

advocacy for **inclusion**

Submission to
ACT Budget Consultation 2018-17

Recognising the purpose of advocacy in the
justice process

Advocacy for Inclusion
October 2017

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*.

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October 2017

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Executive Summary

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 role of advocacy is a critical, fundamental component to the disability reform agenda consistent with the international human right obligation of all Australian governments. This reform agenda is strengthened by the rollout of the National Disability Insurance Scheme (NDIS) and the goals of the National Disability Strategy (NDS) in the ACT and nationally.

The roles of both individual and self-advocacy has largely been removed from the disability reform agenda in the ACT and has been perceived to be less significant when driving policy change and development than the role of service providers and support systems. While there has been significant injection of funding and resourcing with the extension of the National Disability Advocacy Program (NDAP) federally, there has been little to no change for advocacy organisations of reassurance after 2020. In the ACT, this means that the role of individual and self-advocacy is severely under-resourced and under increased pressure, particularly in the area of justice. This is an increasing concern as the purpose of advocacy is directed at supporting the human rights of people with disabilities in the most marginalised and vulnerable situations.

There remains a need to understand the relative underdevelopment of individual and self-advocacy and the benefit it provides people in vulnerable circumstances. The ability for organisations like Advocacy for Inclusion to secure and adequate funding has had harmful consequences on people with cognitive disabilities who rely on skilled support independently or within a group to navigate complex social environments, particularly in areas of social exclusion, guardianship restraint, the housing sector, the criminal justice system and child protection.

Advocacy for Inclusion welcomes the implementation of the Disability Justice Strategy noted in the previous Budget Consultation outcomes^{2 3}, but remains disappointed that the funding allocated has not delivered nor where it has been delivered towards. Recognising advocacy for people with disabilities, particularly through the justice process, will support the implementation of Australia's obligations under the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) 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.⁴

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

² Treasury, ACT Budget 2017-2018, *Better support when it matters for a more inclusive Canberra*, <https://apps.treasury.act.gov.au/budget/budget-2017-2018/media-releases/community-services>

³ Advocacy for Inclusion (2016), *ACT Budget Submission 2017-2018: Recognising Marginalisation*, http://www.advocacyforinclusion.org/Site%20Data/Publications/Budget/ACT_Budget_2017-18_submission_REVISSED_FINAL.pdf

⁴ 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

Summary of Recommendations

Recommendation 1: The ACT Government to meaningfully fund the full range of advocacy services in recognition of their critical role in supporting people with disabilities as active citizens.

Recommendation 2: The ACT Government to meaningfully fund the full range of advocacy services in recognition of their critical role in ensuring self-determination, choice and control for people with disabilities, particularly in regard to the imminent launch of the NDIS, which will increase the demand for advocacy.

Recommendation 3: the ACT Government continues to conduct regular, ongoing consultation with Advocacy for Inclusion around disability reform in the ACT, in recognition that Advocacy for Inclusion is the recognised coordinating point for consultation and engagement with people with disabilities in the ACT.

Recommendation 4: Recognise the specific disadvantage faced by people with disabilities through the benefit of independent, self-advocacy and system advocacy.

Recommendation 5: ACT Government to inject small funding into self-advocacy advocacy towards Advocacy for Inclusion to continue facilitation and resource development as a matter of urgency. This will continue to continue the work of advocacy towards Canberra's most marginalised disability population.

Recommendation 6: Allocate increased funding to expand the ongoing provision of Self-advocacy training for people with disabilities. This training and ongoing support builds skills and supports people with disabilities to assert their preferences and feel confident to take control over their own lives.

Recommendation 7: that the ACT government to significantly increase its commitment to systemic advocacy funding to direct policy and consultations about people with disabilities in the ACT by establishing a system for continuously seeking advice from people with disabilities and Advocacy for Inclusion.

Recommendation 8: Continue the budgetary notion of the ACT Disability Justice Strategy into the 2018-2019 budgetary years to 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 9: Target early intervention and prevention through low cost specialist disability response measures rather than wasting money sending people with disabilities through the justice system, including imprisonment.

Recommendation 10: Utilise resources to alert people in the justice system that a person has disability, for example the new Advocacy for Inclusion wallet card (Appendix A).

Recommendation 11: 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 12: 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. Care and Protection Services must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

Recommendation 13: 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 14: The ACT to research and develop mechanisms through which all people with disabilities, particularly those with cognitive and communication disabilities, are supported to give evidence and be heard in court on an equal basis to people without disabilities.

Recommendation 15: The ACT to undertake an audit of legislation to identify and address the barriers for people with disabilities to access justice.

Recommendation 16: 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 17: Ensure all investigative interviewers undergo specific training in effective disability interviewing techniques with an evidence-based evaluation component for continuous improvement.

Recommendation 18: Recognise that specialist independent disability advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

Recommendation 19: Recognise that specialist independent and self-advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

Recommendation 20: 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 21: Recognise the specific disadvantage faced by people with disabilities in accessing justice and support holistic policy and program responses to address it.

Recommendation 22: 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

“We just help them, be them really”⁵

Year after year, Advocacy for Inclusion has had to decline more than twice as many individual advocacy intakes as it has accepted because of this limited capacity. With the lack of investment and focus on the critical role individual and self-advocacy for people with disabilities in the ACT, it is difficult to adjust to the requirement for the “the advocacy sector... to adjust in significant ways”.⁶ It remains crucial that the “appropriate for the level of government responsible for each service system to acknowledge the role of advocacy within their system and contribute to the pool of funding for independent disability advocacy accordingly.”⁷

The ACT is one of the few Australian jurisdictions that do not match federal individual funds. At present, there is no ACT government funding for neither individual nor self-advocacy advocacy where the most silenced people with disabilities are part of the continuum and no funding for self-advocacy facilitation and support programs for people with disabilities alone. As the ACT moves into a new approach of a restorative community practice, the lack of funding and engagement with the community sector environment surround advocacy does not indicate support for the goals of the CRPD, nor work towards building capacity for people with disabilities to undertake their own advocacy at any level to be able to lift above the highly-marginalised status.

The key future direction for all disability reform in the ACT must be to support the independence of people with disabilities, to shift policy direction. Advocacy for Inclusion has, and continues, to advocate the significant human rights issues for people with disabilities in the ACT, nationally and internationally with alignment of the UN CRPD. At times, this organisation has worked in partnership with other independent advocacy organisation as a form of collaboration and involvement to continue to place the critical human rights issues in areas of justice, parenting, guardianship and housing in the ACT and nationally.

The ACT Government must proactively support the self-determination of people with disabilities. Since the ACT rollout of the National Disability Insurance Scheme (NDIS), which is targeted at improving choice and control for people with disabilities, it has required immediate policy attention.

In an advocacy perspective, self-determination is where a person has choice and control over their life and the decisions made in their life. Self-advocacy skills – the skills to be assertive and speak up for one self – are an essential component of self-determination. The belief that all people with disabilities can learn the skills to have a degree of choice and control over their own lives is fundamental to promoting self-determination.⁸ However, this ability is disbelieved and resisted among the community due to societal misconceptions.

Paternalistic attitudes among the community perpetuate the belief that people with disabilities are passive and cannot be the drivers of their own lives. Many members of the community, including those working in the disability sector, hold the misconception that people with significant disabilities cannot have self-determination. This includes their closest family, carers and support workers. Some people with disabilities are surrounded by ‘doubters’, which directly discourages and blocks a person’s ability to self-advocate and exercise self-determination.

*For some people with disabilities, the years of isolation and exclusion have had a profound impact on self-worth and self-esteem.*⁹

People with disabilities approach Advocacy for Inclusion because they have little or no meaningful control over their lives. People with disabilities ask Advocacy for Inclusion “do I have the same rights as other people”¹⁰.

⁵ Anderson, S. (2013) “We just help them, be them really” *Building positive, included identities: engagement in self-advocacy groups by adults with intellectual disability*. Latrobe University, Victoria.

⁶ Department of Social Services (2016), *Review of the National Disability Advocacy Program Discussion Paper*, p.3

⁷ DANA. (2013), *Submission to Australian Government Community Consultation 2013-14 Budget.*, p. 17-18

⁸ Wehmeyer, M. (1998). Self-determination and individuals with significant disabilities: Examining meanings and misinterpretations. *Research and Practice for Persons with Severe Disabilities*, 23(1), 5-16.

⁹ National People with Disabilities and Carer Council. (2009). Shut out: The experience of people with disabilities and their families in Australia. p. 7. http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nds_report.pdf.

¹⁰ Quote from Self-advocacy participant, *Being Safe, Being Strong* project (2015)

They can see that their lives are different, and often make the assumption that the segregation, exclusion, boredom and demeaning treatment surrounding them is acceptable to the community and therefore must be accepted by them.

The ACT Government must target resources at supporting people with disabilities to develop and then retain their self-advocacy skills so that they can maximise their independence and self-determination. This is most evident in the ensuring people with disabilities have equal access within their own justice process. The ACT Government must proactively support the human rights of people with disabilities across all facets of their lives.

Recommendation 1: The ACT Government to meaningfully fund the full range of advocacy services in recognition of their critical role in supporting people with disabilities as active citizens.

Recommendation 2: The ACT Government to meaningfully fund the full range of advocacy services in recognition of their critical role in ensuring self-determination, choice and control for people with disabilities, particularly in regard to the imminent launch of the NDIS, which will increase the demand for advocacy.

Recommendation 3: the ACT Government continues to conduct regular, ongoing consultation with Advocacy for Inclusion around disability reform in the ACT, in recognition that Advocacy for Inclusion is the recognised coordinating point for consultation and engagement with people with disabilities in the ACT.

‘Seeing’ the Disadvantage

People with disabilities¹¹ are significantly over represented in the criminal justice system as both offenders and victims.¹² In several other areas of the justice system people with disabilities represent large groups of affected people including in child protection, guardianship, and tenancy matters. Yet there are very few specialist disability response services anywhere in Australia, and few that have a capacity to respond to the variety of matters that the disability population faces.^{13 14}

Australia and the ACT have been relying on basic justice solutions to respond to people with disabilities, many of whom have cognitive impairments¹⁵ or significant communication barriers and complex support needs. While many of these existing solutions are high quality for general purposes, they also face substantial demand, and so they struggle to respond appropriately to many people with disabilities.

The outcomes of this generic approach are stark:

- Over half the Australian prison population is people with disabilities.¹⁶
- Parents with disabilities have high exposure to the child protection system.¹⁷
- People with disabilities can be indefinitely incarcerated in Australia.¹⁸

¹¹ The *Convention on the Rights of Persons with Disabilities* includes people with psychosocial disability. As such whenever Advocacy for Inclusion uses the term disability it includes ALL people with disabilities including those with psychosocial disability.

¹² 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>

¹³ In the ACT, the only disability specialist response is the Disability Discrimination Legal Centre which focusses on responding to matters covered by the *Disability Discrimination Act 1991*.

¹⁴ R Tanton, Y Vidyattama, Y & I Mohanty, *Disadvantage in the ACT: report for ACT Anti-Poverty Week*, NATSEM, Canberra, 2013, p.iii.

¹⁵ The term cognitive impairment covers a broad range of disabilities including intellectual disability, brain injury and psychosocial disability.

¹⁶ Human Rights Law Centre (2015) *Australia's Human Rights Score cards – NGO Coalition Fact Sheet 10 – People with Disability and Mental Illness*; Australian Institute of Health and Welfare (2013) *The health of Australia's prisoners 2012*.

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

¹⁸ Justice diversion provisions for people with cognitive, psychosocial disability or mental illness within the criminal justice system deemed 'unfit to stand trial' have resulted in indefinite detention of people in prisons or psychiatric facilities without conviction. See Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014). KA, KB, KC

- People with disabilities face a low incidence of their legal problems reaching successful resolution.¹⁹
- People with disabilities experience higher rates of violence.²⁰
- Women with disabilities experience very high rates of physical and sexual violence.²¹
- People with disabilities are not seen as credible witnesses.²²
- There are low rates of prosecution of assaults perpetrated against people with disabilities.²³
- People with disabilities feel substantially less safe out in their local area and at home alone at night.²⁴

The assumption that basic solutions will manage, or be able to provide specialist expertise as required, is clearly flawed. If basic solutions were going to work they would be doing so already, and they are not. The lack of a specialist disability response means people with disabilities simply don't have equal access to justice or the resources to participate actively in the community.

A system that recognises that some groups in our community are disadvantaged, and provides specialist responses for them, is simultaneously expecting that the most disadvantaged group will be well served by basic responses. Advocacy for Inclusion's mission to value and 'see' marginalisation through advocacy has been developed to be a support system with people with disabilities, particularly those with cognitive disabilities, feel they belong, are able to contribute and contain a sense of participation and ownership.

The key contributing factor to the current situation is a long term failure by the community to recognise the considerable disadvantage faced by people with disabilities in accessing justice on equal terms to the broader population. There is no specific blame to attach to this failure; rather it is a cultural phenomenon that has arisen over many centuries of poor responses to the needs of people with disabilities.

Recommendation 4: Recognise the specific disadvantage faced by people with disabilities through the benefit of independent, self-advocacy and system advocacy.

Self-Advocacy

There is an urgent need to build the self-advocacy capacity in people with disabilities to affirm their self-determination. Current demand illustrates a desire by individual people with disabilities and other organisations supporting people with disabilities to access self-advocacy training. Advocacy for Inclusion recognises that people with disabilities learning self-advocacy skills need active ongoing support in order to sustain those skills.²⁵

The outcome of Advocacy for Inclusion's model of self-advocacy training is to provide members with the opportunities to 'speak out' to gain confidence in sharing experiences and talking about issues in their lives

and *KD v Commonwealth (Department of Prime Minister and Cabinet, Department of Social Services, Attorney-General's Department)* [2014] AusHRC 80.

¹⁹Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-wide survey: Legal need in the Australian Capital Territory* (Vol. 8). Law and Justice Foundation of New South Wales, xv, xix.

²⁰ Australian Bureau of Statistics. (2012). *Personal Safety, Australia, 2012 - 44906.0*. Table 11 – Experience of violence during the last 12 months, Disability Status. People with disability were found to be more likely to experience violence (a physical or sexual assault or threat) in the preceding 12 months. It was noted that those with severe communication disabilities would be under represented by the survey and people residing in non-private dwellings, such as institutions, were excluded – therefore, the populations of people with disabilities most likely to experience violence were not captured by this survey.

²¹ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia. Background Paper*. Hobart: Women with Disabilities Australia; Frohmader, C Dowse, L., and Didi, A. (2015) *Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective*. Hobart: Women with Disabilities Australia.

²² See for example *Director of Public Prosecutions v Vinod Johnny Kumar* [20 November 2013] VCC. See also Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings* (2014).

²³ Australian Human Rights Commission. (2014). *Equal before the law: Towards disability justice strategies*.p20. Camilleri, M. (2010) *Disabled Justice: Why reports of sexual assault made by adults with cognitive impairment fail to proceed through the justice system*.

²⁴ Australian Bureau of Statistics (2011) *Social Participation of People with Disability – 4439.0* , Feelings of Safety.

²⁵ Advocacy for Inclusion. (2012). *Developing Supporting Self-Advocacy training: Why and how*. Presentation to the world congress on guardianship, Melbourne.

www.advocacyforinclusion.org/index.php?option=com_content&view=category&layout=blog&id=48&Itemid=59

affecting them. Unfortunately, without the funding and resources, Advocacy for Inclusion has been unable to deliver continuous training outside of the regular self-advocacy peer groups to make a significant impact.

Self-advocacy training is an example of the programs needed to build assertiveness skills and knowledge of their rights among people with disabilities. Particular attention must be applied to supporting those who are most unengaged²⁶ and disempowered to exercise control and choice. These are the people comprising a significant portion of the NDIS recipient target group, and who are typically assumed to be 'unable' to make choices and be self-determined. Many will need intensive, practical and ongoing supports, especially those who do not learn well via conventional "class room" style teaching, and those who may need ongoing support to retain skills. Some people with disabilities will require information in alternative communication formats for example, the use of new technologies such as iPads and communication cards.

Participating in the activities of self-advocacy groups has created opportunities of change in the lives of participants, including developing relationship-building skills and self-confidence in their ability to speak for themselves and make independent decisions. Being part of a group has led self-advocates to connect with other members of the group as well outside the group. In our experience, the participation self-advocacy peer programs has changed individual self-perception for people with disabilities and become a catalyst for new and positive identities in the community. Through their experience, participants have become 'people' who actively contributed to the community as well as people who received support.

Case study 1

Jackson has a cognitive disability. He began engaging with Advocacy for Inclusion when he was in the AMC prison. He was provided individual advocacy in relation to his criminal matter which stemmed from the removal of his dogs who were his world and family.

His dogs were removed by the RSPCA due to neglect by assumption. Jackson reacted badly to his dogs being seized and was subsequently arrested by police due to unsafe behaviour.

Advocacy for Inclusion works with Jackson with collaboration of Legal Aid ACT throughout the court process, assisting Jackson with navigating the court process, finding alternative accommodation and support for Jackson so he could be released from the ACT, as well as support him with his meetings with Corrective Services.

Through receiving support and engagement with his advocate, Jackson worked with addressing his aggressive behaviour and building his self-advocacy skills, as well as focusing on goals in obtaining employment, housing and regaining his driver's license.

A positive outcome has been the sense of independence to continue with Advocacy for Inclusion from individual one-on-one advocacy to attending self-advocacy courses to continue bettering himself and making choices around his behaviour and self-determination.

Individuals who had gain confidence to become a self-advocate in their own right have had a greater engagement within the community, express a greater sense of wellbeing and use less support services. Participants from our self-advocacy programs have fulfilled goals of remaining out of the justice system, applying new conflict resolution skills, made arrangements for their own life circumstances and reduced reliance on support services.

Case study 2

Emma has been a regular attendee of our self-advocacy group for a number of years. Over time she has developed and practiced her self-advocacy skills through becoming highly active and involved in her local community. Since becoming involved in self-advocacy, Emma has enrolled in tertiary studies in politics.

²⁶ The term "unengaged" is used to apply to people who have never had an opportunity to be engaged, as opposed to "disengaged" which implies a former level of engagement that no longer exists.

Prior to becoming involved in self-advocacy, Emma had never formally voted in elections as she found the concept of voting overwhelming and the system confusing as nobody had explained the process to her in a way that enabled her to understand. In 2016 to coincide with the 2016 local and federal elections, the self-advocacy group led by facilitators at Advocacy for Inclusion²⁷ discussed topics around accessing information on political party policies, voting and the logistics around making decisions of what issues are important individually but also collectively to benefit the local community.

Emma attended all sessions and later disclosed the impact that the discussion around voting and engaging in the political process had for her and she felt confident voting for the first time.

As an outcome, Emma has now entered tertiary study with a focus on politics and has indicated that she would like to become further involved by becoming a member of a political party within the ACT.

An ongoing self-advocacy facilitation program which delivers training, develops appropriate resources targeted to meet various needs and provides advanced and refresher support to participants would cost the ACT Government a small sum to reduce the number of people with disabilities in the justice system. Self-advocacy support for people with disabilities cannot be provided in an ad hoc or project fashion, rather there must be a continuing availability to ensure the skills learned are retained and grown to improve the lives of the marginalised population in the ACT.

Recommendation 5: ACT Government to inject small funding into self-advocacy advocacy towards Advocacy for Inclusion to continue facilitation and resource development as a matter of urgency. This will continue to continue the work of advocacy towards Canberra's most marginalised disability population.

Recommendation 6: Allocate increased funding to expand the ongoing provision of Self-advocacy training for people with disabilities. This training and ongoing support builds skills and supports people with disabilities to assert their preferences and feel confident to take control over their own lives.

Individual Advocacy

Advocacy for Inclusion provides advocacy for some of the most marginalised, isolated, and excluded people in our community, where independent advocacy one-on-one aims to address the silencing of people with disabilities either through community prejudices, a lack of self-advocacy ability, or isolation and fear. These are often people who are afforded no real voice of their own, have little or no involvement in making day to day decisions about themselves, and who have minimal opportunities to engage in the community and require one-on-one advocacy to address issues accrued through their life circumstances.

Individual advocacy is grossly under-resourced in the ACT, as well as self-advocacy. Advocacy for Inclusion has no option but to decline individual intakes frequently as we do not have the advocates to meet the demand²⁸. To operate as active citizens, people with disabilities need to challenge the negative attitudes and exclusion they face in the community. This is a huge job. They need back-up to support their voices to be louder and to be heard. Independent advocacy provides this back-up, particularly within the justice process.

Advocacy for Inclusion currently has one individual advocate with a high capacity workload and often turns away request for assistance each week. Those being turned away are often in urgent need of assistance, have been discriminated against or have experienced exclusion. Many requests are justice-related where people

²⁷ In 2016, the Advocacy for Inclusion [Voting Kit](#) resulting from this group has been recognised internationally as a best practice model in supporting people with disabilities in the voting process.

²⁸ A tracking audit undertaken in early 2013 showed that for every person with disability who could be supported through individual advocacy, Advocacy for Inclusion had to turn away two other people who desperately needed our advocacy assistance.

with disabilities continue to be trapped within the criminal justice system, child protection and guardianship matters and have no other way to resolve their circumstances.

Case study 3

Sammy has a cognitive disability. He began engaging with Advocacy for Inclusion when he was in the AMC prison. He was provided individual advocacy support in regards to his criminal engagement relating to high-density housing unsuitability. He was continuously being targeted by other tenants due to his vulnerability and pushed into legal activity resulting in threats of vandalism to his property and violence if he did not comply.

A barrier faced by Sammy was a prior drug-use history where the suitability of his housing arrangement made it difficult to overcome in an environment where people housed in the same complex where in and out of the AMC.

Sammy was expected by ACT Housing to continuously make complaints to the police so he could obtain policy reference numbers to support his housing transfer application; however it put Sammy at more risk with those who were targeting his vulnerability.

Continuous efforts to have Sammy removed from the environment and placed into suitable housing finally occurred after 10 months after the original application for a priority transfer was made. Sammy is now housed in a more appropriate accommodation that is not high-density or in the midst of criminal activity.

Sammy takes great pride with his new house dwelling.

With the assistance and collaboration of his advocate, Sammy's housing has been resolved and he is no longer at risk of abuse and violence and he has progressed to the self-advocacy to strengthen his skills in having a voice in his circumstances and self-determination in his choices.

The above case study highlights how individual advocacy can change an outcome that is beyond the reach of the individual involved, particularly when it comes to engaging with stakeholders involved.

There will always be a need for some individual advocacy services as there will always be a cohort of people with disabilities who face communication barriers, low confidence and limited decision-making capacity in their lives. Individual advocacy supports some of the most marginalised and vulnerable people in the ACT community. Many people with disabilities struggle to achieve positive outcomes in accessing simple supports and services, in having their fundamental human rights realised and in working towards life goals that other community members take for granted. Individual advocacy works to achieve these goals.

Individual advocacy is a key design feature of all disability service systems to ensure that an individual is given the self-determination to participate in our society. It will ultimately not be possible for service systems to appropriately target their services without advocacy support and representation being available to those most in need of services. Nor will it be possible for service systems to ensure inclusive quality assurance and improvement processes are in place without the feedback loops created by individual and systemic advocacy practice.²⁹

Systemic Advocacy

The voice of people with disabilities must be heard across a full range of activities and issues that people with disabilities wish to engage in. It is only relatively recently that this voice has been considered at all and the infrastructure to support it is yet to be fully developed, particularly within the justice process and active community participation.

²⁹ DANA. (2013). *Submission to Australian Government Community Consultation 2013-14 Budget*.

Disability remains a major area of change and development, both for the ACT government and the community sector – responding to this change will require a sustained capacity building effort. The disability advocacy sector comprises advocacy organisations and consumer representative organisations. In the ACT this is only a small sector with no peak body, unlike many other sectors which have a plethora of service providers, plus a state based peak attached to a national peak. All of the disability advocacy organisations in the ACT are strongly connected with national peak bodies, and through them with national sectors; however, at the ACT level the resources and capacity remain small.

A few small non-government organisations with very limited funding are expected to provide expert advice across a wide range of disability related areas on an ad hoc basis. This is a serious handicap to the government developing good policy and programs about disability matters. It also sends a message that disability related matters are unimportant, and that what people with disabilities have to say is less valuable.

Policy development, analysis, and advice to government should be done to the greatest extent possible by people with disabilities regarding disability issues. However, they are scarcely employed in these positions or in directly delivering government services to the community. It is important in maximising the self-determination of people with disabilities and having them meaningfully engaged in the work concerning them and the community. It is also important in enabling people with disabilities to be supported by other people with disabilities, who have better insights into the disability experience.

The lack of a peak body results in the sector struggling to perform an ongoing and robust research role, despite the ACT Government understanding where research needs to be undertaken and how it might support an understanding of improved service provision. Naturally some work is undertaken but at a critical time in the development of disability policy and programs, and the obligation to understand the implications of a human rights approach to disability, people with disabilities in the ACT are unable to properly or fully engage in national and local discussions across the broad range of areas currently being addressed. Rather they are forced to identify which processes to disengage from.

With the current plethora of large and critical consultative and policy development processes this is effectively ensuring that ACT people with disabilities are being denied engagement at a crucial time. This is critical to realising the obligations it has under the CRPD to consult people with disabilities through their representative and advocacy organisations; however, as mentioned above, this consultation is still inconsistent.

Recommendation 7: that the ACT government to significantly increase its commitment to systemic advocacy funding to direct policy and consultations about people with disabilities in the ACT by establishing a system for continuously seeking advice from people with disabilities and Advocacy for Inclusion.

Disability Advocacy in the Justice System

Advocacy for Inclusion is currently working towards working with stakeholders and people with disabilities to navigate and be equal participants in the justice process. 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.

The overrepresentation of people with disabilities in the criminal justice system, the indefinite detention of people with disabilities in prisons and the significant barriers to access to justice for people with disability is epidemic. Recent reports from the Australian Human Rights Commission, the Australian Law Reform Commission and the Productivity Commission³⁰ and the subject of inquiry including the Senate Standing

³⁰ Australian Human Rights Commission, *Equal before the Law: Towards disability justice strategies*, 2014; Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124, 2014; Productivity Commission, Australian Government, *Access to Justice Arrangements – Draft Report*, 2014.

Committee on Community Affairs Inquiry into Indefinite Detention³¹ of people with cognitive and psychiatric impairment in Australia have too identified the gap as an increasing problem across Australian states and territories.

The Disability Justice Strategy has initially been committed towards for two years in the 2017-2018 ACT Budget³², yet there has been no ongoing commitment for such funding or outcomes have been measured for the Strategy and it seems to have been placed to the side. There are no current mechanisms to address any of these shortcomings in the justice system. The Disability Justice Strategy will be a critical early intervention measure that could be undertaken immediately and provide results in the long-term.

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.^{33 34}

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 defense.

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 support 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

³¹<http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Indefinite_Detention>

³² ACT Treasury, Better support when it matters for a more inclusive Canberra, see <https://apps.treasury.act.gov.au/budget/budget-2017-2018/media-releases/community-services>

³³ 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>.

³⁴ 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.

outcome will also be a person who is better able to accept that outcome, whatever it is.³⁵ This is a rarity in the current justice system as the assumption is made that the person cannot participate, rather than on supporting them to participate as an equal.

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.³⁶

Recommendation 8: Continue the budgetary notion of the ACT Disability Justice Strategy into the 2018-2019 budgetary years to 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.

The Barriers Faced

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.

People with disabilities are widely and significantly economically disadvantaged in Australia.³⁷ They are overrepresented in the justice system as complainants, litigants, defendants, victims and other witnesses.³⁸ This reduces their access to legal support and representation considerably and exacerbates their barriers to justice. At Advocacy for Inclusion consumers have had their cases turned down by Legal Aid as the risk that their case will not be successful is greater than other cases. This includes extremely serious matters such as appealing child protection orders. As a result many people with disabilities are unable to have their matters heard in court. Resources for legal support and representation must be improved for people with disabilities and has been undertaken by Advocacy for Inclusion through a new Justice Orientation Project.

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.^{39,40}

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

³⁵ For an examination of how being supported to participate in legal processes affects perceptions of fairness and consequently wellbeing, see: Beaupert, 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.

³⁶ Final report from the Senate Standing Committee on Community Affairs Inquiry into violence, abuse and neglect against people with disability
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>

³⁷ Williams, R. (2010). *Model of Citizenship Support*. (Discussion Paper, Julia Farr Association),

³⁸ CRPD Civil Society. (2012). *Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities*.

³⁹ 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>.

⁴⁰ 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.

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.

Then question how many people with disabilities are actively involved in community participation on the same capacity as their non-disabled counterpart? For instance, the budget consultation process does not involve concerted efforts by government to engage people with disabilities, particularly those who are most isolated and unengaged⁴¹. Consider people with disabilities who live in supported accommodation. Many of these people have high support and access needs, and are inexperienced in participating in community consultations due to access barriers. Many are unable to participate in submitting a written contribution due to communication or literacy barriers, and find consultation forums intimidating and unwelcoming, and not suited to their disability access needs. However, these are the people who are most directly and significantly impacted by government policies and funding decisions. Advocacy for Inclusion advocates with and on behalf of these people to help them be heard by government, however, advocacy in the ACT, and nationally, is grossly underfunded which directly prevents meaningful consultation with this highly marginalised group.

A few small non-government organisations with very limited funding are expected to provide expert advice across a wide range of disability related areas on an ad hoc basis. This is a serious handicap to the government developing good policy and programs about disability matters. It also sends a message that disability related matters are unimportant, and that what people with disabilities have to say is less valuable.

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

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 our advocacy delivery to develop a wraparound⁴² 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 disabilities⁴³ are able to access an advocate through the National Disability Advocacy Program (NDAP).⁴⁴ In the ACT each year independent advocacy services, including Advocacy for Inclusion, 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.⁴⁵ 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”.

⁴¹ The term “unengaged” is used to apply to people who have never had an opportunity to be engaged, as opposed to “disengaged” which implies a former level of engagement that no longer exists.

⁴² 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.

⁴³ The current resource available in the ACT equates to less than 40 people per year supported with justice processes.

⁴⁴ 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>

⁴⁵ 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>

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;⁴⁶
- b) people with disabilities regularly don't attend Tribunal processes which impose or review Guardianship and Administration Orders;⁴⁷
- 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;⁴⁸
- 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).⁴⁹

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.⁵⁰ 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.

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.⁵¹ 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 5

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

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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 ;

⁴⁹ 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>

⁵⁰ 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>

⁵¹ 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.

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.

Such a case study has been part of the success arising from the Advocacy for Inclusion model of advocacy delivery illustrate that this 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 9: Target early intervention and prevention through low cost specialist disability response measures rather than wasting money sending people with disabilities through the justice system, including imprisonment.

Recommendation 10: Utilise resources to alert people in the justice system that a person has disability, for example the new Advocacy for Inclusion wallet card (Appendix A).

2. Being a parent

Parents with disabilities have high exposure to the child protection system.^{52 53} 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.^{54 55 56 57 58 59}

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.⁶⁰

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

⁵² 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

⁵³ 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

⁵⁴ 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

⁵⁵ McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. Sydney: University of Sydney.

⁵⁶ 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

⁵⁷ Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). *Understanding and supporting parents with learning difficulties*. Melbourne: Victorian Parenting Centre

⁵⁸ 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

⁵⁹ 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

⁶⁰ AIHW (2016) Child Protection in Australia 2014-2015, p.

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".

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 6

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.

Since the availability of the NDIS is the ACT, 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 11: 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 12: 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. Care and Protection Services must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

Recommendation 13: 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.

3. Being a victim

The ACT Government must take immediate action to protect people with disabilities from violence and abuse. Studies show that people with disabilities experience higher rates of abuse and violence than people without

disabilities.^{61 62 63} “Research suggests high rates of violence, abuse and neglect of women and girls with disabilities in institutional settings. Such violence is experienced more often than men with disability in institutions. In these circumstances, women with disabilities may experience violence for longer periods of time due to inadequate pathways to safety, and may be afraid to report incidents for fear of reprisal or a lack of confidence in authorities and the justice system.”⁶⁴

Many people with disabilities are not even aware that what is happening to them is actually violence or abuse – they are conditioned and oppressed or are unaware of their rights. Compounding this is the fact that many of these forms of violence are not recognised as violence by the general community, statutory bodies and judicial systems. There is little in the way of legislative protections, programs and resources to support people with disabilities to be free from these issues. Unlike in NSW, the ACT *Family Violence Act 2016* does not recognise the types of relationships that occur in disability group homes due to its narrow definition of ‘domestic relationships’ and does not always constitute as ‘family’ although it is a domestic dwelling. This means that people with disabilities are significantly excluded from the Act’s protections.⁶⁵ Because of this people with disabilities are not supported appropriately if at all to have co-resident perpetrators removed or to find alternative accommodation. This is a crucial and urgent point for change.

As in other domestic situations, violence also occurs in disability group homes. Many people with disabilities, particularly those in group homes and other institutional settings, live in an arrangement and with people not of their choosing. This results in conflict between house mates and escalates to violence.

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.⁶⁶ 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.⁶⁷

In the ACT a victim or witness with disability can be deemed not a “credible witness” and for victims with disability, this means that police do not proceed with charges. When this happens, the person with disability is not allowed to give evidence in court. The case is then dropped before going to trial unless a more “credible” witness comes forward. For example, Advocacy for Inclusion is aware of cases in the ACT where a person with an intellectual disability was raped. They were deemed not a credible witness due to their intellectual disability and subsequently the cases were dropped. The alleged offenders are never sent to trial.

This is an urgent point of change that is crucial to the safety and wellbeing of people with disabilities, who are often in most need of the court’s protection. The ACT must develop mechanisms by which people with communication and cognitive disabilities can be heard in court, and their evidence given equal weight to people without disability. This includes greater flexibility to acknowledge and value alternative communication methods such as drawings, pictures, audio recordings, gestures, and the use of advocates.

⁶¹ Powers, L., Curry, M., McNeff, E., Saxton, M., Powers, J., & Oschwald, M. (2008). End the silence: A survey of abuse against men with disabilities. *The Journal of Rehabilitation*, 77.4.

⁶² Powers, L., Curry, M., Oschwald, M., & Maley, S. (2002). Barriers and strategies to addressing abuse: A survey of disabled women’s experience. *The Journal of Rehabilitation*, 68(1).

⁶³ Hughes, R., Lund, E., Gabrielli, J., Curry, M., & Powers, E. (2011). Prevalence of interpersonal violence against community-living adults with disabilities: A literature review. *Rehabilitation Psychology*, 56(4), 302-319.

⁶⁴ Australian Human Rights Commission. (2012). *Independent interim report on CEDAW: Report to the committee on the elimination of all forms of discrimination against women*. http://www2.ohchr.org/english/bodies/cedaw/docs/followup/ngos/AHRC_Australia.pdf

⁶⁵ CRPD Civil Society. (2012). *Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities*.

⁶⁶ 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.

⁶⁷ 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.

Recommendation 14: The ACT to research and develop mechanisms through which all people with disabilities, particularly those with cognitive and communication disabilities, are supported to give evidence and be heard in court on an equal basis to people without disabilities.

Recommendation 15: The ACT to undertake an audit of legislation to identify and address the barriers for people with disabilities to access justice.

Case study 7

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 family⁶⁸. Zafir continues to indicate that he wanted the worker to face consequences, but there is no mechanism available to make this happen.

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 16: 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 17: Ensure all investigative interviewers undergo specific training in effective disability interviewing techniques with an evidence-based evaluation component for continuous improvement.

Recommendation 18: 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

In the ACT, people with disabilities have significantly higher prevalence of legal problems overall and substantial, multiple and diverse legal problems.⁶⁹ People with disabilities are the only disadvantaged group with significantly lower levels of finalisation of legal problems.^{70 71} The current system works somewhat retrospectively and advocacy seeks to change the outcome that disadvantage the individual. Once a legal

⁶⁸ Excerpt from Advocacy for Inclusion's 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

⁶⁹ Ibid. xv.

⁷⁰ Ibid. xix.

⁷¹ 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..

⁷¹ Ibid, 19.

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, which can be harmful to their case overall without the knowledge and understanding by lawyers and justice staff that individual and self-advocacy can be key to determining an influential outcome for all involved.

Shifting the support emphasis in the 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 as a form of advocacy. It will also align more readily with Australia's obligations under the UN CRPD articles 12 and 13, which insist that all people with disabilities have a right to equality of access to justice through holistic advocacy.⁷²

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)"⁷³

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 – this is where advocacy reaches its full capacity. 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).⁷⁴

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.

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.

⁷² 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

⁷³ Fogarty, B. (2010) 'Improving legal representation for people with intellectual disability', *Precedent* 96.

⁷⁴ 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*.

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 19: Recognise that specialist independent and self-advocacy is a low cost, high outcome, response to reducing marginalisation of people with disabilities in justice processes.

Recommendation 20: The ACT government considers implementing ongoing mechanisms to promote access to justice for people with cognitive disabilities. This could include:

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

Recommendation 21: 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

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 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 22: 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.

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.

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 between the justice system and a person with disability. This is readily available now by expanding the resources allocated to specialist independent disability advocacy.

The ACT Government must improve consultation with and advocacy support for people with disabilities to ensure that their voice is heard on policy and service matters directly concerning them. There is high demand for advocacy support in Australia and despite this and the above commitments, independent disability advocacy organisations are severely underfunded.⁷⁵ The NDIS will create increased demand for independent disability advocacy services and the result will lead to further marginalisation that the benefit of individual, self-advocacy and systemic advocacy can effectively reduce in time.

⁷⁵CRPD Civil Society. (2012). *Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities*.

The **POLICE** want to talk to me



Tell them you have a disability



You need to listen



Be calm and polite

It's OK

- ✓ tell them you have a disability
- ✓ tell them your name
- ✓ tell the police where you live
- ✓ tell the police when you were born
- ✓ have them call a person you trust
- ✓ tell them what support you need



Don't say anything else.

Anything you say to police can be used in court against you.