

advocacy for **inclusion**

Submission to Out of Home Care Strategy
2015-2020 Proposal

Advocacy for Inclusion

June 2014

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 individual, self and systemic advocacy services for people with disabilities. We provide information, education, and representation to effectively advocate for positive and inclusive outcomes for people with disabilities.

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

Fax: 6257 4006

Email: info@advocacyforinclusion.org

ABN: 90 670 934 099

General Manager: Christina Ryan

Policy Officer: Ellen Read

June 2014

(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 General Manager of Advocacy for Inclusion.

Introduction

Advocacy for Inclusion is a not-for-profit non-government community organisation in the Australian Capital Territory. We provide individual, self and systemic advocacy to people with disabilities to promote their human rights and inclusion in the community. We advocate for people with disabilities to fulfil their rights as parents as outlined in Article 23 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

Overall, Advocacy for Inclusion supports the proposed Strategy. Many initiatives outlined show great potential to support the needs of families headed by parents with disabilities. We remain concerned that a lack of acknowledgement of people with disabilities as parents and the particular barriers they face will result in continued exclusion of people with disabilities as valued family participants.

Endorsements

Placement prevention strategies

Advocacy for Inclusion is especially supportive of the service elements proposed under the *Strengthening High Risk Families Domain*. Intensive supports targeted at supporting children to stay with their family of origin are sorely lacking in the ACT. We expect that the introduction of such supports will lead to very positive outcomes for parents and children, including parents and children with disabilities, as well as significantly reduce pressures on the out of home care system. To ensure that the child protection system is sustainable into the future and has the capacity to produce the best outcomes for young people and families, we support this shift in service provision.

Recommendation 1: Advocacy for Inclusion commends the proposed service elements under the *Strengthening High Risk Families Domain*, especially intensive in-home supports to prevent placement prevention and support restoration.

Improve accountability and transparency

We support the content outlined under *Strengthening Accountability and Ensuring a High Functioning Care System Domain*. In our advocacy work with individuals we have observed a number of concerning transparency and accountability issues particularly with contracted out of home care agencies. We strongly support the proposed improvements in oversight and governance of these agencies, particularly in light of the investigations and recommendations made by the ACT Public Advocate's Office.

Recommendation 2: Advocacy for Inclusion commends the proposed improvements to accountability and service quality outlined under *Strengthening Accountability and Ensuring High Functioning Care System Domain*.

Remaining concerns

Seeing and hearing parents with disabilities

As identified in our Response to the Discussion Paper last year¹, we remain concerned that parents with disabilities are not in any way acknowledged in the Proposal. There is a growing body of evidence suggesting that parents with cognitive impairment (including intellectual and psychosocial disabilities) are subject to very high rates of child protection interventions and child removal, with issues such as prejudice, discriminatory attitudes and a chronic lack of appropriate parenting supports being contributing factors.^{2 3 4 5 6 7} Indeed these issues are central to the experiences of our consumers who are involved in the child protection system.

¹ 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

² 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

We believe that the Proposal has great potential to meet the needs of families headed by parents with disabilities. However, parents with disabilities will continue to face discrimination and barriers in being recognised as worthy and legitimate parents if change is not made at the systemic level. In order for the Proposed Strategy to benefit rather than harm families headed by parents with disabilities, it must be interpreted by senior and direct child protection workers and out of home care agencies with an awareness and understanding of the issues facing parents with disabilities. Otherwise, much of the Strategy is at risk of being applied inappropriately and discriminatorily when working with these parents.

Recommendation 3: The Out of Home Care Strategy must acknowledge people with disabilities as parents and the heightened risk they face of having their children placed in out of home care.

Recommendation 4: The Strategy must 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 with these families.

No data is systematically collected on the prevalence of parents with disabilities in the ACT child protection system. This lack of data collection was noted as an issue for other marginalised groups, such as people from diverse cultural backgrounds, by stakeholders at the community consultation workshop last year. Whilst we know that there is a significant issue facing parents with disabilities, they are currently invisible in the data. Without data, appropriate policies and programs cannot be developed to address child protection issues for parents with disabilities, and to meet the needs of children and families involved in the child protection system.

Recommendation 5: The Out of Home Care Strategy 2015-2020 must include a provision to routinely collect demographical data from child protection service users in the ACT, including whether or not the parent/s and/or child have disability. This should be done along with the collection of other pertinent data such as cultural background to identify and address intersecting areas of disadvantage.

Tendering placement prevention and restoration supports

All parents require supports flexible to suit their individual needs and goals. However, parents with disabilities coming into contact with the child protection system are likely to require unique supports related to disability specific needs. Therefore, when tendering takes place for these services, services chosen must be accessible to the diverse needs of parents with disabilities. Services must have a proven capacity or ability to develop this capacity to deliver good practice approaches with parents with disabilities.

Recommendation 6: Services chosen to deliver placement prevention and restoration supports must have a proven capacity or ability to develop this capacity to deliver good practice approaches with parents with disabilities.

The NDIS must also be recognised as a resource for parents with disabilities; the NDIS rules specifically allow for the parenting support needs of people with disabilities to be covered by NDIS funds⁸. Many parents with

³ McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. Sydney: University of Sydney.

⁴ 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

⁵ Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). *Understanding and supporting parents with learning difficulties*. Melbourne: Victorian Parenting Centre

⁶ 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

⁷ 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

⁸Section 13 NDIS *Operational Guideline – Planning and Assessment – Supports in the Plan - Household Tasks*
<http://www.ndis.gov.au/document/726>

disabilities do not require disability specific support until they have children and will not have access to NDIS at the time they are referred to Care and Protection Services. Child protection workers must be aware of the NDIS and refer parents to the NDIA for appropriate disability responsive parenting supports as needed.

Recommendation 7: 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. CPS must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

Caution on reduction of maximum orders for infants

We are particularly concerned about the reduction of maximum orders to one year for infants aged under two years. Some parents with disabilities face specific barriers to learning and performing parenting skills and require support over a longer-term or ongoing basis. The ongoing nature of disability and the related parenting support needs must be recognised just as they should be when a person with disability requires ongoing support with personal care or mobility, for example.

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. These misunderstandings will result in children being unnecessarily permanently removed from the care of parents

Assessment of parents with disabilities must consider whether parents are providing good enough care *with support*. We do not want to see children being permanently removed from parents able to parent with adequate and appropriate support due to misunderstandings about significant support needs that remain at the end of a maximum 12 month order. People with disabilities have the right to access support to parent their children well (UN CRPD, Article 23) and the need for support must not be seen as failure or inadequacy in the parent.

Recommendation 8: The Strategy must acknowledge that persistence of parental disability support needs at the end of a 12 month order for children aged under two years is not indicative of a parent's inability to address issues that brought a young child into care. It must be acknowledged that some parents with disabilities will only be able to address child protection concerns with access to appropriate and ongoing support that matches their ongoing disability support needs.

Children's advocacy

There exists an inevitable conflict of interest in Care and Protection Services and out of home care agencies. These agencies by nature of their work are focused not only on the needs of the child but also on those of foster carers, family of origin and the demands in a risk averse climate of child protection practices. We are concerned that the views and wishes of children are often lost in the scheme of this, particularly in an overburdened system.

The Proposed Strategy acknowledges the need for carer advocacy and support to address conflicts of interest. We strongly recommend that children also need access to an independent advocacy service provided solely for the purpose of advocating children's wishes. Advocacy for Inclusion and ADACAS in the ACT are examples of how such a service might function. This would provide children access to individual advocacy services which are independent from the child protection system, whose focus would be on supporting and promoting the child's wishes and ensuring their voice is heard. The child should be routinely made aware of this service and access it when they choose.

The Children's Commissioner plays an extremely important independent role in assisting children with complaints. However, the process involved is formal, highly structured and arduous compared with access to a community based organisation providing non-statutory independent advocacy support. The Children's Commissioner does not have the capacity to provide support to children outside of a formal complaints process. Community based independent advocacy for children would provide easier to access services that are not based around a complaints process. The services would be focused on working alongside a child to

identify, articulate and promote their wishes during times of change or at routine Review of Arrangement Meetings.

Recommendation 9: The Strategy must include community based independent advocacy for children in the out of home care system targeted at supporting children to identify, articulate and promote their wishes.

Contact and restoration in cases of 18 year orders

Some children have been removed from their families on the basis of parental disability and lack of disability responsive parenting supports. We know this from our direct practice experience, as well as from the research literature⁹. We have experience with such parents who have maintained positive relationships with their children who are on 18 year orders, whose foster placements are temporary and who wish to return to the care of their parent. However, because the child is on 18 year orders CPS workers are extremely reluctant or unwilling consider exploring how the parent might be supported to have the child returned to their care despite access to support funds under the CSD Enhanced Service Offer and the upcoming NDIS. When a child is on 18 year orders it seems the parent is ruled out as a potential carer, regardless of the circumstances.

Children remain in unstable, unsafe or temporary foster placements when their parents now have access to the disability supports they needed at the time their child was removed, and when child and parent have maintained long-term, strong and positive relationships. The Strategy must acknowledge that under particular circumstances reunification should be considered an option worth exploring for children on 18 year orders in order to achieve the best outcomes for children and young people.

Recommendation 10: The Strategy should acknowledge that in some circumstances 18 year orders should be reviewed and the potential for restoration explored. 18 year orders should not permanently close the door on parents as carers.

Further, the blanket response to children on 18 year orders is to continuously reduce contact (to various extents) with parents, regardless of the child's wishes, the nature of their relationship with their parent, and the stability or instability of the foster placement. This diminishes the child's valuable and consistent relationships with significant others based on a blanket approach to reduce contact.

These responses are produced by a system that fails to acknowledge the particular needs and circumstances of families headed by parents with disabilities and the conditions under which children have been removed from these families.

Recommendation 11: The Strategy should acknowledge that levels of contact with parents for children on 18 year orders should match the particular circumstances of the family and wishes of the child, rather than automatically be reduced.

Conclusion

The proposed Out of Home Care Strategy outlines a number of positive initiatives, especially the service elements outlined under the *Strengthening High Risk Families Domain*. We strongly recommend that these initiatives are followed through as they represent an important shift in service delivery, which will contribute to the development of a more effective and sustainable child protection system. Advocacy for Inclusion made a number of recommendations to ensure parents with disabilities and their children, who are overrepresented in the child protection system, are not forgotten or further marginalised by this Strategy. The Strategy has the potential to benefit these families if the system becomes sensitive and responsive to their needs.

⁹ 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