Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Issues
Paper

Safeguards and quality

November 2020

> Please be aware that the content and associated questions in this Issues Paper may be distressing or raise issues of concern for some readers.
>
> There are a range of services available if you require support after reading this paper. Contact details for these services are located at the end of this paper under the heading 'Support to respond to this issue paper'.

Introduction

Safeguards and quality services are key areas of inquiry for the Royal Commission. The purpose of this paper is to invite information and discussion from people with disability, their representative organisations and the public to better understand how safeguards and quality services may prevent and reduce violence against, and abuse, neglect, and exploitation of, people with disability and improve responses when it does occur.

We want to hear about safeguards and quality services that may prevent and reduce violence against, and abuse, neglect and exploitation of, people with disability. We also want to hear about gaps and ways in which safeguards could be improved to prevent and reduce violence, abuse, neglect and exploitation across all areas of life and settings for people with disability. We are interested in the interaction between people with disability and services such as education, health, justice, transport, accommodation and the National Disability Insurance Scheme (NDIS).

A list of questions is included at the end of this paper. The questions are a guide. You do not have to answer every question. More information about how to respond to this issues paper is at the end of the paper.

If you wish to share an individual experience of violence, abuse, neglect or exploitation, experienced by you or another person with disability, please consider making a submission or registering for a private session. You can contact us in writing, by telephone or by sending a video. More information about each of these is on our website.

Attachment A sets out the Royal Commission's working definitions of violence, abuse, neglect and exploitation.

What are safeguards and quality services?

Safeguards can be defined as 'actions designed to protect the rights of people to be safe from the risk of harm, abuse and neglect, while maximising the choice and control they have over their lives.'[1]

Safeguards can be both informal and formal. Informal safeguards include self-advocacy and building a network of trusted relationships. Formal safeguards include legislative and administrative requirements, policies and practices, organisational culture, complaint processes (including within organisations and to external bodies like the police) and regulatory oversight of service providers' staff. Examples of both informal and formal safeguards are set out below.

Quality services are those that include a focus on providing positive outcomes for people who use services, involve individuals and staff in service design, encourage continuous improvement, and use available data to monitor performance and improve the service.[2]

A human rights based approach

We are committed to promoting and protecting the rights of people with disability. Australia has ratified the *UN Convention on the Rights of Persons with Disabilities* (*CRPD*).[3] This means that as a State Party to the *CRPD*, Australia has agreed to ensure, promote and fulfil the rights described in the *CRPD*, for all people without discrimination on the basis of disability.

The *CRPD* includes specific provisions relating to safeguarding against all forms of violence, abuse, neglect and exploitation. Article 16 requires States Parties to take legislative, administrative, social, educational and other measures to protect against violence, abuse and exploitation, including the gender-based aspects, occurring both within and outside the home. States Parties are to provide information and education on how to avoid, recognise and report these abuses when they occur and to provide for effective monitoring by independent bodies. Legislation and policies should enable these incidents to be identified, investigated and, where appropriate, prosecuted. Measures are required to promote recovery, rehabilitation and social reintegration for people with disability who have experienced violence, abuse and exploitation.[4] The *CRPD* also requires safeguards be implemented to protect particular rights (such as the right to equality before the law) or be applicable to specific settings (such as the workplace).[5]

As our terms of reference require, we will consider the multi-layered experiences of people with disability of different age, sex, gender identity, sexual orientation and race. In particular, we will look at the experiences of First Nations people with disability and culturally and linguistically diverse people with disability, as well as children and young people's experience. We acknowledge that accessing quality supports and effective safeguards, including complaints processes, may be even more difficult for people where they identify with more than one marginalised group.[6]

A life-course approach

People with disability access services throughout their lives. These services may be disability-specific or the same services that everyone else needs and uses. A life-course approach recognises that all stages of a person's life are connected and that the quality of the services and the safeguards in place to prevent violence, abuse, neglect and exploitation can have an impact on a person later in life.

We want to better understand how people with disability have experienced violence, abuse, neglect and exploitation throughout their lives. This means looking at their experiences around birth, in early childhood, during schooling years, as young people and adolescents, and into adulthood and ageing.

Current approaches

Informal and formal safeguarding measures should be provided in a way that enables people with disability to have choice and control in how they live, including taking risks. Overly protective measures that prevent people taking risks can deny them the opportunity to learn decision-making skills, aspire to achieve their own goals, and enjoy the dignity of exercising choice, including the right to make poor choices.[7] A process of 'risk enablement'[8] can balance 'independence, choice and control and the dignity of risk on the one hand and calls for safety on the other'.[9]

Informal safeguarding

Like everyone, people with disability live complex and multi-faceted lives that go beyond their interaction with systems and services. Approaches to safeguarding need to reflect this. Strong safeguards are created when there is a blend of informal and formal safeguards tailored to the individual.[10] Informal safeguards involve keeping a person's individual circumstances as the central consideration and may include:

- building individuals' skills, independence and confidence
- supporting people from specific cultural groups, such as First Nations and culturally and linguistically diverse communities to build their understanding and knowledge of disability-specific supports and services
- enabling self-advocacy to empower people with disability to identify concerns and speak out when they arise
- communication supports and informal advocacy for people with disability who require them, for example having a trusted person attend when being admitted to hospital
- building a network of trusted individuals around a person with disability to provide informal oversight and support which may include professional disability advocates
- additional support that may be needed by people who do not have informal supports (such as family or other advocates), people who face communication barriers, and people with high support needs

Formal safeguarding and quality services

People with disability use a range of services throughout their life. Promoting high quality services is an important safeguard against violence, abuse, neglect and exploitation. For example, high quality services will have appropriate risk identification and management processes in place in order to prevent harm to people using the service and to intervene promptly and effectively if harm occurs.

Formal safeguards for people with disability are delivered through laws, policies and practices – some specific to NDIS services and some for services that have a broader reach, including in health care, education and workplaces. Some formal safeguards may prevent or reduce violence in private homes, such as criminal laws, policies and programs aimed at addressing domestic and family violence. Other formal safeguards are particularly important in specific

circumstances, such as independent oversight of group homes and other segregated or closed settings.[11]

The NDIS *Quality and Safeguarding Framework* (the NDIS Framework) aims to ensure high quality services and safe environments for NDIS participants. The NDIS Framework includes a number of new national components designed to provide NDIS participants with access to supports that promote their right to choice and control, while also ensuring a proper assessment and planning process that enables choice and control. These components include:

- monitoring support worker compliance with the NDIS Code of Conduct
- registration requirements for providers and independent auditing of facilities against the NDIS Practice Standards
- worker screening to identify whether someone will pose an unacceptable risk to people using a service
- processes for authorising (and minimising) use of 'restrictive practices'
- processes for identifying and responding to 'reportable incidents', including abuse and neglect of NDIS participants
- a complaint resolution process

Other formal safeguards may also prevent and reduce violence, abuse, neglect and exploitation against people with disability. For example, the Australian Commission on Safety and Quality in Health Care coordinates key improvements in safety and quality in health care delivery, including for people with disability. The National Principles for Child Safe Organisations apply to organisations engaged in child related work, including those working with children with disability.

A tiered approach involving developmental, preventative and corrective measures has been incorporated in a number of safeguarding policy frameworks.[12] Examples of developmental, preventative and corrective safeguarding measures that apply across a range of services and areas of life are set out below.

Developmental measures, in the context of formal safeguarding, aim to change negative culture and strengthen quality and safeguards. These include:

- implementing public awareness campaigns and workplace cultural change programs to enhance knowledge of human rights and challenge discriminatory attitudes that may perpetuate and increase the risk of violence, abuse, neglect or exploitation
- building organisational capacity to support the delivery of safe, high quality services
- developing a skilled service provider workforce through education and training
- data collection and analysis to monitor service provision, identify risks and enable review of practices to avoid problems recurring

Preventative measures aim to ensure high quality services and minimise risk of violence, abuse, neglect and exploitation. These include:

- standards for screening workers, such as those used by the Australian Health Practitioner Regulation Agency
- practice standards for providers and professionals, for example the NDIS Code of Conduct, NDIS service standards and NDIS registration requirements
- independent accreditation and certification processes to ensure compliance with service and care standards, such as Quality Innovation Performance certification for disability services
- organisational policies and procedures aimed at preventing and responding to violence against, and abuse, neglect, and exploitation of, people with disability such as those applicable in group homes
- measures to ensure accountability of decision-making arrangements like guardianship for people with disability subject to them, such as through regular reviews
- developing safeguarding mechanisms for people with high support needs disability who choose to live alone.

Corrective measures are used to respond when incidents of violence against, and abuse, neglect, and exploitation of, people with disability occur and complaints are made. These include:

- complaint processes, for example in schools, group homes or custodial settings
- role of health care complaints commissions, State and Territory ombudsmen, or human rights commissions in oversight of complaint handling processes, as well as acting as external complaints and investigation bodies
- civil and criminal matters before a court
- independent inspection programs that may also play an advocacy role, such as those provided by Community Visitor Schemes[13] and by Inspectors of Custodial Services[14]
- monitoring of places of detention under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), where people with intellectual, cognitive and psychosocial disabilities have been found by the Australian Human Rights Commission to be significantly overrepresented and subjected to a range of harmful practices[15]

Questions

Please answer as many of these questions as you wish. You do not need to answer them all and your response does not have to address any of the questions. Please consider different areas of life in your response, for example, education, health care, workplaces, criminal justice and home environments. Please also consider different life stages (e.g. childhood, adulthood) and transition points (e.g. school to work).

Question 1: What are the best ways to safeguard people with disability who may be at risk of violence, abuse, neglect and exploitation both when they use services and in other areas of their lives?

Question 2: How can quality services help to prevent violence, abuse, neglect and exploitation of people with disability? What are the features of those quality services?

Question 3: How could safeguarding laws, practices, or policy frameworks (including the NDIS *Quality and Safeguarding Framework)* be improved to better prevent, reduce and respond to violence, abuse, neglect and exploitation of people with disability? We are particularly interested in Australian and international examples of good practice.

Question 4: What can be done to uphold independence, choice and control for people with disability when implementing safeguards against violence, abuse, neglect and exploitation?

Question 5: What challenges are presented by the different safeguarding approaches used across Australian jurisdictions and across different types of services?

Question 6: What role does, or should, independent monitoring and oversight play in safeguarding the right of people with disability to live free from violence, abuse, neglect and exploitation? Should the NDIS Quality and Safeguards Commission be taking a more active role in ensuring service providers are adhering to the appropriate standards, particularly during the pandemic crisis?

Question 7: What safeguards are required for people who may need additional support, such as people who do not have informal supports like families or other advocates, people who face communication barriers, and people with high support needs?

Question 8: How can informal safeguards be strengthened to prevent or reduce violence, abuse, neglect and exploitation of people with disability? What are the ways in which people with disability develop personal capacity to safeguard at different stages of their lives and as circumstances change? Are there systems in place to support this capacity development?

Question 9: What barriers do people with disability face when making a complaint and what will help address these barriers? We are interested in hearing about complaints processes across a range of services and areas of life.

Question 10: How can safeguards and complaints processes be improved to better meet the needs of First Nations people, women, culturally and linguistically diverse people, LGBTIQ+ people, and/or children and young people with disability?

Question 11: What else should we know?

Responding to this issues paper

Responses to this issues paper can be provided by:

- email to DRCEnquiries@royalcommission.gov.au
- letter to GPO Box 1422, BRISBANE QLD 4001

- phone on 1800 517 199 or +61 7 3734 1900 (between 9:00am to 6:00pm AEDT Monday to Friday). We can make a time with you to take your response over the phone.

Responses can be in writing, an audio recording or a video recording. Responses can be in any language. The Royal Commission will translate the response to English.

We encourage responses by **1 February 2021**. Responses will also be accepted after this date.

Support to respond to this issues paper

Blue Knot Foundation offers specialist counselling support and a referral service for anyone affected by the Disability Royal Commission.

For support please call their national hotline on **1800 421 468** (9am-6pm AEST Monday – Friday, 9am-5pm AEST Saturday, Sunday and public holidays).

In addition to the Blue Knot Foundation, the Australian Government provides support to assist people to engage with the Royal Commission. This support includes:

- free legal advisory services provided by National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services through the Your Story Disability Legal Service
- advocacy support services provided under the National Disability Advocacy Program.

Further information about these supports, including how to access them, is available on our website: disability.royalcommission.gov.au/counselling-and-support.

How we will use your response

All responses will inform the work of the Royal Commission.

We may make your response public, unless you tell us not to. Responses can be made anonymously. We may publish your response on our website. Your response may also be referenced in any public document prepared by the Royal Commission, for example, our interim and final reports.

If you refer to individual experiences or case studies that are not your own, we may need to confirm that the person identified has provided consent for their information to be made public.

Your information will not automatically be made public, even if you would like it to be. Any publication of information is a decision for the Royal Commission.

Attachment A – Definitions

The Royal Commission has provisionally defined these key terms as follows:

Violence and abuse – include assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis. (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2019)

Neglect – includes physical and emotional neglect, passive neglect and wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment. (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2019)

Exploitation – means the improper use of another person or the improper use of or withholding of another person's assets, labour, employment or resources including taking physical, sexual, financial or economic advantage. (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2019).

1 Australian Government, Department of Social Services, *NDIS Quality and Safeguarding Framework*, 9 December 2016, pp 102.

2 Australian Government, Department of Social Services, National Standards for Disability Services, 2013

3 *Convention on the Rights of Persons with Disabilities,* opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008).

4 *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008), art 16.

5 *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008), arts 12(4) and 27(1)(b).

6 Ben Smith, Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective, 2016, [16], *The Equal Rights Review*, p.73; Scott Avery, *Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability,* 2018, First Peoples Disability Network (Australia), p.36.

7 Piers Gooding, Supported Decision-Making: A Rights-Based Disability Concept and its Implications for Mental Health Law. 2012, [20] (3), *Psychiatry, Psychology and Law*, p 431-451; Christine Bigby, Jacinta Douglas, Suzane Vassallo, *Enabling Risk: Putting Positives First. An online learning resource for disability support workers (An Overview)* (2017). www.enablingriskresource.com.au; Purple Orange, *NDIS Safeguards and Risk Enablement,* December 2018.
https://www.purpleorange.org.au/application/files/4015/5104/9159/PO_Risk_Enablement_Policy_Amended_Final.pdf

8 Nathan Despott and Daniel Leighton, It's all in the practice: commentary on 'The Value of Citizenship' (Duffy, 2017), 2017, [4] (1), *Research and Practice in Intellectual and Developmental Disabilities*, p 35-41.

9 National Disability Insurance Scheme, Independent Advisory Council to the NDIS, *How can the NDIS help participants enhance their personal safeguards in order to experience greater independence, economic participation and community inclusion?* November 2015, p 3.

10 Michael J Kendrick, Margaret Louise Ward, Leslie Irene Chenoweth, Australia's national disability insurance scheme: looking back to shape the future, 2017, [32] (9), *Disability & Society*, p 1333-1350; Michael J. Kendrick, *Intentional Safeguards For Older People*, A Presentation For The New Zealand Council Of Christian Social Services Conference On " Values: Cost Or Investment", Wellington, New Zealand, March 2002; Sally Robinson, *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?,* Centre for Children and Young People, Southern Cross University, February 2016, pp.32

11 Department of Social Services for the Disability Reform Council, Council of Australian Governments, *Community Visitor Schemes Review,* Final Report, December 2018.

12 NSW Government, Ageing Disability and Home Care, Family and Community Services, *Safeguarding Framework: A Person Centred Approach to Risk Management for Clients of Community Support Teams,* July 2013; Victorian Government, *Dignity, respect and safer services: Victoria's disability abuse prevention strategy*, 2018; Australian Government, *NDIS Quality and Safeguarding Framework*, 9 December 2019; Australian Charities and Not for Profits Commission, *Governance Toolkit: Safeguarding Vulnerable People,* Site accessed 18 June 2020.

13 Department of Social Services for the Disability Reform Council, Council of Australian Governments, *Community Visitor Schemes Review,* Final Report, December 2018.

14 Inspector of Custodial Services, NSW Department of Justice, *Inspection Standards for Custodial Services in New South Wales,* August 2014; Human Rights Watch, *I needed help, instead I was punished: Abuse and neglect of prisoners with disabilities in Australia*, 6 February 2018, pp 86.

15 Australian Human Rights Commission, *Implementing OPCAT in Australia*, June 2020
https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020