people would be much improved, apart from having more money*”¹⁸.

The Commissioners accept that ultimately the governance arrangements for the NDIS will be a matter for governments to decide and the detail will only be developed after intense consultation. However, assuming the decision is for national agency control, we note the Draft Report's proposal that during NDIS implementation “*state and territory*

¹⁷ Productivity Commission 2011, *Disability Care and Support: Draft Report*, p. 7.21

¹⁸ Ibid, p. 7.20

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*disability services will have to remain as they are for a while, even after the introduction of new arrangements, and co-exist with the NDIS for some time*¹⁹.

In this event, it would be helpful if the Productivity Commission's final report provided further detail about how the NDIS would operate alongside, or in place of, the current state programs and initiatives. Further detail would assist in addressing questions such as whether or not the NDIS would step in to fund an initiative only when the period of state-committed funding is due to expire or some earlier point in time.

Monitoring mechanisms

The Commissioners recommend that monitoring instruments established by the proposed national disability schemes do not duplicate or compromise the independence of state based systemic monitoring mechanisms.

The Draft Report seeks feedback on the effectiveness of monitoring instruments that could be used to assist the oversight of the disability sector including the use of consumer surveys, community visitor (CV) schemes and complaints mechanisms.

The Commissioners concur that a multifaceted approach should be taken to monitoring, but note that our own monitoring regimes may overlap with that of the NDIS in relation to children and young people with a disability. The Commissioners therefore respectfully suggest that state agencies which undertake monitoring be consulted during the targeted consultation phase of NDIS implementation, to identify where overlaps may occur and how duplication can be avoided without compromising independence.

The Western Australian Commission monitors government agency systems for dealing with complaints made by children and young people and trends in complaints received, while the Tasmanian Commissioner is responsible for an advocate who visits young people detained in Ashley Youth Detention Centre and the South Australian Guardian for Children and Young People and Public Advocate of the ACT visit youth detention centres.

Under the *Child Wellbeing and Safety Act 2005*, Victoria's Child Safety Commissioner monitors the provision of out-of-home care services provided to vulnerable Victorian children. The Victorian Disability Services Commissioner has a role to work with people with a disability and those who provide disability services to resolve complaints that are made about the provision of disability services. This includes services provided to children.

The Queensland Commission systematically monitors and reports on outcomes for children and young people in the Queensland child protection and youth justice systems. Monitoring mechanisms include review and audit processes, a Community Visitor Program, a complaints investigation service, and the *Views of Children and Young People*²⁰ surveys.

¹⁹ Productivity Commission 2011, *Disability Care and Support: Draft Report* p. 17.1

²⁰ *Views of Children and Young people in Foster Care in Queensland* and *Views of Young People in Residential Care in Queensland*

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These activities provide valuable data regarding the effective operation of service environments, helping to highlight strengths and weaknesses in service delivery as well as areas for policy and practice development. A complaints service and community visitor schemes also provide individual advocacy for children and young people in the child protection and juvenile justice systems and facilitate their individual needs and concerns being heard and addressed.

With respect to the Queensland Commission's monitoring functions, there would potentially be overlap with the NDIS scheme in several ways. For example, if the NDIS was to establish a CV program, the situation could arise where a child in out-of-home care or youth detention in Queensland receiving NDIS funding, is visited by two community visitor schemes.

As the Draft Report footnotes the Queensland Commission's CV Program, the following detail is provided for the Productivity Commission's reference. Under the Commission's CV program, CVs in 2009-2010 regularly visited more than 7200²¹ children and young people in state care and youth detention to see that they are safe and receiving appropriate care, advocate on their behalf, help resolve any concerns or grievances and offer support if required. CVs are required to complete a report after each visit and the information from these reports is used by the Commission to identify any issues which require individual or systemic advocacy.

The Queensland Commission also systematically reports on the lived experiences of children in care through its *Views* surveys. The value of this form of monitoring is twofold. Foremost, it provides children and young people with an opportunity to voice their opinions on the child protection and youth detention systems. Secondly, and increasingly so, the survey findings are being used to inform child protection and youth justice policy and practice decisions and shape departmental performance indicators.

The *Views* research comprises the largest ongoing study of its kind involving the direct participation of children and young people in state care. The Commissioners consider there would be immense value in the NDIS giving children and young people with disabilities similar opportunities to voice their opinions on the disability services system.

Workforce Issues

Appropriate employment screening safeguards and risk management measures to ensure the safety of persons with a disability should not be compromised by measures to expand the disability support workforce.

The Draft Report (Chapter 13) recommends low barriers to employment including (i) *changing some aspects of police checks to ensure their proportionate use* and (ii) not having any qualification as a pre-requisite for non-professional workers in the disability field²². The Commissioners acknowledge the intention is to help address workforce shortages, but is concerned that the recommendations could mean safety is compromised by unchecked labour market expansion.

²¹ Commission for Children and Young People and Child Guardian Annual Report 2009-10

²² Productivity Commission 2011, *Disability Care and Support: Draft Report*, p.13.45

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The Commissioners are particularly concerned about Draft Recommendation 13.2, which calls upon Australian governments to ensure that, *across all jurisdictions, police check arrangements for paid workers providing services to people with a disability:*

- *apply only in cases where both the person with a disability is vulnerable AND*
- *the risks associated with delivery of services are sufficiently high*
- *not include disclosure of crimes covered by spent convictions legislation*
- *cover people for a given period, rather than for a particular job.*

If the above recommendation was adopted, it would affect the integrity of the Queensland Commission's Working With Children Check, its assessment of high-risk individuals and the management of risk to children and young people. Since 1 July 2010, all paid employees and volunteers of Disability Services funded service providers who provide services directly to children require a Working with Children Check, known in Queensland as a Blue Card. In view of its potential to negatively impact on the Commission's employment screening functions, Draft Recommendation 13.2 is opposed.

Victoria places serious importance on Working With Children Checks being required by those who work in child-related categories. This includes the category of out-of-home care services for children, some of whom have a disability. It is important that screening standards are never compromised for this vulnerable cohort in the community.

Draft Recommendation 13.2 compromises current employment screening and risk management regimes. It would also be difficult to put into practice. Limiting police checks '*to apply only in cases where both the person with a disability is vulnerable AND the risk associated with delivery are sufficiently high*' suggests that an individual's vulnerability is key to whether the paid services workers around that person/child need to be screened. This effectively proposes doing things on a case by case basis which would be hard to manage.

It poses questions such as:

- o How would a person's vulnerability be determined – by their age, intellectual capacity, physical limitations, or some other measure?
- o How will '*the risk associated with delivery*' of service be assessed?
- o Will 'risk' be the same for each person?
- o What will the threshold be for '*sufficiently high*'?
- o If a person's situation changes – for example their condition deteriorates, making them more vulnerable – will their unscreened support worker then have to undergo a police check?
- o Who will monitor changes in vulnerability and risk?

The proposal '*not to include disclosure of crimes covered by spent convictions legislation*' would be counter to employment screening best practice. Employment screening decisions are based on an assessment of the person's whole criminal history, including disciplinary and investigative material. It takes account of factors such as when it happened, the person's age at the time and the facts of the case.

Further, Queensland is a participant in the COAG Exchange of Criminal History Information for Persons Working with Children (ECHIPWC) which provides access to

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spent convictions and interstate criminal history information. Adults working with children with a disability will be subject to this extended information. Restricting access to spent conviction information would mean the risks to a person/child cannot be fully assessed.

An up-front contribution to the NDIS

Families with a child with a severe disability should not be required to make any financial contribution to the NDIS.

The Draft Report (recommendation 4.3) proposes that there should sometimes be a requirement to pay a modest fixed upfront contribution to the NDIS of say, \$500 per annum but that this front-end deductible be waived where the extent of natural supports exceeds some government determined level.

The Commissioners recommend that the up front-contribution to the NDIS be waived for families who are supporting a child with a severe disability. Many families of children with disabilities are sole parent families or families where the income earning capacity is diminished, for example by disadvantage or the time demands associated with the child's disability.

The only way some families would be able to make even a modest financial contribution to the NDIS would be by reducing what is available for other family members, including siblings. Siblings of a child with a disability often experience, by necessity, a childhood already much reduced in terms of the financial, emotional and time supports provided to them. Furthermore, it is our view that the need to prove a 'certain level of natural support' to have the front-end deductible waived would be an additional and unwelcome burden for families, both administratively and emotionally.

Promoting the best interests of the child and participation in decision making

The Commissioners recommend that:

- **safeguards be put in place to protect the best interests of children and young people with disabilities**
- **any high level taskforce established to implement the national disability schemes engage in a consultative process with children and young people with disabilities, their families and carers to ensure the needs of children with a disability are considered, and**
- **children and young people with disabilities be given a voice on any Advisory Council for the NDIS.**

Best interests of the child

The Victorian Child Safety Commissioner's submission previously raised the need for any new disability service system to include measures to protect a child's best interests. The Commissioners agree. While the child's family and informal support network would in most cases be the primary safeguard, this cannot be guaranteed. Other mechanisms need to be established.

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The Commissioners consider everyone who comes into contact with a child has a role to play, including assessors, support workers, case managers, community visitors and so forth. It is noted that a key role of the case manager will be to account for the welfare of the client – *to ensure they are receiving the supports they are eligible for, that support services are of an adequate quality, and to monitor their wellbeing over time*²³. This function is supported but it would not be feasible to rely on the case manager alone. We would like to see a raft of safeguards for children built into the disability service system.

To ensure the best interests of the child remains at the forefront of the disability service system, we also recommend that children and young people with disabilities have an independent advocate on the NDIA's Advisory Council.

Participation in decision-making

The Commissioners consider that the voice of children and young people is somewhat missing in the Draft Report. It rarely articulates distinctions between the needs of children and adults. While this is likely to be due to the scope of the report, we consider it imperative that the needs of children and young people be considered separately from adults.

To this end, the Commissioners recommend that any high level taskforce established to implement the national disability schemes engage in a consultative process with children and young people with disabilities, their families and carers to ensure the needs of children with disabilities are considered. We note the short consultation timeframes proposed under the Implementation schedule for the NDIS, however it is our view that moving too hastily will be to the ultimate detriment of the scheme.

On-going opportunities should also be created for children and families to participate in decision-making that affects them, at the systemic as well as individual level. There is growing recognition that children and young people should have a voice, however there are still remnants of the paternalistic view that all children and young people with disabilities need someone else to speak on their behalf. In this regard we agree that *“influencing attitudes and practices in society may be one of the most significant roles of the NDIS outside of its role of directly providing much needed support”*²⁴.

²³ Productivity Commission 2011, *Disability Care and Support: Draft Report*, p. 8.14.

²⁴ Ibid p. 3.5

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Australian Children's Commissioners and Guardians participating in this submission:

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- Michelle Scott, Commissioner for Children and Young People (Western Australia)
- Aileen Ashford, Commissioner for Children (Tasmania)
- Pam Simmons, Guardian for Children and Young People (South Australia)
- Bernie Geary, Child Safety Commissioner (Victoria)
- Howard Bath, Children's Commissioner (Northern Territory)