

Royal Commission into Institutional Responses to Child Sexual Abuse

**Consultation Paper -
Best practice principles in responding to
complaints of child sexual abuse in institutional
contexts**

Children and Young People with Disability
Australia
Submission - April 2016

INTRODUCTION

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services and is a not for profit organisation.

CYDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CYDA welcomes the opportunity to provide feedback to the Royal Commission's consultation paper on *Best practice principles in responding to complaints of child sexual abuse in institutional contexts*. The paper provides a well-considered discussion of the key considerations for effective complaints processes for child sexual abuse in institutions. This submission focuses on issues of relevance to children with disability.

Strong and effective complaints processes are important to improving institutional responses to child sexual abuse. However, given the barriers to disclosure of sexual abuse by children, it is critical that organisations and institutions also develop strong and robust safeguards focussed on preventing abuse.

Children with disability experience both heightened vulnerability to sexual abuse and additional barriers to disclosure and reporting compared to their peers without disability.¹ It is therefore critical that complaints policies and processes include consideration of the specific needs and circumstances of children with disability.

BARRIERS TO REPORTING ABUSE FOR CHILDREN WITH DISABILITY

All children experience significant barriers to disclosing sexual abuse. These include reliance on their abuser, fear they will not be believed, a lack of trusted adults, fear their abuser will hurt them, fear they will be blamed or punished for abuse or because children lack the language to name abuse or do not understand what has occurred.² The challenge of reporting abuse can be further compounded for children with disability, often due to the ignorance and prejudice of others. CYDA has provided an extensive discussion of these barriers in the submission provided to the Royal Commission's *Issues Paper 10 - Advocacy and Support and Therapeutic Treatment Services*. These barriers are briefly summarised below:

- *Limited experience of belonging and connection*: Children with disability are frequently positioned and understood as incapable, a burden, or objects of pity and charity within Australian society. These negative attitudes, or ableism, can have profound impacts on the opportunities for children with disability to develop and sustain a strong and positive sense of belonging and connection within the typical spaces and contexts experienced throughout childhood, such as schools and local neighbourhoods. A limited sense of belonging and connection can result in children with disability feeling unwelcome, not valued and isolated

¹ P Sullivan et al. 2000, 'Maltreatment and disabilities: A population-based epidemiological study,' *Child abuse and neglect*, Vol. 24, No. 10, p. 1257, Children and Young People with Disability Australia 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Melbourne.

² Royal Commission into Institutional Responses to Child Sexual Abuse 2014, *Interim Report Volume 1*, Commonwealth of Australia, Canberra, p. 159.

and this has been shown in research to create challenges to reporting when children feel unsafe.³

- *Dependency on others for personal care:* Children who require regular support with personal care can have less opportunity to define and protect their personal space and may be reliant on adults to impart the importance of boundaries.⁴
- *Limited access to education to sex and protective behaviours education:* Opportunities to define personal boundaries and recognise inappropriate behaviour can be further inhibited by a lack of provision of accessible education about personal development, protective behaviours and sex and healthy relationships to children with disability.⁵
- *Children with high communication and behaviour support needs:* It is not uncommon for it to be assumed that behaviours of children and adolescents with disability which are causing concern are simply symptomatic of disability. For example, expressions of high anxiety, distress, sudden aggression, withdrawal, regression or sexualised behaviour may be assumed to be a manifestation of a child's disability, rather than an indication of sexual abuse. In these circumstances, little or no consideration is given to understanding the meaning of a child's behaviour.

INSTITUTIONAL BARRIERS TO RECOGNISING AND RESPONDING TO ABUSE OF CHILDREN WITH DISABILITY

Research and direct experience illustrates that present institutional responses, including complaints processes, to abuse of children with disability are highly inadequate and problematic. It is the view of CYDA that ableism in institutions results in abuse of children with disability being deprioritised.

CYDA does not frequently receive direct reports of sexual abuse of children with disability. However, CYDA is frequently informed of instances of physical and emotional abuse and neglect of children with disability. The vast majority of these occur in an education setting. While not specific to sexual abuse, CYDA believes the poor institutional responses to broader abuse of children with disability are relevant to the work of the Royal Commission.

CYDA has observed the following institutional responses to abuse of children with disability:

- *Abuse is not recognised:* Many cases of abuse are not recognised as such because the child involved has a disability. These incidents are often not named, treated or responded to as abuse. An example is a student being denied food and drink during a two hour bus ride home from school.
- *Abuse is renamed:* Abuse of children with disability is frequently justified and defended by individual and service providers concerned. A common situation is justification of the use of restraint and seclusion as necessary for 'behaviour management,' thereby attributing abuse to the actions of the child involved. Further, incidents are often not correctly identified as crimes. In these cases, abuse may be seen as an incident that can be addressed within an organisation, rather than making appropriate referral to police.
- *Abuse is denied:* Another response reported to CYDA is for institutions to deny abuse has occurred. For example, it has been reported to CYDA that schools have refused to acknowledge that significant raised and weeping carpet burns across a student's body were

³ S Robinson et al. 2014, *Safe at school? Exploring safety and harm of students with cognitive disability in and around school*, Centre for Children and Young People, Southern Cross University, Lismore, p. 9.

⁴ D Skarbek et al. 2009, 'Stop sexual abuse in special education: An ecological model of prevention and intervention strategies for sexual abuse in special education,' *Sexuality and disability*, Vol. 27, p. 157.

⁵ I Wissink et al. 2015, 'Sexual abuse involving children with an intellectual disability (ID): A narrative review,' *Research in developmental disabilities*, Vol. 36, p. 28.

caused by a teacher dragging the student across a room. In other circumstances, when seclusion rooms have been exposed in schools, it appears they have been denied or physically removed to avoid public scrutiny or accountability.

- *Institutions assume the impact of abuse is minimal:* Ill-informed views hold that children with disability have limited comprehension which diminishes the impact of abuse. This can lead to assumptions that children with disability do not understand what has happened, are unaffected by sexual abuse or that the impact is lessened.

Effective child safe practice, including complaints processes, therefore need to address these issues in institutional responses to abuse of children with disability

SPECIFIC FEEDBACK ON THE CONSULTATION PAPER

BEST PRACTICE EXAMPLES

CYDA supports the best practice examples included in the consultation paper. Specific feedback regarding principles one, two and five is provided below:

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.

An institutional culture that values and upholds the rights of ALL children is a fundamental component of preventing and responding appropriately to child sexual abuse.⁶ CYDA believes institutional policies and culture require a strong grounding in human rights frameworks that identifies upholding the rights and interests of each child as the key factor driving service delivery.

Organisational culture should also acknowledge and respect the diversity of children accessing services, including children with disability. This means hearing and valuing the voices, perspectives and experiences of children with disability. Disability should be understood as a positive attribute of a diverse culture, not as incapacity or a deficit.

It is also important that institutional culture, including all policies and processes, reflects the heightened vulnerability to abuse experienced by children with disability, the factors that contribute to this vulnerability and barriers to disclosure of abuse.

Recommendation 1: National best practice principles in responding to complaints of child sexual abuse in institutions specifically include the need for institutional cultures to value diversity and acknowledge the contributions of children with disability. This must also include recognition and understanding of the heightened vulnerability to abuse experienced by children with disability.

2. A child-focused complaint handling policy.

CYDA supports this principle. It will also be necessary to articulate how organisations can ensure complaint handling policies are accessible to all children. This includes requiring organisations to recognise and respond to the diverse communication needs of children, including when children communicate ostensibly through behaviour.

Recommendation 2: National best practice principles in responding to complaints of child sexual abuse in institutions ensure that complaints processes are accessible to children with a diverse range of communication and support needs.

⁶ J Tucci et al. 2015, 'Constructing a child protection policy to support a safeguarding children culture in organisations and institutions,' *Children Australia*, Vol. 40, No. 1, p. 78.

5. Training is provided about the complaint handling process.

Training for all staff in institutions about complaints policies is important to ensuring they are implemented in practice. This should also include training around recognising the signs of child sexual abuse; acknowledging communication as behaviour; and understanding the vulnerability to sexual abuse of children with disability.

Recommendation 3: National best practice principles in responding to complaints of child sexual abuse in institutions include that training about complaints processes requires a focus on the needs of children with disability, including their heightened vulnerability to experiencing abuse.

IMPLEMENTING THE PRINCIPLES

Creating a culture that encourages reports

One action for institutions included under this section is to create “an environment that actively supports and encourages children and adults to report concerns.”⁷ CYDA supports the components of this culture included in the discussion paper. A further important consideration is that children with disability may have experienced barriers to developing their own instincts about people and situations that are unsafe. When children with disability are not listened to and their ideas, feelings and thoughts are not valued and encouraged, it can inhibit the development of an intrinsic understanding of what is or isn’t safe. This was reflected in research published by the Royal Commission that explored what children and young people with disability view as important to feel safe in institutional settings.⁸ This research found that “many children and young people lack the skills and support to identify and act on feelings and instincts that could keep them safer from potential abuse in institutional settings.”⁹ The paper argues that “work is needed to assist children and young people and their supporters to recognise and assess the relative risk of harm.”¹⁰

Staff in institutions will play an important role in supporting or diminishing the opportunities of children with disability to understand and articulate their sense of safety. This will therefore contribute to whether or not an institutional setting can encourage children to speak up if something is wrong. Education and professional development for staff may be a useful way of ensuring that institutions are responsive to the need to support children to express if they don’t feel safe. Consideration will therefore need to be given to how this employer education can be delivered. One option could be inclusion of this training in requirements for organisations to receive child safe accreditation.

Recommendation 4: Education and professional development for staff working with children in institutions to support children with disability in developing and expressing their sense of safety.

The kinds of behaviour that should be reported

One of the examples of reportable behaviour provided in this section is “not respecting the privacy of children when they are using the bathroom or changing (for example on an excursion and in

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, Sydney, p. 20.

⁸ S Robinson 2016, *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

⁹ Ibid, p. 9.

¹⁰ Ibid, p. 9.

residential situations).¹¹ However, some children with disability require assistance with personal care and will access this through institutions and service providers. Children in these circumstances are often highly or fully dependent on organisations to implement strong protective policies. Additional safeguards, including screening, supervision and monitoring of staff, are therefore required in these circumstances to prevent abuse.

Many children with disability experience compromised privacy. Children accessing disability services and supports for example will have many additional people, organisations and systems in their life who have access to personal and intimate information. Children who require high levels of support experience frequent scrutiny and supervision which further negates the privacy usually afforded across many life circumstances. The context and considerations regarding privacy for children in these circumstances are therefore different to those of their peers. This context needs to be considered by organisations developing policies around the type of behaviour that should be reported due to concerns of sexual abuse.

Recommendation 5: Complaints policies within organisation incorporate the needs of children with disability who have heightened vulnerability and compromised privacy due to high level of support required with communication and/or behaviour.

What to do if the police do not investigate or it does not result in a conviction

CYDA provided a submission to the Royal Commission's *Issues paper eight: Experience of police and prosecution responses*, which discussed the considerable barriers in accessing justice experienced by children with disability who are victims of crime. These issues were also recently explored in the Royal Commission's public hearing into criminal justice issues. This case study illustrated a number of cases in which barriers in the justice system for children with disability prevented conviction of offenders.¹² Organisations will therefore need to be aware of the barriers for children with disability in accessing justice and ensure this is reflected in any organisational response to alleged child sexual abuse.

Recommendation 6: Institutional complaints policies recognise the barriers for children with disability who are victims of sexual abuse to access to justice, particularly the barriers in securing a conviction for alleged offenders.

Communicating with other children, parents, guardians and others

CYDA supports the inclusion in complaint handling policies of a procedure for determining disclosure of abuse to third parties. In particular, families of children should be immediately notified of any abuse experienced by children in institutional settings, including sexual abuse. It is often reported to CYDA, particularly for abuse in education settings, that families are not notified when children experience a range of abuses such as restraint, seclusion or assault. This often arises from a desire to deny or minimise abuse which has occurred.

Recommendation 7: Institutional complaints policies include procedures for determining disclosure of abuse to third parties, ensuring that families or guardians of children who have been abused are immediately notified.

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Consultation paper: Best practice principles in responding to complaints of child sexual abuse in institutional contexts*, p. 23.

¹² Royal Commission into Institutional Responses to Child Sexual Abuse 2016, *Public hearing - Case study 38*, Sydney, viewed 15 April 2016, <https://goo.gl/y25vFd>.

Oversight of complaints handling

CYDA supports the development of an independent oversight mechanism to ensure organisations comply with child safe practice, including in reporting and complaints processes regarding child sexual abuse. CYDA notes that there is work currently occurring in a range of areas relating to oversight of organisations working with children. These include the work of the Royal Commission regarding child safe standards, the National Disability Insurance Scheme Quality and Safeguarding Framework and the 2015 Senate Inquiry into *Violence, abuse and neglect of people with disability in institutional and residential settings*, which made a number of recommendations regarding oversight of services accessed by people with disability, including children. There are opportunities to coordinate the work that is presently occurring to develop a comprehensive oversight system to address abuse and neglect occurring in institutions.

Oversight of complaints processes will need to develop mechanisms to ensure that institutions not only develop appropriate policies and procedures, but also that best practice principles are reflected in organisational culture. Oversight shouldn't rely too heavily on 'compliance based practice standards,' which shift focus from rights based service delivery, to 'tick box' risk management approaches.¹³

Recommendation 8: Development of an oversight mechanism to ensure all organisations working with children implement and comply with best practice principles in responding to complaints of child sexual abuse. This mechanism could be included within monitoring of child safe standards, as is the case in Victoria.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: National best practice principles in responding to complaints of child sexual abuse in institutions specifically include the need for institutional cultures to value diversity and acknowledge the contributions of children with disability. This must also include recognition and understanding of the heightened vulnerability to abuse experienced by children with disability.

Recommendation 2: National best practice principles in responding to complaints of child sexual abuse in institutions ensure that complaints processes are accessible to children with a diverse range of communication and support needs.

Recommendation 3: National best practice principles in responding to complaints of child sexual abuse in institutions include that training about complaints processes requires a focus on the needs of children with disability, including their heightened vulnerability to experiencing abuse.

Recommendation 4: Education and professional development for staff working with children in institutions to support children with disability in developing and expressing their sense of safety.

Recommendation 5: Complaints policies within organisation incorporate the needs of children with disability who have heightened vulnerability and compromised privacy due to high level of support required with communication and/or behaviour.

Recommendation 6: Institutional complaints policies recognise the barriers for children with disability who are victims of sexual abuse to access to justice, particularly the barriers in securing a conviction for alleged offenders.

¹³ S Robinson et al. 2010, 'Preventing abuse in accommodation services: From procedural response to protective cultures,' *Journal of intellectual disabilities*, Vol. 15, No. 1, p. 68.

Recommendation 7: Institutional complaints policies include procedures for determining disclosure of abuse to third parties, ensuring that families or guardians of children who have been abused are immediately notified.

Recommendation 8: Development of an oversight mechanism to ensure all organisations working with children implement and comply with best practice principles in responding to complaints of child sexual abuse. This mechanism could be included within monitoring of child safe standards, as is the case in Victoria.

CONTACT

Stephanie Gotlib, Chief Executive Officer
20 Derby Street, Collingwood VIC 3066
Phone 03 9417 1025
stephanieg@cda.org.au
www.cda.org.au