

## Opening statement prepared by Professor Gwynnyth Llewellyn, University of Sydney

Public Hearing Joint Standing Committee on the National Disability Insurance Scheme  
Market Readiness, Wednesday July 4<sup>th</sup> 2018, NSW Parliament, Sydney

I am Gwynnyth Llewellyn, Professor, Family and Disability Studies and Director, Centre for Disability Research and Policy at the University of Sydney. I have been involved with children and young people with disability and their families for over 30 years. Recently, I served as Expert Advisor on Disability, Royal Commission into Institutional Responses to Child Sexual Abuse and published research for the Commission with my colleagues, Drs Sarah Wayland and Gabrielle Hindmarsh<sup>i</sup>.

I wish to address two of the terms of reference:

- c. the development of a disability workforce to support the emerging market; and
- h. the impact of the Quality and Safeguarding Framework on the development of the market specifically in relation to children and young people with disability.

I have two major points to make before turning to recommendations for ways forward.

*My first major point is in relation to having an NDIS workforce that is fit for purpose. The second major point refers to the National Quality and Safeguards Framework.*

With regard to an NDIS workforce fit for purpose, if we ignore the well-established association between quality and safety, it is at our peril. Poor quality supports result in unsafe practices. At worst, unsafe practices constitute maltreatment. Internationally, children and young people with disability are at *three times higher risk of maltreatment* than their non-disabled peers<sup>ii</sup>. A West Australian linked administrative study in 2017 confirmed that Australian children and young people with disability are also, on average, at 3 times greater risk of maltreatment<sup>iii</sup>.

Children with disability and abuse is *not a trivial problem* in Australia. In our review of care matters in NSW nearly two decades ago (2000) just on one-quarter of all matters were children with disability<sup>iv</sup>. 2016 data from the NSW Ombudsman demonstrates similar findings with 29% of all reportable matters involving children with disability<sup>v</sup>. In the 2017 WA study just mentioned, 29% of substantiated allegations were about children with disability<sup>vi</sup>.

Do we have the workforce required by the newly released NDIS Code of Conduct<sup>vii</sup>, a workforce that can provide supports and services in a safe and competent manner with care and skill? This requires significant investment and will take time to develop. We need to understand why maltreatment of children and young people with disability happens in Australia so that we can develop a workforce that will keep younger people with disability safe. Reasons underlying maltreatment that are relevant to the NDIS include:

- Non-familial adults in one-on-one contact as a constant and frequent presence in the daily life of children and young people with disability, and often during personally intimate activities away from public scrutiny such as in toileting or being dressed.
- Supports put in place which isolate children with disability from their non-disabled peers – such as disability sports or specialist units in schools. They then miss the incidental learning that takes place between children about what behaviours are OK and what are not OK or classroom education on these topics.
- Workers are poorly trained in recognising signs of maltreatment or children's behaviours which indicate this; instead children's behaviours may be punished to control perceived 'misdeeds'.
- The culture of 'caring for', rather than respecting the rights of young people with disability positions them as passive and dependent and without agency. There is a strong power differential between workers and younger people with disability such that they are unlikely to be believed. Worker status is reinforced by community attitudes that elevate working with children with disability to being a 'hero' job.
- Demand outstrips supply for workers and can lead to management condoning questionable practices such as 'trusted' staff taking children home or on one-on-one outings. Parents may be reluctant to complain for fear of retribution or losing supports, or previous poor experiences with grievance procedures.
- As a whole, the disability sector is primarily adult focused; it is as if people with disability 'arrive' as adult persons. This sector remains quite isolated from sectors working with children and young people and their communities of practice which are more focused on safe environments and safe workers.

*My second point directly relates to the NDIS Quality and Safeguarding Framework and recent developments with the NDIS Code of Conduct.*

1. The NDIS Quality and Safeguarding Framework is the most recent in a line-up of national frameworks that virtually exclude children and young people with disability. Examples include:

- *Protecting Australia's Children 2009-2020: Protecting Children is Everyone's Business*<sup>viii</sup> only one mention of children with disability and this in the context of supporting their parents

- *NDIS Quality and Safeguarding Framework, December 2016*<sup>ix</sup> assumes people with disability are adults with bare mention of the particular needs and life experiences of children and young people
- *The NDIS Code of Conduct Guidance for Workers and for Providers*<sup>x</sup> recognizes culture and gender diversity but not age-related diversity. There is only one paragraph that addresses the age-related needs of children and young people. This reads as follows:  
 “For children and young people, families also have an important role. In the early years, workers should work with families to understand a child’s strengths, interests and needs, and support them in their caring role. As a child grows up, they will be more involved in decision making. Workers should involve children and young people in decisions that affect them in ways appropriate to their age and stage of development. In the case of very young children, this will involve ensuring staff pay attention to the signs children give that communicate their feelings, ideas and wishes including non-verbal indications.”

This lack of attention to children and young people contrasts sharply with the anticipated numbers of younger age NDIS participants. These younger age participants are central to realizing the potential of the NDIS over time for the social and economic participation of persons with disability, their families and carers. This will not happen if we do not act to enforce a stronger focus on the life stage needs and supports of younger participants.

### Turning to what needs to happen

Australia’s children and young people with disability deserve a fit for purpose, well informed workforce that provides supports and services in a safe and competent manner with care and skill.

To achieve this requires:

1. *A quality, safeguarding, and independent oversight system that is child and young person focused.* In research and at the Royal Commission, survivors of maltreatment have consistently asked to have independent adults coming to visit them, who they can talk to, and “watching out” for them and their safety much like Community Visitors and Official Visitors do for adults.
2. *A market that works in linked up ways with the multiple systems* that children and young people with disability endure as they grow up – the NDIS, health, education, community services, and so on, and with the resources to collect data to monitor market effectiveness in providing child safe environments.
3. *All jurisdictions honouring their national agreement in 2009 to insert a disability identifier* in care and protection and out-of-home administrative datasets so that Australia can then

measure progress at a national level towards keeping children and young people with disability safe in all contexts<sup>xi</sup>.

4. *National investment in an informed workforce, educated to support children and young people with disability in competent and safe ways and with care and skill.* This requires NDIS planners, LAC personnel, providers and workers to use evidence-informed best practice approaches to supporting children and young people with disability. We need an informed workforce capable of:

- implementing Australia's obligations under the relevant UN Conventions;
- providing supports that recognize the age diversity and personal agency of children and young people with disability; and
- a workforce which has access to ongoing, accessible, flexible training opportunities at reasonable cost given documented workforce turnover in the sector.

5. *Training for workers which measures worker behaviours.* Training on knowledge, skills and attitudes is not enough. Worker behaviours have to be taught and assessed using competency-based methods and linked to the NDIS Code of Conduct. There are examples that Australia can learn from. One example is the *Code of Conduct for healthcare support workers and adult social care workers* developed by Skills for Health UK<sup>xii</sup> which is linked to a Care Certificate. "The Care Certificate describes the minimum things you must know and be able to do. Using the Code of Conduct with the Care Certificate is a measurable way for you and your employer to check that you are working to the same standard as other people in similar roles across health and social care. They are designed to help you, to provide safe, effective and compassionate healthcare, care and support".

6. *Training on knowledge, skills and behaviours is needed but will not be sufficient.* Evidence in the 17 volumes of the Royal Commission makes crystal clear that the proposed child safe standards in Recommendation 6.5<sup>xiii</sup> must be embedded in all sectors including the disability sector, with data collected to determine successes and shortfalls so that Australia can progress toward sustaining child safe environments for all children and young people with disability.

NDIS Market readiness requires that we adopt:

*A child-centred framework, that identifies ways to be 'child-safe' means that children and young people with disability are active agents in their own lives. This framework provides space for effective population approaches **and** targeted interventions that place the child or young person at the centre of conversations – identifying ways to assist all involved – children and young people, families, workers, providers and the community – and to implement prevention strategies to minimise risk.*

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<sup>i</sup> Llewellyn, G., Wayland, S., & Hindmarsh, G. (2016). *Disability and child sexual abuse in institutional contexts*. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. ISBN 978-925289-87-9© Commonwealth of Australia 2016.

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- <sup>ii</sup> Jones, L, Bellis, MA, Wood, S, Hughes, K, McCoy, E, Eckley, L, Bates, G, Mikton, C, Shakespeare, T & Officer, A (2012). Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies, *The Lancet*, 380(9845): 899-907.
- <sup>iii</sup> Maclean, M.J., Sims, S., Bower, C., Leonard, H., Stanley, F. J., and O'Donnell, M. (2017). Maltreatment risk among children with disabilities. *Pediatrics*, 139(4):e20161817. Available at: <http://pediatrics.aappublications.org.ezproxy1.library.usyd.edu.au/content/pediatrics/139/4/e20161817.full.pdf>
- <sup>iv</sup> McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. The Law Foundation of NSW and the University of Sydney. ISBN 1 86487 323 X
- <sup>v</sup> Ombudsman NSW (2016) *Disability Section 16 years of Reportable Conduct Forum*. *What have we learnt and where are we heading February 26 2016*. Ombudsman NSW, Sydney, Available at: <https://www.ombo.nsw.gov.au/training-workshops-and-events/community-education,-events-and-forums/reportable-conduct-forum-/reportable-conduct-forum->.
- <sup>vi</sup> Maclean op.cit
- <sup>vii</sup> NDIS Code of Conduct. *Guidance for Service Providers* Version 1- May 2018 at <https://www.ndiscommission.gov.au/document/566> and *NDIS Code of Conduct. Guidance for Workers* Version 1- May 2018 at <https://www.ndiscommission.gov.au/document/571>
- <sup>viii</sup> <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/protecting-australias-children>
- <sup>ix</sup> <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework>
- <sup>x</sup> NDIS Code of Conduct. op.cit
- <sup>xi</sup> Australian Institute of Health and Welfare (2014) *A new approach to national child protection data: implementation of the Child Protection National Minimum Data Set. Child Welfare Data Set Number 59* Australian Institute of Health and Welfare, Canberra, Available at: <http://www.aihw.gov.au/publication-detail/?id=60129548812>.
- <sup>xii</sup> <http://www.skillsforhealth.org.uk/standards/item/217-code-of-conduct>
- <sup>xiii</sup> [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_recommendations.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf)
- Recommendation 6.5 Child Safe Standards

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.