



Records and Recordkeeping Policy Team
Royal Commission into Institutional
Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW

People with Disability Australia Incorporated

Postal Address: PO Box 666
Strawberry Hills NSW 2012

Street Address: Tower 1, Level 10
1 Lawson Square
Redfern NSW 2016

Phone: 02 9370 3100

Toll Free: 1800 422 015

Fax: 02 9318 1372

TTY: 02 9318 2138

Toll Free TTY: 1800 422 016

Email: pwd@pwd.org.au

TIS: 13 14 50 **NRS:** 1800 555 677

NGO in Special Consultative Status with the
Economic and Social Council of the United Nations

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Dear Royal Commission,

People with Disability Australia (PWDA) is a grassroots, mutual support, representative and advocacy organisation of and for people with all types of disability. We are a national peak representative body for people with disability, with a long history of working to end violence against people with disability. We strive for the realisation of our vision of a socially just, accessible, and inclusive community in which the human rights, belonging, contribution, potential, and diversity of all people with disability are recognised, respected, and celebrated with pride.

PWDA is also a member of Disability Peoples Organisations Australia, an alliance of cross-disability organisations funded as Australia's peak representative bodies for people with disability.

PWDA's expertise in the area of recordkeeping is partially drawn from both our experience providing advocacy to children with disability, and our role providing Royal Commission-related advocacy supports to adults with disability seeking to access their records. It is also drawn from our ongoing engagement with the disability service sector, particularly with the development of the National Disability Insurance Scheme (NDIS) and the Agency responsible for its provision.

PWDA's principle concern is that this consultation paper does not discuss disability service providers at all throughout its consideration of record-keeping.

Children with disability constitute at least a large minority of those children receiving services from institutions, and in many cases, they access many more services than other children. It is therefore particularly important to fully consider the responsibilities of disability service providers and 'mainstream' institutions in record-keeping about children with disability. Disability service providers must be explicitly addressed by Royal Commission

recommendations. Given our contributions to the development of the record-keeping policy area at the Royal Commission, we are disappointed that this area of service provision is not reflected in the consultation paper.

In addition to having ratified the Convention on the Rights of the Child, Australia has ratified the Convention on the Rights of Persons with Disabilities. Article 7¹ focuses on children with disability, and emphasises that they have all fundamental freedoms and human rights on an equal basis with other children. This is important in the context of record-keeping, because the rights that the Consultation Paper is exploring must be understood to extend to children with disability. Unfortunately, children with disability are regularly denied their basic human rights in Australia, in some cases by the institutions responsible for support provision and subsequent record-keeping, so it is important that these fundamental rights are highlighted in policy work focussed on these institutions.

The Royal Commission's recordkeeping principles

PWDA broadly supports the five principles of recordkeeping outlined in the Consultation Paper. However, we are concerned that the issues regarding accuracy of records and terminology to be within these records be more fully considered.

Historically, many children, including those without disability, have been recorded as 'mentally retarded'. This has been the case for some of the clients we have supported to access their records, and is frequently very upsetting, because the language is understood now to be derogatory and long since replaced with more appropriate terminology. However, it demonstrates a much more significant problem, which is that the shifts of language and conceptualisation of disability over time can have a disproportionate impact on those with disability.

It also highlights that the prejudices and discriminatory attitudes of the record-maker may impact on the record, in ways that are not always transparent to that record-maker themselves. This highlights that there must be adequate training for all record-makers and record-keepers, to ensure that records are accurate and appropriate and do not cause undue trauma to the subject of the records, whether a survivor of child sexual abuse or not.

There are numerous instances of the sexualised behaviour of children with disability being characterised as disability-related, obscuring the adequate recording of potential indicators of abuse. This was highlighted in Case Study 41², where disability service providers

¹ Convention on the Rights of Persons with Disabilities, available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>

² The Australian Bureau of Statistics unfortunately only tracks disability relative to two age ranges under the age of 18: 0-4 and 5-14 (the next age range is 15-24). This makes it difficult to track prevalence of disability for all persons under the age of 18. However, solely considering the age range 0-14, approximately 12.9% of all children within this age range have disability (see the Survey of Disability, Ageing and Carers, 4430.0). Because children with disability are likely to be accessing numerous services from institutions, especially with the rise in

responded poorly to concerns raised about sexualised behaviour, and failed to record instances of potential abuse due to misperceptions about what had occurred.

Additionally, in other circumstances, children with disability who display any sexual behaviours whatsoever may be understood as displaying ‘problem’ sexual behaviours. PWDA has concerns about how records are kept regarding these behaviours, particularly as records are likely to be accessible by an array of services throughout a person’s life. In our individual advocacy work, we have seen clients who are treated poorly by services because they are characterised as “sexual predators,” based on poor record-keeping regarding normal sexual development by prior service providers. For many people with disability accessing services in an ongoing way, records like this may pursue them throughout their lives, with the potential that some disability support workers may not behave professionally when it comes to such records in future.

Appropriate and accurate records are essential to the provision of adequate support to those who have experienced child sexual abuse, or who are suspected to have experienced child sexual abuse. In our individual advocacy experience, this support is very rarely offered to children and adults with disability who have experienced child sexual abuse, often due to inaccurate or incomplete records of events when abuse may have occurred. Without accurate records, which can subsequently lead to the provision of adequate support, there may be very negative long term outcomes for the individual and potentially heightened risk of the victim becoming a perpetrator in future.

PWDA strongly recommends the inclusion of an enforcement principle as well (the mooted sixth principle). Without rigorous obligations, many of these essential concerns regarding record-keeping will not be addressed, or will not be given the priority that they must have, especially in small NGOs. Adequate record-keeping relies on everyday practice, meaning both that it can be made habitual within an organisation, and that any small deviation from good practice, especially one that also becomes standard practice within an organisation, can have asymmetrical impacts on the children about whom the records are kept.

Record keeping and the NDIS

One of our key concerns which is not discussed in the Consultation Paper is record-keeping for children under the NDIS. While services will have an obligation to keep records of services provided, in order to fulfil NDIA requirements, these details are unlikely to include meaningful information about a child’s development and life. It is important that the Royal Commission give due attention to the NDIS as it is likely to transform the landscape of

early interventions under the NDIS – including therapeutic interventions, specialist schooling, respite care, day services, out of home care and so on – it is fair to say that children with disability constitute at least a large minority, if not a majority, of those interactions between institutions and children in Australia.

children's services, including increasing the availability of service in remote areas such as Aboriginal and Torres Strait Islander communities.

For some children, such as those in voluntary Out Of Home Care (OOHC) in NSW, the Children's Guardian is responsible for maintaining records regarding the child. However, it isn't clear that similar arrangements exist in other states and territories. In many cases, government agencies responsible for disability services in other states and territories would hold responsibility for record-keeping; yet in many locations, these agencies will be dissolved with the full roll-out of the NDIS. This raises serious concerns that records for current or future service-users will be unavailable or incomplete.

In addition, it is unclear how these obligations, whether on the Children's Guardian or on other agencies, will interact with NDIS service providers, whose obligations are far less rigorous. This may also impact on children in OOHC who are receiving services from disability service providers, under the NDIS.

In relation to the NDIS and the significant changes to the disability service sector, the issue of the exemption from the Australian Privacy Principles (APP) for small organisations is likely to be of especial significance for the nascent and developing sector. Even the smallest organisation must be required to keep adequate records, therefore PWDA supports the removal of the exemption for small organisations from the APP. We acknowledge that this may require some sector education to ensure it occurs, as many new organisations are joining the sector, but the size of the organisation should not absolve it from its obligations to keep accurate records of clients.

Additionally, we are concerned that the expectation for adequate record keeping may see some resistance. With record-keeping now understood to be included in hourly payment rates (set by the NDIA), many disability service providers are suggesting that funding is too limited to enable disability support workers to do very much paperwork at all. It is likely that any demands that they maintain records of the kind referred to in the Consultation Paper will be understood to increase their responsibilities beyond what is reasonable for the funding they receive.

Government leadership

Given these difficulties, it is important that Government take a leadership role in ensuring that adequate record-keeping practices are developed, adopted and used, and enforced, across all institutions. This is particularly important with the privatisation of many public institutions, and for organisations funded under the NDIS. Without adequate government leadership, due priority may not be given by private organisations to record-making and record-keeping in line with the Royal Commission's principles. Retention periods should be carefully managed, prioritising the needs of the subjects of the records, and with due

recognition of the longer retention period required in light of amendments to limitation periods on child sexual abuse cases in some states.

PWDA thanks you for the opportunity to provide our insights into the issue of record-keeping for children with disability. Please do not hesitate to contact us if you have any further queries regarding this important issue.

Yours sincerely,

Dr Jessica Cadwallader
ADVOCACY PROJECTS MANAGER, VIOLENCE PREVENTION