Ms Cristina Ricci

Australian Human Rights Commission

GPO Box 5218

Sydney NSW 2001

Email: cristina.ricci@humanrights.gov.au

RE: ACCESS TO JUSTICE IN THE CRIMINAL JUSTICE SYSTEM FOR PEOPLE WITH DISABILITY

Children with Disability Australia (CDA) congratulates the Commission for conducting this consultation on access to justice in the criminal justice system for people with disability and is pleased to provide a brief written response. CDA recognizes there are substantial and long standing issues for people with disability across the criminal justice system. It is hoped that this inquiry progresses a range of solutions inside and outside the justice system to provide better supports, increased opportunities and fairness to people with disability.

Children with Disability Australia is the national peak body that represents children and young people with disability, aged 0-25 years. CDA has a national membership of 5000. CDA’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.

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CDA’s purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

• **Education** of national public policy-makers and the broader community about the needs of children and young people with disability.

• **Advocacy** on behalf of children and young people with disability to ensure the best possible support and services are available from government and the community.

• **Inform** children and young people with disability, families and care givers about their rights and entitlements to services and support.

• **Celebrate** the successes and achievements of children and young people with disability.

CDA was pleased to participate in the Commission’s roundtable discussions which examined improving access to justice in the criminal justice system for people with disability, focusing on children and youth. Many of CDA’s relevant issues and concerns related to the inquiry’s barriers were raised in the consultation workshop and were comprehensively documented by the Commission. CDA takes this opportunity to reiterate some of the key concerns of our organisation in relation to this issue.

CDA is highly conscious of the issues faced by children young people with disability in relation to the justice system, as victims of abuse and neglect and also of failures by other service systems that can lead to the justice system becoming involved in the lives of these young people.

CDA has done significant work on the issue of abuse and neglect of children and young people with disability in recent years. CDA commissioned Dr Sally Robinson of Southern Cross University to complete the organisational annual issues paper on this issue. The aim of the paper being to progress greater recognition, better responses and safeguarding for children and young people with disability. The report titled “Enabling and Protecting: Proactive approaches to the abuse and neglect of children and young people with disability” was official launched by Senator Jan McLucas, Parliamentary Secretary for Disabilities and Cares, in December 2012. It attracted significant media attention and has been a powerful tool and resource n the advocacy CDA has completed around this issue.

An overwhelming concern of CDA is that there is a significant disconnection between what is known to be a high prevalence of abuse of children and young people with disability and the response and involvement of the criminal justice system.

There is a great paucity in the local data on the prevalence of abuse of children and young people with disability. Research available however has found that:

• Children and young people with disability experience abuse and neglect at rates considerably higher than their peers who do not have disability (the prevalence of abuse).

• Children with communication impairments, behaviour difficulties, intellectual disability

and sensory disability experience higher rates of abuse.

• Abuse and neglect of children and young people with disability is likely

to be under-reported.

• Children with disability are often abused on multiple occasions (the incidence of abuse)

• This maltreatment is significant (the impact of abuse).[[1]](#footnote-1)

There are many circumstances where actions and behaviours are not classified as abuse, or identified properly as crimes. It is common for abuse to be characterized as ‘poor practice’ or a procedural or policy issue simply because it takes place in a service environment such as a school or disability service. There are other circumstances where abuse can even be regarded as appropriate, good or necessary practice, such as in instances of restraint or seclusion.

There has been a series of recent media reports by The Age in Victoria which highlight this systemic and broader community placement of what in other circumstances would be perceived as criminal acts. Abuse has been described as something that is par for the course because disability is a difficult area in which to work, or expected because people with severe levels of disability are ‘challenging’.

In an article which details reported issues of neglect and abuse at a Yooralla house (Host of problems at home in crisis, The Age 29/7/13) it refers to these incidents as “challenges that service providers face in caring for severely disabled people”. Labelling of people in care as ‘challenging’, is no excuse for providers failing to execute their contractual duty of care or committing crimes.

That particular article is one of a series which reports on shameful treatment of vulnerable people in the care of service providers. We have seen reports on a child’s death (Autistic boys carer had no experience with children – The Age 25/6/13), sexual assault (Serial predator admits to rape at Yooralla – The Age 8/3/13) and abuse (Abuse by Carers ‘covered’ up – The Age 11/7/12, Love of life affirmed in the blessing of the fisherman – The Age 16/8/13).

The key issue reflected in these media reports, and in other situations commonly reported to CDA, is that young people with disability who are victims of abuse may be denied access to justice because the abuse is not defined as a crime and there are few avenues in service settings for this abuse to be reported to the police.

CDA is aware of numerous cases where students with disability have been abused and neglected in education settings. These include the use of a martial arts instructor to train school staff in the ‘behaviour management’ of children with disability; the use of small rooms and fenced areas for ‘bad behaviour’, and the use of chemical restraint without accompanying positive behaviour support strategies. In some instances the giving of psychotropic medication is a condition of the child being allowed to attend school.

Another issue raised at the roundtable that resonates with CDA member reports is the link that appears to exist between disengagement with school, either through a limited sense of connection, inability to access school enrolment, enforced part time attendance or high rates of suspension & expulsion, and consequent involvement with the criminal justice system as an offender.

Imperatives for reform in education that may have an impact on preventing contact with the justice system include:

* improving school engagement and developing inclusive practice.
* addressing entrenched practices that allow bullying, suspensions and expulsions. More focus on transitions from school to post school options.
* improve the use of effective IEPs that positively impact on behaviour and social skills.

Suspension data is not recorded in Victoria but CDA is aware from its members that this is a big reason for disengagement from school. In the *Held Back* report, of the students that had reported being suspended, 33.3% of these students had been suspended more than 5 times, and 26% had been expelled from school.[[2]](#footnote-2)

The report also discusses the negative impacts of suspensions and expulsions, including citing research from the Melbourne Centre of Adolescent Health that links school suspension with increased aggressive behaviour and violence over time.

This was cited in the roundtable for this consultation as a factor that could contribute to young people with disability becoming disengaged from school and subsequent involvement with the justice system as either a victim or as a perpetrator of a crime.

CDA believes that the reform underway in education must ensure that inclusive education is mandated by funding and accountability mechanisms. Preventing the social and educational disengagement of some students with disability from their schools is a critical part of preventing the link between this disengagement and contact with the justice system.

CDA is also concerned about the poor capacity of the out of home care system to support children and young people with disability. It was also raised at a roundtable for this project that there is an established link between a young person being in out of home care and becoming involved with the justice system. The out of home care system takes a generic approach to providing accommodation and care, but needs stronger links with specialist services to better support young people with disability.

CDA believes there is a major need for this inquiry to identify areas where the disability service sector can improve its performance in safeguarding the rights of people with disability in their care.

Further, CDA expects that the inquiry’s analysis will enable it to make recommendations about mainstream service systems, such as education, being more accountable to young people with disability.

Other areas identified for further attention are detailed in the CDA report *Enabling and protecting: proactive approaches to addressing the abuse and neglect of children and young people with disability.* These include improved data collection, development of mechanisms to monitor and review policies, procedures and practices, education for children and young people with disability, strategies to build community capacity and support for organisations/service systems in developing frameworks around protection from maltreatment.

CDA is available to provide further information to the inquiry if required. Thank you for the opportunity to contribute to this valuable work.

Contact: Stephanie Gotlib

 Executive Officer

 Email: stephanieg@cda.org.au

 Mobile: 0425 724 230

1. Children with Disability Australia, 2012 *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability* , p10 [↑](#footnote-ref-1)
2. Ibid: p101 [↑](#footnote-ref-2)