



Submission to
ACT Budget Consultation 2017–18

Recognising Marginalisation

- addressing systemic discrimination and inequality for people with disabilities in the ACT engaging with justice processes

Advocacy for Inclusion
December 2016

About Advocacy for Inclusion

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion provides independent individual, self and systemic advocacy for people with disabilities.

Advocacy for Inclusion is a Disabled Peoples Organisation which means a majority of our board, members and staff are people with disabilities. We represent Canberra's most marginalised and isolated people with disabilities, those with cognitive disabilities and/or significant communication barriers.

We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and is signed onto the *ACT Human Rights Act*.

Contact details:

2.02 Griffin Centre
20 Genge Street
Canberra City ACT 2601

Phone: 6257 4005

Email: info@advocacyforinclusion.org

ABN: 90 670 934 099

Chief Executive Officer: Christina Ryan

Policy Officer: Bonnie Millen

December 2016

(c) Copyright Advocacy for Inclusion Incorporated

This publication is copyright, apart from use by those agencies for which it has been produced. Non-profit associations and groups have permission to reproduce part of this publication as long as the original meaning is retained and proper credit is given to Advocacy for Inclusion Inc. All other individuals and agencies seeking to reproduce material from this publication should obtain the permission of the Chief Executive Officer of Advocacy for Inclusion.

Executive Summary - Marginalisation & Inequality4

Summary of Recommendations5

Introduction7

Implementing the National Disability Strategy8

Recognising Marginalisation in the Justice System.....9

1. Being an offender9

2. Being a parent12

3. Being a victim14

Equal Participation in Justice Processes16

Budget savings through independent specialist disability advocacy20

Conclusion21

Executive Summary - Marginalisation & Inequality

People with disabilities are the largest minority group in Australia and on the planet – yet continue to be marginalised and unrecognised in the communities we live in.¹

The UN *Convention on the Rights of Persons with Disabilities* (CRPD) defines disability as resulting from the 'interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others'.² Negative attitudes in society towards disability often mean that people with disabilities routinely experience discrimination within the community which deny them equitable access to resources, services and opportunities for personal development and community participation.

A combination of environmental and attitudinal barriers within the ACT justice system, and the community, lead to people with disabilities being effectively excluded from participating equitably in social, economic and political processes. As a result of discrimination and social exclusion, the invisibility of persons with disabilities at all levels of society and the lack of positive responses becomes a driving factor as to why people with disabilities cannot actively participate on an equal basis in areas of social and economic life, including the ACT justice system. To date the only disability justice response by the ACT government has been to expect people with disabilities to use generic processes designed for mainstream members of the community.

This systemic marginalisation places people with disabilities at an inherent disadvantage when engaging with all areas of the justice system. While justice system stakeholders have good intentions they are simply unskilled in providing the specialist disability response required to ensure that people with disabilities are able to participate equitably in justice processes which involve them. Many people with disabilities are specifically excluded from their own process, or are not recognised as requiring a level of reasonable adjustment until it is too late.

The result for people with disabilities is high levels of imprisonment, high rates of child removal, and low levels of justice outcomes for victims.

¹ World Health Organisation, 2016, fact sheet on disability, <http://www.who.int/mediacentre/factsheets/fs352/en/>

² United Nations, 2006, preamble para (e), <http://www.un.org/disabilities/convention/conventionfull.shtml>

Summary of Recommendations

Core Recommendation: Recognise that specialist disability responses to justice processes will reduce marginalisation and inequality for people with disabilities in the ACT, and immediately fund them appropriately.

Recommendation 2: The ACT Government to implement the recommendations of the National Disability Strategy 2010-2020 prior to 2020, including immediate measures to increase equitable access to justice through currently available early intervention and support mechanisms.

Recommendation 3: The Disability Justice Strategy must cover both criminal and civil justice, from the commencement of legal processes, to minimise the risk of people with disabilities being further marginalised by the justice system.

Recommendation 4: Target early intervention and prevention through low cost specialist disability response measures rather than wasting money imprisoning people with disabilities.

Recommendation 5: Develop tools to alert people in the justice system that the person has disability, for example the new Advocacy for Inclusion wallet card.

Recommendation 6: Provide early intervention parenting supports to parents with disabilities through the NDIS. This solution is not currently routinely used in the ACT.

Recommendation 7: Acknowledge that parents with disabilities have disability specific support needs, to which Care and Protection Services must be sensitive and responsive in order to prevent out of home care placements and promote successful restoration of children.

Recommendation 8: There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. CYPS must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

Recommendation 9: Develop a plan for coordination between NDIS, CYPS and support providers to ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed including specialist case management services.

Recommendation 10: Provide appropriate training to staff and practitioners in the criminal justice system in disability awareness. The training must involve people with disability in its development and/or delivery.

Recommendation 11: Ensure all investigative interviewers undergo specific training in effective disability interviewing techniques with an evidence-based evaluation component for continuous improvement.

Recommendation 12: Recognise that specialist independent disability advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

Recommendation 13: The ACT government considers implementing ongoing mechanisms to promote access to justice for people with cognitive disabilities. This could include:

- a) auditing specific barriers in access to justice i.e. the lack of reasonable accommodations for people with cognitive disabilities in legal proceedings;
- b) collecting ongoing data on the types of support that people with disabilities are requesting or availing of in legal proceedings; and,
- c) ensuring that legal proceedings – from police intake assessment, courtrooms to administrative tribunals and reporting mechanisms – are accessible for people with disabilities in general.

Recommendation 14: Recognise the specific disadvantage faced by people with disabilities in accessing justice and support holistic policy and program responses to address it.

Recommendation 15: Invest \$500,000 with Advocacy for Inclusion now to provide early intervention wraparound independent specialist disability advocacy, including a custody notification service, as a means of reducing further waste in the system.

Introduction

Advocacy for inclusion welcomes the ACT Government's commitment to develop an ACT Disability Justice Strategy. This Strategy could incorporate real actions, against benchmarks, to focus on outcomes which support people with disabilities to achieve equitable access to the justice system.

Advocacy for Inclusion works on the frontline with Canberra's most marginalised and isolated people with disabilities yet receives no funding from the ACT Government. Our organisation has experienced a surge in disability justice advocacy, and we have now made the decision to commit all of our organisational resources towards this area. There are very few specialist disability services to respond to the people we work with. There are certainly none that are by and for people with disabilities – Advocacy for Inclusion is unique in the ACT and one of very few across Australia.

There are no disability led initiatives in the area of disability justice, which means people with disabilities face severe discrimination and marginalisation in the justice system are forced to rely on generic mainstream services and are often treated as “difficult” or “uncooperative”. Consumers at Advocacy for Inclusion tell us that they feel equal and respected when working with us because they are being responded to by “people like us” who “respect our rights first”.

A Disability Justice Strategy will finally provide for ways to turn away from the current high levels of waste in the ACT justice system. It will be the ACT's key response to people with disabilities in the justice system, but it will take potentially years to develop. However, there is no reason, or time, to wait for the Strategy to be finalised when there is clear evidence that independent specialist disability advocacy can contribute to substantial savings to government and strong outcomes for people with disabilities today. There is work that could be underway now to reduce marginalisation and provide systemic reasonable adjustment for people with disabilities engaging with criminal and civil justice systems. Current structures are entirely generic and require people with disabilities to respond in ways that they cannot. This results in further marginalisation, heavy imprisonment rates, high child removal rates, and a lack of justice outcomes for victims with disabilities. It is also the most expensive way to respond to people with disabilities and costs the community significantly in both resources and social capital.

It is time to focus on the economic benefit of providing reasonable adjustments to the criminal justice system so that the ACT Government can target its resources towards bringing people with disabilities away from the margins and into mainstream living as active and valued contributors to the ACT community. This includes providing specialist disability early intervention responses to:

- Support offenders with disabilities to respond to police, courts and lawyers.
- Support victims with disabilities including those escaping violence.
- Support parents with disabilities responding to child protection matters.
- Recognise that all people with disabilities, including people viewed as having ‘significant’ disabilities, have the right to participate as equals in their own justice process and to be supported by independent disability advocacy to do so.

Due to increasing demand and a gap in service responses Advocacy for Inclusion has restructured our organisation to focus solely on working with people with disabilities engaged in justice processes. Alongside this we have built an entirely new innovative wraparound model of independent advocacy which is recording substantial real outcomes for people including: preventing imprisonments, supporting child restoration to families, and ensuring victims are heard and believed.

Much work is needed in these critical areas and the ACT Government must ensure these opportunities enable marginalised people with disabilities to access their basic human rights to be active and valued contributors to the ACT community by providing access to specialist solutions as required. There is no history of specialist solutions in these areas in the ACT, or most Australian jurisdictions, and people with disabilities face high levels of marginalisation as a result.

Core Recommendation: Recognise that specialist disability responses to justice processes will reduce marginalisation and inequality for people with disabilities in the ACT, and immediately fund them appropriately.

Implementing the National Disability Strategy

In 2011 all Australian governments recognised law and justice issues as crucial to disability reforms, with “Rights protection, justice and legislation” forming one of the six outcome areas of the *National Disability Strategy 2010-2020* (NDS). This includes commitment to more effective criminal justice responses and access to justice for people with disability.³ To implement the recommendations in the NDS the ACT Government must ensure that solutions are in place prior to 2020, so they must be part of the forthcoming Disability Justice Strategy, but some thought will also need to be given to what immediate measures can be undertaken.

In 2014, the *Equal before the law*⁴ report by the Australian Human Rights Commission brought into focus the urgent need for action on disability justice reforms across all jurisdictions. South Australia has been ahead of the curve with its *Disability Justice Plan 2014-2017*. However, South Australia’s Plan is concerned only with the criminal justice system and not specialist disability advocacy to assist people with disabilities in the overall justice process. It does not offer solutions to early intervention with police and justice staff to work with and ensure people with disabilities in justice processes are treated fairly and equitably. As the first Australian Plan developed it was ground breaking, but it has since become a dated response.

As the ACT begins to develop a Disability Justice Strategy, it must be recognised that the disadvantage experienced by people with disabilities is not exclusive to matters of criminal law, but is inextricably bound up with issues of legal capacity and the full range of civil law matters to which people with disabilities are commonly exposed.⁵ The ACT must work from a position of principle, grounded in CRPD article 13, which becomes the overall goal of the Disability Justice Strategy and informs the entirety of its content.

Rather than constantly responding to crises and using incarceration as a fix all solution, the new Strategy can plan for improved, more equitable, justice processes by collecting appropriate data across all areas of justice operations to recognise where people with disabilities are engaging with the justice system, where early intervention supports are required, and how to respond more appropriately to offenders with disabilities while in detention and when exiting the prison system.

Recommendation 2: The ACT Government to implement the recommendations of the National Disability Strategy 2010-2020 prior to 2020, including immediate measures to increase equitable access to justice through currently available early intervention and support mechanisms.

Recommendation 3: The Disability Justice Strategy must cover both criminal and civil justice, from the commencement of legal processes, to minimise the risk of people with disabilities being further marginalised by the justice system.

³2010-2020 *National Disability Strategy* at p36-41, Outcome area 2, Policy Directions 3 and 5. Indeed, this is part of our international human rights obligations under of the United Nations *Convention on the Rights of Persons with Disabilities*. Article 13 requires States Parties to “ensure effective access to justice for persons with disabilities on an equal basis with others”. United Nations General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106.

⁴ Advocacy for Inclusion was part of the early roundtable which framed the human rights structure of the *Equal before the law* report. We then partnered with the AHRC to undertake the consultation process in the ACT and assisted in finalising the report.

⁵ ACT Law Reform Advisory Council (2015) *Tell us what you think – Adults making decisions in the ACT: Reform of guardianship arrangements for adult people with disabilities in our community - Response Booklet*. Although this review is focused on the *Guardianship and Management of Property Act 1991*, reforms that bring decision making laws (and practice) into compliance with Article 12 of the UN CRPD would have significant implications in how the broader legal system is accessed by, and responds to, people with disabilities.

Recognising Marginalisation in the Justice System

People with disabilities are placed at extreme disadvantage when interacting with justice systems in the ACT – whether as victims, offenders or other litigants, they are victimised, wronged or discriminated against, caught up in inadvertent processes of criminalisation, or simply excluded from accessing mechanisms and supports necessary to achieve just legal outcomes.

Throughout various points in justice processes, inflexible systems or procedures often fail to respond to a person's disability and their associated needs, or the identification of their disability leads to discrimination against them. For instance, being assessed as having cognitive impairment, and subsequently being found unfit to plead, directly contributes to the indefinite detention of people with disabilities in prisons and within the justice system.⁶⁷

The ACT, as with most jurisdictions, finally engages with a person's disability at the end of their trial period when it assesses their fitness to plead. Rather than recognising and responding to their disability at their point of entry into the justice system (when arrested) it is left until a point close to the end before imprisonment occurs. For parents in the family court responding to child protection intervention, disability is simply not considered and they face removal of their children as a result of being unable to participate as equals in a very complex legal process. Victims with disabilities are often denied any justice process as they are deemed unreliable when making formal statements of providing testimony.

There are no current mechanisms to address any of these shortcomings in the justice system. These must be responded to by the impending Disability Justice Strategy, but there is early intervention work that could be undertaken immediately.

1. Being an offender

It is time to disrupt the ACT criminal justice system to address the overrepresentation of incarceration of marginalised groups as a means to achieving safer communities. The evidence is clear that we need to be spending less money on the prison system and investing more in pulling marginalised people out, particularly those with disabilities. Every dollar spent on prisons is one dollar less to spend on education, health, and support services for people with disabilities, training and employment programs or providing accessible housing.⁸ The ACT Government is capable of creating smarter approaches to building a strong community, reducing crime and saving taxpayers millions of dollars by avoiding wasteful prison spending.

In the 2014-15 fiscal year, the ACT justice system spent \$304.26 per prisoner in the AMC per day in open imprisonment plus periodic detention.⁹ Although the cost has been lowered since the 2013-2014 release of expenditure from \$396 per prisoner,¹⁰ the ACT is still spending more on prisoners than the rest of Australia.

The overrepresentation of people with disabilities, which includes Indigenous people with disabilities, in the AMC prison structure is costing the ACT Government a large sum of money, particularly when the problem could be readily addressed by using specialist disability advocacy as an early intervention mechanism.

The frontline experience of Advocacy for Inclusion illustrates that the benefits of a person with disability accessing advocacy services are enormous. More recently Advocacy for Inclusion has completely disrupted

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>.

⁷ 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.

⁸ A new blueprint for reducing Aboriginal imprisonment rates and building stronger, safer communities [news]. Melbourne: Human Rights Law Centre, 2015: 30 Apr. <http://hrlc.org.au/a-new-blueprint-for-reducing-aboriginal-imprisonment-rates-and-building-stronger-safer-communities/>

⁹ Productivity Commission (2016) Report on Government Services (Corrective Services), table. 8A.7, p.55

¹⁰ Thomas, J (2015), 'How much does it cost to keep people in Australian jails?', SBS News, 2nd February 2015, <http://www.sbs.com.au/news/article/2015/02/02/how-much-does-it-cost-keep-people-australian-jails>

our advocacy delivery to develop a wraparound¹¹ model which provides an intense supportive framework to someone from their first engagement with the justice system, through imprisonment, until they reintegrate into the community. With several significant recent successes including preventing imprisonment, it is clear that this approach has a great deal to offer the ACT community, the ACT Budget, and most importantly the right of people with disabilities to reasonable adjustment from the system.

The need for specialists to work alongside justice professionals is well entrenched across a range of other specific areas of disadvantage (Indigenous people, people from culturally diverse backgrounds), yet there is no current recognition that this would improve justice processes when working with people with disabilities. The ACT could make significant changes to outcomes for a relatively small investment in specialist responses.

A very small number of people with disabilities¹² are able to access an advocate through the National Disability Advocacy Program.¹³ In the ACT each year independent advocacy services turn away more than triple the number of people that they are able to support, this has been the case for many years due to poor funding and a lack of recognition of the benefits of independent advocacy.¹⁴ Most people with disabilities are not supported to participate as equals in their own justice process; instead these processes further marginalise them and reinforce their “wrongness”.

The inaccessibility of legal advice and appropriate supports affects the participation of people with disabilities across numerous areas, for example:

- a) outdated understandings of legal capacity commonly prevent people with disabilities from being informed about or involved in legal decision-making directly concerning their lives;¹⁵
- b) people with disabilities regularly don't attend Tribunal processes which impose or review Guardianship and Administration Orders;¹⁶
- c) parents with disabilities are poorly resourced to respond to the removal of their children by Care and Protection, or to access the parenting supports and/or legal advocacy needed to have their children returned from out of home care;¹⁷
- d) people with disabilities are stranded in situations of abuse or violence, unaware of their rights and feel isolated and powerless to speak up, or without access to recourse against the perpetrator(s).¹⁸

The current levels of disadvantage will not be addressed by mere legislative reform, but will require coordinated investment in changing culture and attitudes and in supporting people with disabilities to exercise their self-determination through self-advocacy support.¹⁹ The current levels of disadvantage also represent a large budgetary commitment being pumped into a punitive and generic justice system when advocacy is a simple, effective and low cost tool to ensure that people with disabilities understand the justice process they are engaged in and are therefore better able to engage with it.

¹¹ While we use the term wraparound, this should not be confused with existing terminology which associates “wraparound” with case management. Advocacy is not case management. We are describing an intensive blend of individual and self-advocacy delivery which provides an holistic response to a person to address their barriers to equality.

¹² The current resource available in the ACT equates to less than 40 people per year supported with justice processes.

¹³ Department of Social Services (2015) *National Disability Advocacy Programme (NDAP)*. <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>

¹⁴ Advocacy for Inclusion (2015) *Submission to the Senate Inquiry into community sector funding*. <http://advocacyforinclusion.org/index.php/2014-09-22-05-11-32/publications-home/funding>

¹⁵ The Australian Law Reform Commission has recommended in its 2014 Report, *Equality, Capacity and Disability in Commonwealth Laws*, that the existing tests relating to a person's capacity to exercise legal rights or participate in legal process must be reformulated to focus on whether and to what extent a person can be supported to play their role in the justice system. Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws – Final Report*, ALRC Report 124, p192.

¹⁶ Advocacy for Inclusion (2015) *The Right to Equality: Review of Guardianship Arrangements for Adults with Disabilities in the ACT - Submission to the Law Reform Advisory Council*, 22-27.

¹⁷ See Advocacy for Inclusion. (2013). Counting them in: Parents with disabilities and the ACT Child Protection System.

http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx ;

¹⁸ Advocacy for Inclusion (2015) *Submission to the Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings*, 8. <http://advocacyforinclusion.org/index.php/2014-09-22-05-11-32/publications-home/restraint>

¹⁹ For more detailed recommendations see Advocacy for Inclusion (2015) *The Right to Equality: Review of Guardianship Arrangements for Adults with Disabilities in the ACT -Submission to the Law Reform Advisory Council*, 22-27.

<http://advocacyforinclusion.org/index.php/2014-09-22-05-11-32/publications-home/decision-making>

Shifting the support emphasis to the beginning of any justice process, by assuming that appropriate communication supports must be provided at the inception to ensure that people with disabilities enjoy effective access to justice at all stages of their legal process, will provide a more holistic response. It will also support the implementation of Australia's obligations under the *Convention on the Rights of Persons with Disabilities* article 13, which insist that all people with disabilities have a right to equality of access to justice, and reasonable accommodations are made in the legal process to ensure effective participation of persons with disabilities in the justice system.²⁰

A person with disability who is supported by specialist disability advocacy to participate in their justice process from the outset will be in a better position to instruct their lawyer, respond to police or prosecution staff, and ultimately better understand any outcome. A person who is more engaged and understanding of any process and outcome will also be a person who is better able to accept that outcome, whatever it is.²¹ This is a rarity in the current system as the assumption is made that the person cannot participate, rather than on assuming that they require support to participate as an equal.

Case study 1

Bob was supported by a disability advocate throughout his court proceedings. The advocate recognised the need to rewrite Bob's bail conditions into Easy English as Bob kept breaching his conditions unintentionally due to not understanding or remembering them. The court was really confusing and Bob didn't understand what was being said as it all happened really fast and there were too many things to remember at once.

When the advocate wrote the easy English bail conditions for him they still covered all the information that the court was ordering, but they suddenly became clear and made sense. She also spent time explaining them in an environment that was less scary.

Bob had been unaware that he must remain in his place of residence as a bail condition that he had 'agreed' to during the complex court proceedings. The advocate also explained this to Bob so that he understood. She then explained to Bob that he could be arrested if he was found to be in breach of his bail conditions. This helped Bob to understand why he kept getting picked up by police when he was trying so hard to do the right thing.

Because he had an independent disability advocate Bob has stopped breaching his bail conditions because he now understands them.

Several recent success stories arising from the new Advocacy for Inclusion model of advocacy delivery illustrate that this new wrap around approach is highly effective in reducing marginalisation by lifting equality of participation in justice process for people with disabilities. These successes prove that simple specialist responses can save the justice system court and police time, legal and police resources, and imprisonment rates. In one recent month Advocacy for Inclusion has prevented the imprisonment of two people with disabilities with previous high exposure to the justice system.

Recommendation 4: Target early intervention and prevention through low cost specialist disability response measures rather than wasting money imprisoning people with disabilities.

Recommendation 5: Develop tools to alert people in the justice system that a person has disability, for example the new Advocacy for Inclusion wallet card.

²⁰ United Nations *Convention on the Rights of Persons with Disabilities* articles 12 and 13, http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf

²¹ For an examination of how being supported to participate in legal processes affects perceptions of fairness and consequently wellbeing, see: Beupert, F. (2009) 'Mental Health Tribunal Processes and Advocacy Arrangements: "Little Wins" are No Small Feat' 16 *Psychiatry, Psychology and the Law* 90, 93. Winick, B.J. (1999) 'Therapeutic Jurisprudence and the Civil Commitment Hearing' 10 *Journal of Contemporary Legal Issues* 37, 54. Tyler, T. R. (1992) 'The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings' 46 *Southern Methodist University Law Review* 433.

2. Being a parent

Parents with disabilities have high exposure to the child protection system.²² There is a growing body of evidence suggesting that parents with cognitive disabilities are subjected to a higher rate of child protection intervention and child removal, than parents without disabilities. The rates surround issues of prejudice, discriminatory attitudes and a severe lack of available appropriate parenting supports.^{23 24 25 26 27 28}

For almost a decade, Advocacy for Inclusion has been highlighting concerns regarding the disproportionate removal of children from the care of their parents where one or both parents have disability, in particular cognitive disability. It is suggested that children and families who come in contact with the child protection system often share common marginalisation and demographic characteristics. Parents with cognitive disabilities are over-represented in the child protection system and face significant barriers to equitable participation in the legal processes arising from this.²⁹

In our advocacy work we have observed a number of concerning transparency and accountability issues, particularly between agencies and parents with disabilities, and their children being removed from their care. Parents with disabilities facing child protection orders are often left in the dark about how their case is progressing and are not provided the support they need to understand and engage in the process. A high proportion of our advocacy consumers have children removed and placed into a Final Care and Protection Order of 18 years, removing all parental responsibility or care from the parent, without ever truly understanding what it is that they have done wrong and how they could have changed it. Most simply understand that it's about their disability and they are simply "wrong".

Australia is a signatory to the CRPD, which places obligations on the ACT Government to fulfil the right for parents with disabilities to care for their children - with appropriate supports. Parents with disabilities are currently an incredibly marginalised group in the ACT. Accessible resources that meet the needs of this group are non-existent. In several Advocacy for Inclusion cases, children have been removed from parents because no appropriate support was available to help them to care for their children. In all these cases no supports were tried or offered before removal was undertaken.

In 2014-2015 the annual real expenditure in the ACT Out of Home Care system amounted to \$51,165.42 per child³⁰ for 671 children in care.³¹ This is the most costly solution available to the ACT Government, yet it remains the most common response to parents with disabilities.

Given the lack of awareness of the needs of parents with disabilities in the child protection system, parents' ongoing disability support needs at the end of a maximum 12 month order will likely be misunderstood as a lack of progress or an inability to address the issues that brought their child into care. This misunderstanding then results in children being permanently removed from the care of parents simply because appropriate

²² See Advocacy for Inclusion. (2013). Counting them in: Parents with disabilities and the ACT Child Protection System. http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx

²³ Lamont, A., & Bromfield, L. (2009). *Parental intellectual disability and child protection: Key issues*. National Child Protection Clearing House, (31), 1-18. www.aifs.gov.au/nch/pubs/issues/issues31/issues31.html

²⁴ McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. Sydney: University of Sydney.

²⁵ Booth, T., & Booth, W. (2005). Parents with learning difficulties in the child protection system: Experiences and perspectives. *Journal of intellectual disabilities*, 9(2), 109-129

²⁶ Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). *Understanding and supporting parents with learning difficulties*. Melbourne: Victorian Parenting Centre

²⁷ Llewellyn, G., McConnell, D. & Ferronato, L. (2003). Prevalence and outcomes for parents with disabilities and their children in an Australian court sample, *Child Abuse & Neglect*, 27(3), 235-251. doi: 10.1016/S0145-2134(03)00004-8

²⁸ McConnell, D., Llewellyn, G., & Ferronato, L. (2002). Disability and decision-making in Australian care proceedings. *International Journal of Law Policy and the Family*, 16(2), 270-299. doi: 10.1093/lawfam/16.2.270

²⁹ AIHW (2016) Child Protection in Australia 2014-2015, p.

³⁰ Productivity Commission (2016) Report on Government Services, Chapter 15 Child Protection Services, table 15.13 <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/community-services/child-protection/rogs-2016-volume-f-chapter15.pdf>

³¹ Child protection Australia 2014-15, table 15A.18 p.150

disability supports were not provided. This is unfair and discriminatory to parents that do not have support made available to enable them in their parenting role as a first response to their child being born.³²

Rather than working with parents with disabilities to provide early intervention supports, via the fully available National Disability Insurance Scheme (NDIS), and to identify what long term support will result in maintaining family cohesion, current systems use costly court processes, lengthy orders for out of home care and adoption as their first response.

The provision of advocacy support represents a much less costly response and also removes the marginalisation and discrimination inherent in the current system. The ACT Government could be saving substantial funds were it to recognise its obligation to support the right of parents with disabilities (CRPD article 23) and turn existing resources to provide early intervention and ongoing supports.

Case study 2

Advocacy for Inclusion has been working with Mandy, a mother with cognitive disability who has had two children removed from her care.

Mandy used an advocate to assist her in liaising with CYPS and NDIA for support services to be established for herself, and her children. Both CYPS and NDIA had refused to collaborate with each other, and there had been a number of changes in caseworkers in CYPS, fracturing communication further.

With six months, the advocate worked with Mandy to ensure that she was supported to be an equal participant in proceedings involving her with both CYPS and NDIA. The advocate assisted in communication, navigating available services and processes, ensuring support for attendance at case meetings, and providing referral to appropriate services. The advocate worked alongside Mandy, and was guided by her expressed wishes, and assisted in achieving her desired outcomes. With the assistance of an advocate, Mandy is confident in liaising with both organisations to gain support mechanisms.

Mandy is currently working through a plan for the restoration of one of her children now that she can rely on support services covered by the NDIS. One year ago she was facing 18 year final orders.

The NDIS has been available in the ACT for over two years. During that time Advocacy for Inclusion has pushed for protocols to be developed to ensure Child Protection Services engages directly with the NDIS whenever supports are required for a parent with disability to maintain custody of their children. This support is rarely called on by either agency and both regularly fail to engage. Advocacy for Inclusion has now intervened in numerous cases to bring the two agencies together so that custody can be retained, or in some cases restoration can be worked towards.

Recommendation 6: Provide early intervention parenting supports to parents with disabilities through the NDIS. This solution is not currently routinely used in the ACT.

Recommendation 7: Acknowledge that parents with disabilities have disability specific support needs, to which Care and Protection Services must be sensitive and responsive in order to prevent out of home care placements and promote successful restoration of children.

Recommendation 8: There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. CYPS must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

Recommendation 9: Develop a plan for coordination between NDIS, CYPS and support providers to ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed including specialist case management services.

³² Counting them in: Parents with disabilities and the ACT Child Protection System.

http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx

3. Being a victim

Advocacy for Inclusion suggests a new presumption that all people with disabilities require access to independent specialist disability advocacy support when involved in criminal investigations. This would ensure people with disabilities are directly heard and appropriate action by police can then result. This is true for both victims with disabilities and people with disabilities who come into contact with the justice system.

For victims with disability, there is limited access to legal representation and many people with disabilities do not know their rights and therefore do not ask for reasonable adjustments.³³ Often it is family members who are given the choice of whether or not to proceed and not the person with disability who has been the victim of a crime.³⁴

Many people with disabilities, particularly people with cognitive disabilities and psychosocial disabilities also report that they are being interviewed without appropriate support persons. More generally, the Judicial Commission of NSW has observed:

*People with intellectual disabilities are vulnerable to prejudicial assessments of their competence, reliability and credibility because judicial officers and juries may have preconceived views regarding a person with an intellectual disability. For example, they may fail to attach adequate weight to the evidence provided because they doubt that the person with intellectual disability fully understands their obligation to tell the truth. In addition, people with an intellectual disability are vulnerable to having their evidence discredited in court because of behavioural and communication issues associated with their disability.*³⁵

The failure for the justice system to identify disability, provide reasonable accommodations and adjustments or take disability into account at the beginning of the process, compounded with negative attitudes and assumptions of people with disabilities often results in victims with disabilities being seen as not credible and their evidence as not reliable.³⁶ For victims with disability this means that police do not proceed with charges.

Case study 3

An advocate at Advocacy for Inclusion worked closely with Zafir and his mother, who is his legal guardian, throughout a police investigation involving a residential support worker. Zafir became visibly distressed at the police station when his mother was being questioned, indicating that he understood that they were discussing the worker's violence against him.

Although Zafir could not explicitly articulate his personal wishes in terms of pursuing the case at the time, Zafir's mother was determined to follow this through for him and for other people with disabilities who may have been supported by the worker at the time and in the future. Despite two support workers willing to come forward as witnesses, the police decided not to pursue charges against the worker and instead gave him a warning. The police said that the reason they will not pursue was because there was not enough evidence.

Zafir was not a reliable witness because of his cognitive and communication impairments, and he could not make a statement in conventional formats. The police noted that the worker expressed significant remorse and also suggested that the process would be too stressful for Zafir and his family³⁷. Zafir continues to indicate that he wanted the worker to face consequences, but there is no mechanism available to make this happen.

³³ Australian Human Rights Commission and University of NSW roundtable: Access to Justice in the Criminal Justice System for People with Disability (22 April 2013); Claire Hansen, Submission 13.

³⁴ Australian Human Rights Commission Access to Justice Public Meeting, Canberra (26 June 2013); ACT Disability, Aged and Care Advocacy Service, Submission 20; Communication Rights Australia, Submission 73.

³⁵ 'Equality before the Law Bench Book' (Judicial Commission of New South Wales, 2006) 5301

³⁶ New South Wales Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences*, Report 138 (2013) p.25

³⁷ Excerpt from Advocacy for Inclusion' submission to the *Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings*, July 2015 http://www.advocacyforinclusion.org/Site%20Data/Publications/Submissions/2015/Submission_to_Senate_Inquiry_into_institutional_violence_against_FINAL.pdf

Advocacy for an individual with disability making the first step to engage with the justice system is crucial. Victims with disabilities must not be disadvantaged because they are unable to participate in the justice process nor should they be denied justice simply because supporting them is perceived to be difficult.

Recommendation 10: Provide appropriate training to staff and practitioners in the criminal justice system in disability awareness. The training must involve people with disability in its development and/or delivery.

Recommendation 11: Ensure all investigative interviewers undergo specific training in effective disability interviewing techniques with an evidence-based evaluation component for continuous improvement.

Recommendation 12: Recognise that specialist independent disability advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

Equal Participation in Justice Processes

The barriers to justice experienced by people with disabilities extend across a range of areas.³⁸ In the ACT, people with disabilities have significantly higher prevalence of legal problems overall and substantial, multiple and diverse legal problems.³⁹ People with disabilities are the only disadvantaged group with significantly lower levels of finalisation of legal problems.⁴⁰

There is a great deal of research documenting and analysing the over-representation of people with disabilities in criminal justice systems.⁴¹ During arrest and questioning, people with cognitive disabilities often face barriers to understand their legal rights, including their right to silence, particularly where no specific communications support is made available during the process.⁴²

The barriers that prevent people with disabilities participating fully in legal and justice system processes include:

- a) communication and cognitive barriers associated with giving instruction to legal representatives;
- b) costs associated with legal representation;
- c) difficulties accessing necessary support, adjustment or aids;⁴³ (a shortage of funding to legal assistance services severely undermines their capacity to meet the legal needs of specific and vulnerable groups, particularly people with disabilities);⁴⁴
- d) highly formalised and ritualised procedures and complicated legal language that people with cognitive disabilities find confusing, incomprehensible, alienating or intimidating;⁴⁵ and,
- e) cognitive and/or sensory impairments require extra time and specialist assistance to address.

These barriers are likely to influence the sentencing stage, and therefore contribute to the high number of prison orders imposed on people with disabilities.⁴⁶ In the first instance, disability may not be readily evident and police, and other first responders, often fail to identify its presence.⁴⁷

The current system works somewhat retrospectively. Once a legal process has reached a certain point, later in the proceedings, a great deal of effort is then put into assessing a person's legal capacity. Capacity assessment processes can take many months to work through and many people who require assistance find

³⁸ Coumarelos, C. et al. (2013), *Law and disorders: illness/disability and the experience of everyday problems involving law*, Justice Issues Paper 17. Law and Justice Foundation of New South Wales..

³⁸ Ibid, 19.

³⁹ Ibid. xv.

⁴⁰ Ibid. xix.

⁴¹ Australian Human Rights Commission. (2014). *Equal before the law: Towards disability justice strategies*.

<https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>. See also Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings* (2014).

Queensland Advocacy Incorporated (2015) *dis-Abled Justice: Reforms to the justice for persons with disability in Queensland*. NSW Law Reform Commission (2013) *People with cognitive and mental health impairments in the criminal justice system*. Intellectual Disability Rights Service, (2008) *Enabling Justice: A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*. Brown, S. and Kelly, G. (2012) *Issues and inequities facing people with acquired brain injury in the criminal justice system: Report prepared for Victorian Coalition of ABI Service Providers Inc. (VCASP)*. Cockram J, (2005), *Equal justice? The experiences and needs of repeat offenders with intellectual disability in Western Australia*. Activ Foundation Inc.

⁴² Bartels, L. (2011). *Police Interviews with Vulnerable Adult Suspects*. Research in Practice Report No. 21. Australian Institute of Criminology, Canberra, ACT. 13p.

⁴³ Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws – Final Report*, ALRC Report 124, p192.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ Cockram, J. 'People with an Intellectual Disability in Prisons' (2005) 12 *Psychiatry, Psychology and Law* 163, 170.

⁴⁷ Susan Hayes, 'A Review of Non-custodial Interventions with Offenders with Intellectual Disabilities' (2005) 17 *Current Issues in Criminal Justice* 69, 71. M Henshaw and S Thomas, 'Police Encounters with People with Intellectual Disability: Prevalence, characteristics and challenges' (2011) *Journal of Intellectual Disability Research* 1.

themselves ineligible for services that arise from capacity impairment. Once capacity is called into question a case will progress differently.

Shifting the support emphasis to the beginning of any justice process and assuming that appropriate communication supports must be provided at the outset for any person whose legal capacity is in question, will provide a more holistic response to all people including people with disabilities. It will also align more readily with Australia's obligations under the *Convention on the Rights of Persons with Disabilities* articles 12 and 13, which insist that all people with disabilities have a right to equality of access to justice through holistic advocacy.⁴⁸

Case study 4

Robert has cognitive and physical disabilities. He has been engaged with the criminal justice system in the ACT for over 10 years. Robert has been working with Advocacy for Inclusion for one year, and has been piloting the wraparound advocacy approach for nine months. During his first six months of receiving advocacy he had multiple bail breaches, AMC custodial periods, police interventions and court appearances.

In the most recent incident he was charged with assault, arrested and bailed to appear in court.

Robert has become increasingly frustrated with the police approaching him in the community, keeping him in a cell as a measure of 'safety' and not explaining to him what his rights or restrictions are as listed in his bail conditions. Robert can't understand why he keeps being picked up by the police and he wants to confront them about his treatment.

According to Robert, the lawyers involved in his case had made assumptions about his disability when it came to whether he was 'fit to plead'. They also did not have the time to explain his case in full to Robert, or in a way that he understood. Effectively, Robert was excluded from participating in his own legal defence.

Working with Robert to explain the court and police processes, his advocate outlined his rights in Easy English using a guide developed by Advocacy for Inclusion. She also used this as a tool to explain the lawyer's motivations for asking certain questions, and to clarify what the presiding judge was ordering. For the first time, Robert finally understood what was happening and he has attributed this to having advocacy support. As a result Robert has not breached his bail or been taken to the AMC for six months.

Robert has engaged with the new wrap around model of advocacy offered by Advocacy for Inclusion and has been supported directly to communicate through individual advocacy, while being trained in specific skills like emotional responses and assertiveness by the self-advocacy training team. In less than one year, Robert understands his rights and his bail conditions due to the advocacy team working closely with him and other services. He is able to abide by the bail conditions and has not been to the AMC.

This case study is an example of the importance of the holistic model of individual advocacy provided by Advocacy for Inclusion. A person with disability who is supported to participate in their justice process from the outset will be in a better position to instruct their lawyer, respond to police or prosecution staff, and ultimately better understand any outcome. A person who is more engaged and understanding of any process and outcome will also be a person who is better able to accept that outcome, whatever it is.⁴⁹ This is a rarity in the current system as the assumption is made that the person cannot participate, rather than on supporting them to participate as an equal.

⁴⁸ United Nations *Convention on the Rights of Persons with Disabilities* articles 12 and 13, http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf

⁴⁹ For an examination of how being supported to participate in legal processes affects perceptions of fairness and consequently wellbeing, see: Beupert, F. (2009) 'Mental Health Tribunal Processes and Advocacy Arrangements: "Little Wins" are No Small Feat' 16 *Psychiatry, Psychology and the Law* 90, 93. Winick, B.J. (1999) 'Therapeutic Jurisprudence and the Civil Commitment Hearing' 10 *Journal of Contemporary Legal Issues* 37, 54. Tyler, T. R. (1992) 'The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings' 46 *Southern Methodist University Law Review* 433.

When people with disabilities do access legal representation, lawyers are ill-equipped to respond to their particular individual needs; for example, allowing the client time to process information, or communicating in ways that support their comprehension and involvement. People with disabilities may need:

“more time to understand and answer questions or... a support person to explain things to them and ensure that they are not overwhelmed by the stress of a new and confronting situation (like a court or police station)”⁵⁰

Advocacy for Inclusion finds that police officers, lawyers, and court staff do not have specific skills for working with people with disabilities, despite the best of intentions. Their focus is on applying their specialist area of expertise, and this is as it should be. Just like many other members of the community, assumptions are made that people with disabilities are unable to be engaged, to make a credible statement, or give evidence, even with supports.

Current justice processes, including meetings with legal representatives, lack the time that is required to ensure full participation by a person with significant cognitive or communication barriers. The need for support is not considered - instead legal presumptions and processes are applied to remove or downgrade the client’s legal personhood, such as through substitute decision-making (guardianship).⁵¹

Lawyers often prefer to speak with family members instead of directly to the person with disability about their case. This saves time, but it results in people with disabilities not being directly represented or heard, and as such their rights are discarded. Many people with disabilities tell Advocacy for Inclusion that they do not understand what is happening, have not had it explained to them, and are overlooked in favour of guardians when seeking information.

The idea that guardianship can fix people’s problems reflects the paternalistic responses that have historically been used toward people with disabilities. As Advocacy for Inclusion argued in our submission to amend the provision of guardianship in the ACT:

“guardianship orders necessitate an imbalance of power, unequal access to legal assistance and uneven valuing of knowledge in both procedure and outcome. The perception that guardianship protects and cares for people with disabilities is unrealistic and must be challenged.”⁵²

People with disabilities are often left in the dark about how their case is progressing and are not provided the support they need to understand and engage in the process. Unfortunately Robert’s case illustrates several existing systemic barriers to justice.

Lawyers, police officers and other relevant personnel are not, and cannot reasonably be expected to become, experts in disability communication or proficient in responding to the various needs of this group. Rather, access to specialist support to assist communication and comprehension in justice settings would enable people with disabilities to meaningfully participate in legal processes. People working in the justice system must be trained in identifying when specialist expertise and support is required, and have access to supports to call in for assistance, in the same way that they currently respond to the need for interpreters in community languages.

By funding specialist independent disability advocacy services to work alongside the justice system, the ACT government will reduce the high levels of marginalisation, and better assist people with disabilities in legal proceedings. This is a low cost, efficient, and highly effective response arising from evidence-based practice.

Recommendation 12: Recognise that specialist independent disability advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

⁵⁰ Fogarty, B. (2010) ‘Improving legal representation for people with intellectual disability’, *Precedent* 96.

⁵¹ The current review of the *Guardianship and Management of Property Act 1991* has illustrated the vital need to overhaul ACT laws around adults making decisions. ACT Law Reform Advisory Council (2015) *Tell us what you think – Adults making decisions in the ACT: Reform of guardianship arrangements for adult people with disabilities in our community - Response Booklet*.

⁵² *Ibid*.

Recommendation 13: The ACT government considers implementing ongoing mechanisms to promote access to justice for people with cognitive disabilities. This could include:

- a) auditing specific barriers in access to justice i.e. the lack of reasonable accommodations for people with cognitive disabilities in legal proceedings;**
- b) collecting ongoing data on the types of support that people with disabilities are requesting or availing of in legal proceedings; and,**
- c) ensuring that legal proceedings – from police intake assessment, courtrooms to administrative tribunals and reporting mechanisms – are accessible for people with disabilities in general.**

Recommendation 14: Recognise the specific disadvantage faced by people with disabilities in accessing justice and support holistic policy and program responses to address it.

Budget savings through independent specialist disability advocacy

The ACT currently spends over \$100,000 per year per prisoner in the AMC.⁵³

The ACT currently spends up to \$51,165.42 per year per child in out of home care.⁵⁴

There are no specialist disability responses in either the criminal justice, or child protection systems in the ACT, yet people with disabilities are heavily over represented in both systems.

Advocacy for Inclusion is a specialist disability response working with scarce resources and has illustrated how effective specialist responses can be. Within the last month we have saved the ACT government close to \$750,000 with success in only a few cases.

Advocacy for Inclusion receives no funds from the ACT government. The ACT does not invest in specialist disability responses to justice inequity. It is time that changed.

It is clear that the availability of specialist independent disability advocacy makes a substantial difference to the experience of people with disabilities engaged with justice processes including criminal and civil, and as offenders, victims and child protection parents. Advocacy for Inclusion has cited several cases illustrating how intervention by specialist advocacy, particularly using our new innovative wraparound model, has made significant differences to the experiences of people with disabilities, but also to lawyers, presiding judges, and police.

While the impending Disability Justice Strategy will contain specific structural adjustments, identify areas for key research, and allocate resources to training and development, it is clear that there are small measures which can be taken immediately to provide reasonable adjustments across the justice system, including introducing the presumption of advocacy support, alongside the availability of specialist independent disability advocacy.

For a small investment now a substantial increase in preventative and reasonable adjustment capacity will be established. This will provide a greater immediate ability to deliver the highly successful and innovative wrap around Advocacy for Inclusion response, including an ACT disability custody notification service (modelled on the successful Aboriginal Legal Service NSW model). For \$500,000 in investment the ACT could be saving several million dollars every year and reduce imprisonment, child removal, and victim marginalisation.

Most importantly it will contribute to an end in marginalisation and exclusion for people with disabilities and contribute to the implementation of the National Disability Strategy, Involve, and the CRPD.

If the ACT government genuinely wishes to address current inequities in the justice system for people with disabilities it will provide these resources now to expand a proven local success. This can then be bolstered by specific mechanisms and benchmarks in a future Disability Justice Strategy where further data collection, research and strategies can be implemented.

Recommendation 15: Invest \$500,000 with Advocacy for Inclusion now to provide early intervention wraparound independent specialist disability advocacy, including a custody notification service, as a means of reducing further waste in the system.

⁵³ Productivity Commission (2016), *Report on Government Services 2016: Chapter 8 Corrective Services*, table 8.1 (Real net operating expenditure on prisons and community corrections plus depreciation, per person (2014-15 dollars))

⁵⁴ Productivity Commission (2016), *Report on Government Services 2016: Chapter 15 Child Protective Services*, Figure 15.2 Total real recurrent expenditure on all child protection services, per child (2014-15 dollars)

Conclusion

People with disabilities experience severe and complex disadvantage when interacting with the ACT justice system. Existing statistics and research indicate a highly disproportionate involvement of people with disabilities across the justice system, though the true extent and nature of this over-representation is unknown. As a disability justice response is being developed and to be implemented as a Disability Justice Strategy, the ACT government must implement a research strategy to shine a light on current marginalisation and, over time, track progress in removing it.

An effective policy response will not isolate criminal justice issues but comprehensively address the inaccessibility and prejudice of the legal system through the implementation of the Disability Justice Strategy and *National Disability Strategy 2010-2020*. Disability justice initiatives in the ACT must also be integrated with broader reforms in disability and justice policy and coordinated with the benefits of advocacy.

It is time for the ACT Government to recognise that the lack of specialist disability support in justice settings is a major roadblock to the effective and equitable participation of people with disabilities in the ACT in their own justice processes, and is exacerbating marginalisation and exclusion.

Police, courts and prison officials are rightly focused on application of the law and developments in their area of expertise. It is unreasonable to expect professionals working in the often pressured and evolving justice sector to possess, or acquire, the considerable skills and knowledge needed to effectively assist the participation of people with disabilities in legal processes. Instead, improvements must focus on ensuring the need for reasonable accommodations to be systemically identified and addressed through the immediate provision of appropriate communication and other supports from the first point of contact between the justice system and a person with disability. This is readily available now by expanding the resources allocated to specialist independent disability advocacy.