

Advocacy for Inclusion's Election Priorities 2016

Overview

Advocacy for Inclusion is a non-profit non-government community human rights organisation in the Australian Capital Territory. We are a Disabled Peoples Organisation and represent Canberra's most marginalised people with disabilities: those with cognitive disabilities and/or significant communication barriers. We provide individual, self and systemic advocacy support to people with disabilities to promote their human rights and inclusion in the community.

We are a small charity working to address significant issues of discrimination. Our work is under severe pressure and often we undertake unfunded initiatives to make sure that people with disabilities are better supported. The NDIS has seen a quadrupling of our workload, with no extra funding to support that demand. The expectation that we should down tools to focus on the NDIS, to the exclusion of the other heavy demands we face is unacceptable.

Advocacy for Inclusion works on the frontline with Canberra's most marginalised and isolated people with disabilities. People seek our assistance with advocacy when they are in crisis or facing insurmountable barriers to achieving an outcome. Often they are experience violence, abuse, interactions with legal processes, or have had their children taken into care.

There are very few specialist disability services to respond to the people we work with. In most cases there are none. There are no disability led initiatives across most of the areas that we work, which means people with disabilities facing severe discrimination and marginalisation are forced to rely on generic mainstream services, usually with no staff who are people with disabilities. In the future this lack of specialist, disability led, responses must change so that people with disabilities can begin to address our own disadvantage and marginalisation.

The work of Advocacy for Inclusion centres on the issues that we see every day as part of our frontline advocacy work. The issues raised here are not isolated, rather they are the most common issues raised by our consumers. Many of these issues are longstanding as they have never received specific attention by policy makers or government.

This ACT election we aim to see this lack of response change.

This ACT election we are seeking commitments on disability rights that the ACT Government has committed to implement through the *ACT Human Rights Act* and the *Convention on the Rights of Persons with Disabilities*.

These Election Priorities will be sent to all members of the ACT Legislative Assembly. We are seeking commitments from all major parties, and encourage minor parties and independents to also commit to disability rights. All commitments made will be logged on our website.

This election, Advocacy for Inclusion seeks commitments for the following:

1. **Representation:** Resource Disabled People's Organisations in the ACT to ensure the most marginalised people are engaged and represented at the systemic level;
2. **Representation:** A majority of speakers and participants at all disability related ACT Government facilitated and funded forums and consultation processes must be people with disabilities;
3. **Equal access to justice:** Establish a system for routine and consistent data collection disaggregated by disability across all areas of government, particularly in regards to prevalence of violence and prevalence of disabled people across the justice system;
4. **Equal access to justice:** A Disability Justice Strategy attached to real resourcing enabling people with disabilities equitable access to legal representation, accommodations and social supports throughout all stages and aspects of the justice system;
5. **Parenting:** A Disability Strategy to complement the Out of Home Care Strategy, which ensures that the needs of families headed by parents with disabilities are acknowledged and addressed and which includes:
 - An independent inquiry into removal of children from parents with disabilities in order to identify the reasons for removal and potential for restoration where children have been prematurely or inappropriately removed. i.e. where the parent/s have not had access to adequate and targeted support to parent their child well;
6. **Violence:** Commit to resourcing sustainable violence prevention and response programs for people with disabilities, especially those who are excluded from current domestic violence legislation and programs;
7. **Guardianship:** A commitment to reform Guardianship law towards supported decision making models which prioritise the person's rights, will and preferences;
8. **Accommodation:** Cease funding any new proposals for models of support which involve the functional placements of people with disabilities, where they are obliged to live in particular arrangements in order to get the disability supports or respite they need.
1. **Accommodation:** Commit to developing a 10 year housing stock plan for people with disabilities, prioritising people with disabilities exiting institutional models of support (including group homes) in response to the planned impacts of the NDIS and individualised models of support

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Disability Representation

Commitments sought

1. Resource Disabled People's Organisations in the ACT to ensure the most marginalised people are engaged and represented at the systemic level;
2. A majority of speakers and participants at all disability related ACT Government facilitated and funded forums and consultation processes must be people with disabilities;

What is currently being done?

People with Disabilities ACT, Women with Disabilities ACT and Advocacy for Inclusion provide cross disability representation. Each organisation covers different areas and has different expertise according to their core constituency. These are the only formally constituted disability representative organisations in the ACT. All three organisations have disabled peoples organisation (DPO) status, and work collaboratively to ensure all people with disabilities in the ACT are represented to government and the community. The funding for disabled peoples organisations is very uncertain and will cease at June 2017.

Background

Article 4.3 of the *Convention of the Rights of Persons with Disabilities* stipulates that states parties must actively engage and closely consult with disabled people through their representative organisations in the development and implementation of legislation and policies. Representative organisations provide important systemic advocacy to inform government and influence society at the policy level.

The three disability representative organisations (DPOs) in the ACT provide representative systemic advocacy for various cohorts of people with disabilities in the ACT. All organisations are run by and for people with disabilities. Advocacy for Inclusion uniquely provides direct individual advocacy and self-advocacy to highly marginalised individuals, which creates a particular capacity to act as a representative voice for people living in supported accommodation, people with cognitive and communication impairments, and people experiencing violence. A commitment is sought to appropriately fund disabled peoples organisations in the ACT over the long term to ensure the representative voices of people with disabilities are able to participate across all areas of government consultation and policy development.

A related issue is the lack of disability representation across all areas of government, such as forums and advisory committees. It is common for people with disabilities to be heavily outnumbered as speakers, members of advisory groups, and consulted participants across all areas of government policy development. This demonstrates a lack of commitment to "nothing about us without us". People with disabilities must be engaged as equals if we are to achieve true representation and equality. A commitment is sought to have people with disabilities as the majority speakers and participants in all forums and processes about disability which are sponsored by the ACT Government.

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Access to Justice

Commitments sought

The development of a **Disability Justice Strategy** incorporating real actions (funded programs) focusing on outcomes which support people with disabilities to achieve equitable access to the justice system. This Strategy must include:

1. Invest in specialist community legal services that have capacity to respond to the access needs of people with disabilities as well as target the specific legal issues experienced by people with disabilities such as child protection, guardianship, and violence;
2. Training for police and court personnel regarding the access rights and needs of people with disabilities;
3. Invest in systems for providing support, accommodations and adjustments to people with disabilities at all stages of legal proceedings;
4. Systematic data collection disaggregated by disability.

What is currently being done?

Disability led responses

- None. There are currently no programs funded by the ACT government, controlled by and for people with disabilities, such as legal services or advocacy support targeted at improving access to justice.

Disability specialist responses

- None.

Mainstream responses

- The Disability Discrimination Law Service, other community legal centres, and Legal Aid, respond to many people with disabilities but have no specialist staff or communications expertise.

Background

People with disabilities are more likely to experience legal issues, which are wide-ranging and may further entrench their social exclusion.¹ They are significantly over represented in the criminal justice system as both offenders and victims, and are disproportionately impacted by child protection, guardianship, and tenancy matters. They are also significantly less likely to have their legal problems finalised.² It is clear the current reliance on mainstream services is not working.

Barriers include costs associated with legal representation as a socioeconomically disadvantaged group and difficulties accessing necessary support, adjustment or aids throughout proceedings.³ Despite the demand, there are very few specialist disability response legal services anywhere in Australia, and few that have a capacity to respond to the variety of matters that the disability population faces. A shortage of funding to legal assistance services severely undermines their capacity to meet the legal needs of diverse groups, particularly

¹ Coumarelos, C. et al. (2012), *Legal Australia-wide survey: Legal need in the Australian Capital Territory* (Vol. 8). Law and Justice Foundation of New South Wales, xv.

² As above.

³ Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws – Final Report*, ALRC Report 124, p192.

people with disabilities who generally need more time and specific targeted responses.⁴ This makes accessing the legal system highly problematic especially for people with cognitive impairment; they can find the highly formalised legal procedures and jargon incomprehensible, alienating and intimidating.⁵

In some instances people with disabilities are not provided with legal representation at all. For example, it is not usually expected that a person with disability subject to a guardianship application will have legal representation and it is certainly not routinely provided. In our experience legal representation is only provided when we intervene and organise it. Advocacy for Inclusion is only able to service a very small proportion of people in such circumstances, so the vast majority does not access legal representation. While guardianship hearings are conducted in a tribunal and are considered less formal, the decisions made through these processes have the power to remove a disabled person's legal right to make decisions. Thus, access to legal representation is important for a fair process that can result in major life changing consequences to the person's freedom.

When people with disabilities do access legal representation, lawyers are ill-equipped to respond to their particular individual needs because they are not specialists in disability communication; for example, allowing the client time to process information, or communicating in ways that support their comprehension and involvement.

People with disabilities not only need access to legal representation, but they also often need adjustments and supports throughout various points in a justice process. Inflexible systems fail to respond to a person's disability and their associated needs, or the identification of their disability leads to discrimination against them both as victims and offenders. For instance, being assessed as having cognitive impairment, and subsequently being found unfit to plead, contributes to the indefinite detention of people with disabilities.⁶ Victims with cognitive impairment may also be deemed unreliable witnesses, and subsequently be denied a fair hearing.

These barriers influence the sentencing stage and are a factor in the high number of detention orders imposed on people with disabilities.⁷ For defendants with disabilities, some will struggle to understand their legal rights, including the right to silence, especially where no specific communications support is provided at arrest.⁸ People with disabilities require a specialist response to aid their access to the justice system at every stage. This includes social supports to understand the process as well as disability responsive legal services.

A barrier to understanding the problem is inadequate data collection. The ACT Criminal Justice Statistical Profile rightly collects and publishes data on the interactions between other population groups and policing, courts, the Restorative Justice Unit and Corrective Services. Data is also provided on the age and gender of offenders, detainees and victims. However, disability status is not indicated, leaving a major gap in knowledge about the extent of disability access and support needs in the system.

⁴ The Law Council of Australia (2014) *Submission to Inquiry into Equality, Capacity and Disability in Commonwealth Laws*. Office of the Public Advocate Victoria (2011) *Submission to the Inquiry into Access to and Interaction with the Justice System by People with Intellectual Disability and their Families and Carers*, 20-21.

⁵ Parliament of Victoria Law Reform Committee (2013) *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers- Final Report*. quoting the Submissions of the Legal Services Commissioner, Villamanta Disability Rights Legal Service, Victorian Advocacy League for Individuals with Disability Inc xxiv, 103, 178, 205.

⁶ Aboriginal Disability Justice Campaign, 'Position Statement on the Inappropriate Incarceration of Aboriginal People with Cognitive Impairment', (Position Paper, People With Disability Australia, October 2008) <www.pwd.org.au/systemic/adjc.html>. Sotiri, M, McGee, P, & Baldry, E (2012) *No End in Sight. The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment*. Sydney: University of NSW.

⁷ Cockram, J. 'People with an Intellectual Disability in Prisons' (2005) 12 *Psychiatry, Psychology and Law* 163, 170.

⁸ Bartels, L. (2011). *Police Interviews with Vulnerable Adult Suspects*. Research in Practice Report No. 21. Australian Institute of Criminology, Canberra, ACT. 13p.

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Parenting

Commitments sought

Establish a **complementary disability strategy to the *Out of Home Care Strategy* to address the specific needs of people with disabilities in their parenting roles**. The strategy should include the following initiatives:

1. An independent inquiry into removal of children from parents with disabilities in order to identify the reasons for removal and potential for restoration where children have been prematurely or inappropriately removed. i.e. where the parent/s have not had access to adequate and targeted support to parent their child well;
2. Introduce routine data collection about child and parent disability status;
3. Build capacity for disability appropriate responses among community services contracted to provide in-home supports to "high risk families" to ensure that these services are equipped and sensitive to respond to the needs of parents with disabilities;
4. A plan for coordination between NDIS, CPS and support providers to ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed including specific specialist case management services.

Additionally, a commitment is sought for robust annual monitoring, by the ACT Legislative Assembly through its committee system, of the newly introduced permanent placement mechanism to ascertain:

1. How many children of parents with disabilities are placed in permanent placement arrangements using the new mechanism?
2. What supports were offered to parents with disabilities prior to their child/ren being removed into a permanent placement arrangement by Care & Protection Services?
3. What alternatives to adoption were investigated prior to its approval as a last resort?

What is currently being done?

Disability led responses

- None. There are currently no programs funded by the ACT government controlled by and for people with disabilities to support the parenting rights of people with disabilities or to assist them with child protection matters.

Disability specialist responses

- None. There is a major shortfall in the provision of in home parenting supports which are responsive to the specialist needs of parents with disabilities.

Mainstream responses

- The new Out of Home Care Strategy acknowledges parents with disabilities as a target group but has not developed any further targeted response to support them. Only generic services exist.

Background

Advocacy for Inclusion is deeply concerned about some of the changes to child protection [legislation](#) in January 2016 as part of the new [Out of Home Care Strategy](#). The changes will result in shorter temporary placement orders for infants aged younger than 2 years – reduced from two years to one year – and speedier permanent removal of infants from their parents. We seek a commitment to establish a coordinated and targeted strategy to meet the needs of families headed by parents with disabilities, to stop children being removed as a result of preventable child protection concerns.

Article 23 of the *Convention on the Rights of Persons with Disabilities* outlines that people with disabilities have the right to access the support they need to parent. Advocacy for Inclusion welcomes a number of initiatives recently introduced with the *Out of Home Care Strategy*, especially the service elements under the *Strengthening High Risk Families Domain*. The ACT Government must target policies and resources at supporting people with disabilities to fulfil their parenting responsibilities, including via a complementary disability strategy.

A lack of recognition of people with disabilities as parents in the new Strategy, and the particular barriers they face, is resulting in continued exclusion of people with disabilities as valued family participants. Despite the rhetoric delivered with this new Strategy, since its introduction Advocacy for Inclusion has already worked on cases where a new born child has been removed from a mother's care, without first implementing and trialling parenting supports; the mother hadn't left the hospital and was afforded no opportunity to bond with her child, or to demonstrate her parenting capacity. Alarming, discussions by Care and Protection Services workers were had about applying for 18 year orders despite this lack of support provision. In other cases where child protection services have encouraged the implementation of parenting support there is a lack of coordination between the NDIS and parenting support services, and a gap in provision for disability sensitive parenting support.

There is also a complete lack of specialist case management which stretches across both disability services and child protection domains, despite this being a considerable area of need.

As Advocacy for Inclusion has repeatedly cautioned, the Strategy does not incorporate a disability lens, which means that it does not incorporate an understanding of how to best respond to the particular needs of parents with disabilities. For example, parents with disabilities may require more intensive parenting supports than parents without disabilities, especially in the first few months of the child's life. Issues such as these are not yet consistently understood or acknowledged by the child protection system. Rather the new strategy assumes that a generic approach will suffice.

Australian and international studies indicate that parents with cognitive impairment in particular (including intellectual and psychosocial disabilities) are subject to high rates of child protection interventions and child removal, with issues such as prejudice, discriminatory attitudes and a chronic lack of appropriate parenting supports being contributing factors. A recent study of 126 parents involved in the ACT child protection system found that 37 per cent of parents had one or more disability⁹. Due to a lack of collection of demographic data by the child protection system in the ACT and nationally, this high prevalence of parents with disabilities has been invisible. Consequently, we do not know the full picture in the ACT. Given the lack of targeted action we are concerned that the Government does not appreciate the potential extent of the problem and, therefore, has no real ability to respond appropriately to it.

⁹ Hamilton, S. & Braithwaite, V. (2014). *Complex lives, complex needs, complex service systems*. Australian National University.

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Violence

Commitments sought

1. Amend the *Family Violence Bill 2016* to be inclusive of disability specific domestic arrangements;
2. Immediately expand the Crisis Services Scheme to ensure people living in disability specific domestic arrangements can access the scheme;
3. Develop systematic measures for collecting violence data. Data must be disaggregated by disability and gender across a range of fields including the health system, education, the NDIA, and ACAT. Data collection must be sensitive to disability specific forms of violence;
4. Invest in violence prevention programs. A good starting point is training NDIA planners to understand the value of consumer control and choice over their lives and living arrangements in protecting them from violence. People with disabilities must be supported to use their NDIS packages in the living arrangements of their choosing;
5. Ensure the Reportable Conduct Scheme is inclusive of children with disabilities. As outlined by the Australian Cross Disability Alliance, this should involve:
 - Ensuring that "accidental" conduct is not excluded from the scheme;
 - Ensuring that all organisations providing support to children are covered including disability services which may primarily be for adults yet also provide services to children with disabilities;
 - Including restrictive practices as reportable conduct, as it is conduct that may cause harm and requires particular oversight and monitoring yet may not be considered "criminal".

What is currently being done?

Disability led responses

- None. There are currently no programs funded by the ACT government controlled by and for people with disabilities to prevent and respond to violence against people with disabilities. Advocacy for Inclusion was funded to provide one small, short term project which has ended.

Disability specialist responses

- One. The Crisis Services Scheme is targeted at women with disabilities, however is currently only intended to service a very small number of women, is limited in scope, and there is no clear plan for significant expansion of the service.

Mainstream responses

- The ACT Prevention of Violence against Women and Children Strategy acknowledges disabled women as a target group.
- A reportable conduct scheme for all children was announced in early June. A disability lens must be applied to this.

Background

People with disabilities are at a significantly higher risk of violence than people without disabilities, yet programs targeted at preventing and responding to this are severely lacking. In addition to traditional ideas of sexual and physical assault, people with disabilities experience distinct forms of disability based violence, such as withholding of disability aids or supports, inciting fears or paranoia of a person with mental illness, leaving a person reliant on support in uncomfortable or humiliating situations, medication mismanagement and use of restraint. A major issue is the absence of systematic and streamlined data collection in the ACT which captures the prevalence of violence among people with disabilities. Targeted and effective policies and programs cannot be developed without having a clear picture of the extent and nature of the problem.

The *Family Violence Bill 2016* provides victims of violence in domestic relationships a “greater level of protective response”. The Act does not recognise the household relationships common among people with disabilities as “domestic” and consequently excludes them from this “greater level of protective response”. For example, relationships in disability supported accommodation (such as group homes) and informal arrangements such as home-sharing. People in these relationships are not covered by ACT domestic violence legislation.

Whilst these relationships are not covered, people with disabilities living in supported accommodation are at even higher risk. In these settings they often live with one or more co-residents on a permanent basis, interact daily, build highly personal relationships, share living space, groceries, and jointly own furniture. They also share this space with paid support workers or staff for up to 24 hours a day. These are undoubtedly domestic relationships, which can become violent. Violence occurs between co-residents and is also perpetrated by support staff against people with disabilities. People with disabilities can become unsafe in their own homes.

The Crisis Services Scheme in the ACT is a new program targeted at responding to women with disabilities experiencing domestic violence (as defined in the current legislation) and sexual violence. However, we remain gravely concerned that this scheme is limited in capacity and scope, with the service assisting only five women in the 2014-15 financial year¹⁰. As acknowledged at the time the scheme was designed¹¹, there remains a gap in crisis response services for women and men with disabilities who are subjected to non-sexual violence in disability specific relationships, which do not fall within the services current scope and relevant legislative definitions. The scheme must ensure women with disabilities experiencing violence in disability specific settings which do not fall neatly within current definitions of domestic and sexual violence have pathways to safety.

The Act must be amended to extend protection to people with disabilities living in disability specific arrangements. The domestic violence law in NSW covers disability specific home settings and general share-house arrangements. This has promoted greater recognition of domestic violence in disability specific settings and better response capacity by service providers and government, including appropriately targeted programs and resources. We recommend that the ACT Government consider Section 5 of the NSW *Crimes (Domestic and Personal Violence) Act 2007* and its application to ACT legislation. Specifically:

“For the purposes of this Act, a person has a “domestic relationship” with another person if the person:

¹⁰ Victim Support ACT. (2015). *Annual Report 2014-15*. Retrieved from: http://www.victimsupport.act.gov.au/__data/assets/pdf_file/0009/796509/151148-Victim-Support-AR-2014-15-FA-Screen.pdf

¹¹ ACT Disability and Community Services Commissioner. (2014). *Developing an ACT crisis response to women with disabilities who experience domestic violence and/or sexual assault*. <http://www.hrc.act.gov.au/res/Final%20Report%20-%20Crisis%20Services.pdf>

*(d) is living or has lived in the same household as the other person, or
(e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the Crimes (Administration of Sentences) Act 1999 or a detention centre within the meaning of the Children (Detention Centres) Act 1987), or
(f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person.”*

In addition to a lack of targeted response programs, Advocacy for Inclusion is concerned by a lack of understanding among NDIA staff about the significance of one's living arrangement as a factor in their vulnerability to being victimised, particularly disability specific arrangements over which the person with disability has limited control. We have been involved in some cases where the NDIA is pressuring a person with disability to pool their funds and move into a living arrangement shared with another person with disability, despite their history of perpetrating violence against several previous co-residents. Forced cohabitation is a strong contributor to domestic violence for people with disabilities yet it is being actively pursued as a preferred solution by the NDIA, the ACT Government, and various community individuals.

The ACT Government must recognise that control and choice for people with disabilities is an important violence prevention strategy. Where people with disabilities have no control over where and with whom they live, this encourages unhealthy power dynamics and violent relations, and it traps people with disabilities in violent households which they cannot escape because their access to adequate support is tied to their co-resident.

Violence against children with disabilities in service settings is also a key concern. Last year a serious breach of human rights in an ACT school was brought to light when it was found that a child with disability was being locked in a cage made of pool fencing. Advocacy for Inclusion has endorsed the Australian Cross Disability Alliance's submission to the consultation regarding a Reportable Conduct scheme, which outlines measures required to ensure the safety of children with disabilities.

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Guardianship Reform

Commitments sought

1. Commit to reforming the *Guardianship and Management of Property Act* 1991 (ACT) in line with the National Decision Making Principles proposed by the Australian Law Reform Commission and the UN CRPD;
2. Commit ongoing funding to programs for people with disabilities to support the establishment of supported decision making arrangements;
3. Commit funding to individual and self-advocacy services for people with disabilities to support their expressed will and preferences in a range of settings.

What is currently being done?

Disability led responses

- None. There are currently no programs funded by the ACT government controlled by and for people with disabilities to implement guardianship reform. Advocacy for Inclusion is the only Disabled People's Organisation offering individual and self-advocacy, however capacity is very limited and no specific funding is provided to support guardianship reform or specific decision making supports.

Disability specialist responses

- One small scale non-ongoing training program targeted at support people is currently underway and will end soon.

Mainstream responses

- The Guardianship Act has been reviewed, but the report has not yet been released by the ACT Government.

Background

Under the ACT *Guardianship and Management of Property Act*, people with cognitive impairment can be deemed to lack decision making capacity and be assigned a substitute decision maker. This denies recognition of an individual's decisions in the eyes of the law. It is now widely recognised that such practices are outdated, and fail to recognise that with appropriate social supports, people with cognitive impairment can make decisions for themselves. It also fails to honour Article 12 of the UN *Convention of the Right of Persons with Disabilities (CRPD)*, which requires States Parties to "take action to develop laws and policies to replace regimes of substitute decision-making with supported decision-making, which respects the person's autonomy,

will and preferences”¹² As a signatory to the CRPD, Australia and therefore the ACT¹³, is obliged to substantially reform guardianship legislation.

In light of these issues, the [Australian Law Reform Commission](#) proposed four National Decision-Making Principles and recommended legislative reform consistent with these principles:

1. The equal right to make decisions: All adults have an equal right to make decisions that affect their lives and to have those decisions respected.
2. Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.
3. Will, preferences and rights: the will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.
4. Safeguards laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.

Supported decision-making is a relatively new model for supporting people with cognitive disabilities to make decisions, exercise their legal capacity, and retain and build decision making skills. They do this with support from a selected network of people or an individual such as a friend, or family member. These supporters help the person with disability to gather and consider information about significant decisions. They help the person to weigh up the pros and cons of decisions as well as the likely outcomes and consequences. Unlike guardianship practices which acts on a “best interests” principle, this model prioritises the person’s rights, will and preferences with respect for their self-determination.

Supported decision-making agreements are currently used in parts of Canada, the UK, and have been successfully trialled in South Australia. The South Australian Office of the Public Advocate (OPA) evaluation highlights the benefits and successes of supported decision making as an alternative to guardianship in the Australian context, including increased skills and confidence in decision making.¹⁴ The ACT Government has shown interest in reforming Guardianship legislation by conducting a review of the legislation and exploring supported decision making via the funding of one small, short term supported decision making project. A commitment is now sought to reform the legislation and fund sustainable decision making support programs for people with disabilities.

¹²Committee on the Rights of Persons with Disabilities. (2014). *General Comment no. 1*. Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

¹³ The ACT is obliged to implement the CRPD through Australia’s ratification, but also through S 8 of the ACT *Human Rights Act*.

¹⁴ Wallace, M. (2012). *Evaluation of the supported decision making framework: office of the Public Advocate*. Retrieved from http://www.opa.sa.gov.au/documents/11_Supported%20Decision%20Making/8-Final%20Supported%20Decision%20Making%20Evaluation.pdf

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Accommodation and forced cohabitation

Commitments sought

1. Recognise that institutionalisation is not only large congregate models of support, but rather any model of support that obliges a person to live in an arrangement in order to get the disability supports they need. This includes group housing where people live together for functional purposes;
2. Cease funding or supporting any new proposals for models of support which involve the functional placements of people with disabilities, where they are obliged to live in particular arrangements in order to get the disability supports they need, in line with the expectations of Article 19 of the *Convention on the Rights of Persons with Disabilities*;
3. Commitment to develop and implement a human rights audit process for all accommodation proposals, including respite facilities, to ensure that they are compliant with the *Convention on the Rights of Persons with Disabilities* Article 19;
4. Commit to developing a 10 year housing stock plan for people with disabilities, prioritising people with disabilities exiting institutional models of support (including group homes) in response to the planned impacts of the NDIS and individualised models of support.

What is currently being done?

Disability led responses

- None

Disability specialist responses

- None

Mainstream responses

- None

Background

Article 19 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) states that people with disabilities have the right to live where and with whom they choose on an equal basis to the general community, and to access adequate community based supports to achieve this.

The [Shut In campaign](#) defines an institutional setting as any place a person with disability has to live in order to get the disability supports they need¹⁵. Whilst the remaining large institutions across Australia are for the most

¹⁵ <http://www.shutin.org.au/index.php/what-is-the-issue>

part actively being phased out, the process is far from complete, with the majority of people moved into other institutional settings such as boarding houses, nursing homes and group homes¹⁶.

There is a lack of understanding about the ways that institutional practices are being carried over into smaller scale settings located in the community such as group homes.¹⁷ This includes in group homes run by disability service providers, which are considered the modern alternative to larger facilities. New respite houses are being built in the ACT, despite the opportunities brought by the NDIS to develop innovative, inclusive models of respite support for people with disabilities in the general community.¹⁸

The ACT Government has publicly supported several new projects in the last three years which feature forced cohabitation or congregate care models. People with disabilities are required to live in these arrangements in order to receive the supports that they require.

Advocacy for Inclusion seeks a commitment from all parties to cease endorsing, or supporting with funds or land grants, any new proposals for congregate living or forced cohabitation. These models cause great distress for people with disabilities and result in greater risk of violence and sexual assault.^{19 20} Advocacy for Inclusion responds to a large number of requests for advocacy support each year where people in congregate settings are not safe in their own homes and wish to be moved.

Despite the introduction of the NDIS, which has created high hopes for finally completing the deinstitutionalisation that began in the 1960s, people with disabilities are still being cornered into living in institutional settings. Advocacy for Inclusion is currently working on cases where NDIS participants are being pressured by the NDIA to cohabit with another person with disability. People who are currently living alone and have fought hard to live alone; yet, the NDIA is insisting that a person with disability should live with another person with disability as this is more “inclusive” and provides “companionship”.

This indicates that we still have a long way to go in terms of achieving deinstitutionalisation in its true form. Inclusion means genuine access to and participation in the community on an equal basis with non-disabled people. It means having access to accommodation options on an equal basis to the non-disabled community. This is a fundamental human right. Companionship involves freely given relationships with family, friends and other community members, and perhaps mutually chosen housemates. Real companionship cannot be forced onto people – it is something that evolves organically.

Inclusion and companionship does not mean being pressured into a permanent living arrangement with a stranger with disability against your will, based on an extremely outdated and oppressive assumption that if you're a person with disability, you are better off being grouped together with other disabled people to live, work or be educated. With the control and choice principles underpinning the NDIS, it is concerning that NDIA representatives are yet to grasp basic human rights concepts and translate those to practice in the planning process. This is a hugely concerning issue, which the ACT Government must address.

¹⁶ Drake, G. (2014). The transinstitutionalisation of people living in licensed boarding houses in Sydney. *Australian Social Work*, 67(2), 240-255.

¹⁷ Marsland, D., Oakes, P., White, C. (2007). Abuse in care? The identification of early indicators of the abuse of people with learning difficulties in residential settings. *The Journal of Adult Protection*, 9(4), 6-20.

¹⁸ For more information: <http://www.canberratimes.com.au/act-news/ricky-stuart-foundation-plans-to-build-second-respite-centre-for-teenagers-with-a-disability-20150603-ghfeqf.html>

¹⁹ Chenoweth, L. (1995). The mask of benevolence: Cultures of violence and people with disabilities. *Journal of Australian Studies*, 19(43), 36-44.

²⁰ Hollomotz, A. (2011). *Learning difficulties and sexual vulnerability: A social approach*. London: Jessica Kingsley Publishers.