



## Submission to review the ACT Adoption Process

Advocacy for Inclusion

November 2016

## **About Advocacy for Inclusion**

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

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

Advocacy for Inclusion is a Disabled Peoples Organisation which means our board, members and staff are a majority of 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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## List of Recommendations

**Recommendation 1:** actions should be taken immediately to ensure the rights of parents with disabilities and their children in new adoption changes.

**Recommendation 2:** The current child protective system must resource supportive in-home and community based intensive services targeted at preventing families from entering the child protection system. This must include supports that meet the specific needs of parents with disabilities, which are in-home hands-on modelling and practicing of skills, feedback and positive reinforcement as per behavioural teaching.

**Recommendation 3:** Disability awareness training is mandatory for CYPS workers at induction to facilitate the development of positive attitudes and approaches towards parents with disabilities. Additionally, regular attendance at further training to update skills and understanding is recommended for all CYPS staff.

**Recommendation 4:** Guidelines should be established to ensure that positive contact is maintained and enhanced for reunification and stability in relationships between child and birth parents.

**Recommendation 5:** ACT Government must include a strategy to routinely collect demographical data from child protection service users in the ACT, including whether or not the parent/s and child has disability and the numbers of adoptions recorded.

**Recommendation 6:** that legislation be amended to give effect to Article 12 of the UN CRPD to ensure that parents with disabilities are treated equally before the law and where necessary, provided decision-making support in an adoption process.

**Recommendation 7:** People with disabilities must be supported to participate equally in all legal processes concerning them, and supported to retain control over their own decision making through mandatory access to Legal Aid.

**Recommendation 8:** The *Cross-Directorate Domestic Adoptions Taskforce* must acknowledge that continuing need for parental disability support 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, but an indication that some parents with disabilities will require ongoing support as part of their ongoing disability support needs.

**Recommendation 9:** the role of recognised sanctions in the adoption process should be expanded under the *Adoption Act 1993* to ensure parents with disabilities are given full access to the legal framework for adoption in the ACT.

**Recommendation 10:** Amend the *Adoption Act 1993* to ensure consistency with the *Guardianship and Management of Property Act 1991* for the matters of adoption and exemption with the need for the parent's consent to the adoption over CYPS and/or the Director-General alone.

**Recommendation 11:** Amend the *Adoption Act 1993* to provide clarity around the role and functions of a guardian for the matter of exemption, with greater protection and safeguards for the rights of parents with impaired capacity for matters of adoption and exemption.

**Recommendation 12:** acknowledge people with disabilities as parents and the heightened risk they face of having their children placed in out of home care.

**Recommendation 13:** 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.

**Recommendation 14:** 18 year orders should not permanently close the door on parents as carers.

**Recommendation 15:** 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.

**Recommendation 16:** There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. CYPS must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

**Recommendation 17:** 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 specific specialist case management services.

## Introduction

Advocacy for Inclusion is a not-for-profit non-government Disabled Peoples Organisation (DPO) 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).

Parents with disabilities are particularly vulnerable to judgements based on socioeconomic disadvantage, social isolation, and discrimination, poor access to services, poor housing, inadequate health care and denial of opportunities to contribute and participate actively in society, causing them to come under Child and Youth Protective Services (CYPS) watch.<sup>1</sup> Violence against women with disabilities is also evident in domestic violence circumstances. Women with disabilities are 40% more likely to be victims of domestic violence than women without disabilities, resulting in child removal if a woman feels unable to leave her violent partner due to her support needs, or child removal if she does leave her violent partner because she is then no longer able to manage without access to appropriate disability supports.

Discrimination against parents with disabilities is common in Australian society and remains a barrier to the full equality of people with disabilities in the ACT community. This situation is not limited to traditional categories of disability, such as physical or sensory impairments. Discrimination by legal authorities and in child custody proceedings against parents with emerging disabilities is common as well. For example, negative stereotypes regarding parents with disabilities, particularly cognitive disabilities, affect and influence the decision-making process in the ACT child protection and legal systems, and appear to over-ride any imperative for family preservation.

It is inherent discrimination against a parent's right to their children and to parent when they are not given an opportunity to do so. The *ACT Human Rights Act 2004* specifically states that everybody has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily<sup>2</sup>. It is evident that parents with disabilities are not afforded this right and are interfered with from the birth of their child. Parents with disabilities experience the same abuses of their human rights; notably, status-based removals and dispossession of due process protections such as reunification services.

There has been insufficient time dedicated to consideration of marginalised groups, including parents with disabilities, in existing child protection and adoption systems. No data is systematically collected on the prevalence of parents with disability in the ACT child protection system. A lack of disability disaggregated data collection or monitoring by the CYPS means the features of this population group are not understood. This creates a danger of adoption being considered because factors relating to disability have not been considered.

Without data, appropriate policies and programs cannot be developed to address and prevent child protection issues for parents with disabilities, and to meet the needs of children and families involved in the out of home care system. 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.

We do not support the adoption of children of parents with disabilities in the ACT, before appropriate support has been offered to the parent as a first response to any concerns raised about their parenting. Presently, a safeguard between the interests of the child and their parents has been built on inaccurate assumptions regarding parental incapacity, the lack of appropriate family supports, predictions of the likelihood of future neglect and harm to children in a risk-averse society.

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<sup>1</sup> Women with Disabilities Australia, (2009), *Parenting Issues for Women with Disabilities in Australia*, p.8

<sup>2</sup> *ACT Human Rights Act 2004*, S.10(12)(a)

Changes in open adoption procedures Australia-wide have paralleled a shift in social attitudes, from providing a service for adults, to a focus on the wellbeing of children. What is lost is the parent's right to parent their own child free of prejudicial social attitudes and overbearing scrutiny by CYPS and a 'rapid adoption' process without assessment of their living and family circumstances. This is a fundamental breach of Article 23 of the UN CRPD where 'in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents'.<sup>3</sup>

**Recommendation 1:** actions should be taken immediately to ensure the rights of parents with disabilities and their children in new adoption changes.

## The Child Protection Picture

Parents with disabilities have high exposure to the child protection system.<sup>4</sup> 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.<sup>5 6 7 8 9 10</sup>

For more than seven years, 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.<sup>11</sup> Internationally, there is more published literature on parenting and disability than in Australia which remains embedded in a medical model of disability which is individualistic, attributing disability to the body's inability to function in the normal, presumed way.<sup>12,13</sup> In many ways, child removal is ordered without evidence of abuse, neglect and/or parental capacity, and occurs at the time, or within days of a child's birth.<sup>14</sup>

Without support and services offered as a first response, the questions that are likely posed by Child Protection Services are, 'can a parent with disability 'cope' with pregnancy or childcare', 'will her impairment allow her to meet the needs of a baby or young child?'<sup>15 16</sup> In our work, the question is never 'what kinds of aids

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<sup>3</sup> UN Convention on the Rights of Persons with Disabilities, Article 23(4)

<sup>4</sup> 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](http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx)

<sup>5</sup> 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](http://www.aifs.gov.au/nch/pubs/issues/issues31/issues31.html)

<sup>6</sup> McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. Sydney: University of Sydney.

<sup>7</sup> 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

<sup>8</sup> Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). *Understanding and supporting parents with learning difficulties*. Melbourne: Victorian Parenting Centre

<sup>9</sup> 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

<sup>10</sup> 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

<sup>11</sup> The term **cognitive impairment** is a broad term that refers to all people who have intellectual disability, psychosocial disability, traumatic brain injury, autism spectrum disorder, etc. The term refers to people for whom the ability to perceive and process information is impaired in some way, and who may require support to understand and remember information, and to communicate their wishes/intentions.

<sup>12</sup> Women with Disabilities Australia, (2009), Parenting Issues for Women with Disabilities in Australia

<sup>13</sup> Radcliffe, V. (2008) *Being Brave: Disabled Women and Motherhood*. Dissertation for the Degree of Masters of Arts in Disability and Gender, School of Sociology and Social Policy, The University of Leeds, UK.

<sup>14</sup> Llewellyn, G., McConnell, D., & Ferronato, L. (2003) *Prevalence and outcomes for parents with disabilities and their children in an Australian court sample*. Child Abuse and Neglect, Vol. 27, pp. 235-251

<sup>15</sup> Women with Disabilities Australia, (2009), Parenting Issues for Women with Disabilities in Australia

or assistance are available in our community to assist parents with disability?’ Rather, the view that parents with disabilities cannot parent reinforces a notion that disability may mean that the parent will require a great deal of additional and professional assistance in order to parent, and the easier option seems to be child removal and rapid adoption processes under long-term Final Protection Orders from birth up to 18 years of age.

Advocacy for Inclusion is concerned that the legislation of *ACT Adoption Act 1993* and the *Adoption Amendment Act 2009* allows for conditional orders of up to 18 years. We are also particularly concerned about the reduction of maximum orders to one year for infants aged less than two years.

Given the lack of awareness of the needs of parents with disabilities in the child protection system, parents’ ongoing disability support needs at the end of a maximum 12 month order will likely be misunderstood as a lack of progress or an inability to address the issues that brought their child into care. This misunderstanding will result in children being permanently removed from the care of parents simply because appropriate disability supports were not provided.

All adoptions are considered open where a form of contact or information exchange is encouraged and are routinely recommended to the court.<sup>17</sup> This poses a concern for parents with disabilities who have had children removed from their care and placed into an open adoption process when consent is removed from them during the conditional order-process. This is unfair and discriminatory to parents that do not have support made available to enable them in their parenting role as a first response to their child being born.<sup>18</sup>

Research has indicated that women with disabilities are parents, or who are seeking to become parents, report difficulty in accessing appropriate information, services and support.<sup>19 20 21 22 23</sup> There is a lack of suitable information available in Australia, including the ACT, on child-rearing as well as adoption measures for parents with disabilities making a consenting choice. Feedback to Advocacy for Inclusion indicates that for many parents with disabilities it often comes down to ‘luck of the draw’ with child protection services or health professionals as to whether the right information has been provided when they request it or have been referred to for assistance.<sup>24</sup>

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.

The likelihood of harm has become a central element of current legislation and child protection processes. The point at which behaviours becomes ‘abuse and neglect’; such that ACT Child and Youth Protection Service intervenes to protect a child depends on the legal definition of when a child is ‘in need of protection’ from a

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<sup>16</sup> Thomas, C. (1997) *The baby and the bath water: disabled women and motherhood in social context*. *Sociology of Health & Illness*, Vol. 19, No. 5, pp. 622-643.

<sup>17</sup> AIHW *Adoptions Australia 2014-15*, p. 82

<sup>18</sup> 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](http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx)

<sup>19</sup> Malacredia, C. (2009) 2009) Performing motherhood in a disablist world: dilemmas of motherhood, femininity and disability. *International Journal of Qualitative Studies in Education*, Vol. 22, No. 1, pp. 99-117.

<sup>20</sup> McKeever, P., Angus, J., Lee-Miller, K. & Reid, D. (2003) It’s More of a Production: accomplishing mothering using a mobility device. *Disability & Society*, Vol. 18, No. 2, pp. 179-197.

<sup>21</sup> Blackford, K. (1993) Erasing Mothers with Disabilities through Canadian Family-related Policy. *Disability, Handicap & Society*, Vol. 8, No. 3, pp. 281-294.

<sup>22</sup> Preston, G. (2005) *Family values: Disabled parents, extra costs and the benefit system*. Published by Disability Alliance, UK.

<sup>23</sup> Radcliffe, V. (2008) *Being Brave: Disabled Women and Motherhood*. Dissertation for the Degree of Masters of Arts in Disability and Gender, School of Sociology and Social Policy, The University of Leeds, UK.

<sup>24</sup> Advocacy for Inclusion (2013), *Counting them in: Parents with disabilities and the ACT Child Protection System*,



parent with cognitive disability.<sup>25</sup> The legal definition of a child requiring protection is set in the ACT legal inception at which sub-optimal parenting or living circumstances become abuse or neglect. The definition of a child in need of protection from a parent with disability has provided an unnecessary legislative ground for intervention, and it is these grounds that form the basis of what is verified following a child protection investigation that is unwarranted and unfair.

There is a growing concern, shared across Australia and internationally, that parents with disabilities are subject to high rates of child protection interventions and child removal due to prejudice, discriminatory attitudes and a severe lack of appropriate support for parents with disabilities.<sup>26 27 28 29</sup> A relationship should always be shown between the disability and harm to the child, so that a child is taken from a parent only when the parent's disability is creating a disadvantage that cannot be alleviated. However, this is not the reality in the ACT Child Protection system nor what is apparent in the changing adoption process.

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 a child is removed and placed into a Final Care and Protection Order of 18 years, removing all parental responsibility or care from the parent.

Australia is a signatory to the CRPD, which places obligations on the ACT Government to fulfil the right for parents with disabilities to care for their children with appropriate supports. Parents with disabilities are currently an incredibly marginalised group in the ACT. Accessible resources that meet the needs of this group are scarce. In several Advocacy for Inclusion cases, children have been removed from parents because no appropriate support was available to help them care for their children. The changes made to the *Adoption Act 1993* and the *Children and Young People Legislation Amendment Act 2016* to accommodate the new adoption process present a frustrating picture of the issues facing parents with disabilities and their children.

## Lack of Parenting Support Available

Existing Australian studies show a marked overrepresentation of parents with cognitive impairments in child protection court proceedings, with parents with intellectual disabilities being at greatest risk of having their children removed.<sup>30</sup> It is thought that this is due to a pervasive false belief that parents with intellectual disability are unable to learn parenting skills.<sup>31</sup> Studies show that parents with intellectual disabilities can learn parenting skills with adequate and appropriate support.<sup>32 33 34 35</sup>

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<sup>26</sup> 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](http://www.aifs.gov.au/nch/pubs/issues/issues31/issues31.html)

<sup>27</sup> McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. Sydney: University of Sydney.

<sup>28</sup> 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

<sup>29</sup> Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). *Understanding and supporting parents with learning difficulties*. Melbourne: Victorian Parenting Centre

<sup>30</sup> 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

<sup>31</sup> 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

<sup>32</sup> Llewellyn, G., McConnell, D., Honey, A., Mayes, R., & Russo, D. (2003). Promoting health and home safety for children of parents with intellectually disability: A randomised controlled trial, *Research in Developmental Disabilities*, 24(6), 405-431. doi: 10.1016/j.ridd.2003.06.001

<sup>33</sup> Monsen, K., Sanders, A., Yu, F., Radosevich, D., & Geppert, J. (2011). Family home visiting outcomes for mothers with and without intellectual disabilities, *Journal of Intellectual Disability Research*, 55(5), 484-499. doi: 10.1111/j.1365-2788.2011.01402.x



Research<sup>36, 37</sup> has demonstrated that parents with cognitive disabilities can learn and apply new parenting skills with the right support and services in place. It indicates that discussion and instructions alone are not effective for parents with intellectual disabilities, yet in-home hands-on modelling and practicing of skills, feedback and positive reinforcement as per a behavioural teaching is beneficial.<sup>38</sup>

Professionals have consistently confused knowledge with skills when it comes to accommodating a new parent with disability. Note that cognitive disability may inhibit a parent's ability to verbally describe a skill or articulate their understanding on issues, however this does not mean a parent is unable to perform or understand the skill and its importance to their child's wellbeing.<sup>39</sup>

**Recommendation 2:** The current child protective system must resource supportive in-home and community based intensive services targeted at preventing families from entering the child protection system. This must include supports that meet the specific needs of parents with disabilities, which are in-home hands-on modelling and practicing of skills, feedback and positive reinforcement as per behavioural teaching.

## Stability and Family Reunification

Priority has been given to the ACT child protection system for stability for children, thought to be found in current permanent care and adoption processes. Research has shown that safe reunification is always a policy preference<sup>40</sup> before placing a child into long-term care and potentially, adoption. In practice, stability and attachment to carers by children and young people in care may be so, but love and attention by their parents, though they have a disability, may entail concurrent planning, where safe reunification is pursued at the same time as planning for alternative care should arise.

In particular, many service providers do not have a clear understanding of how to identify and support women with disabilities and their children who experience violence, and there is a pressing need to 'build awareness of the types of violence experienced by women with disabilities' so that services and frontline workers can respond appropriately without involving CYPS.<sup>41 42</sup> In our experience, CYPS are alerted to the family situation and children are removed based on the mother's disability and inability to care for herself in a violent situation. Yet, no disability or parenting supports are put in place to assist with care for the children. In these circumstances, reunification becomes difficult and challenging for the mother with disability to recover her children before they are placed into long-term care arrangements.<sup>43</sup>

These issues are paramount to the experiences of our consumers involved in the ACT child protection system. A planned process is required to safely restore a child to their birth parent(s) as a form of reunification, where it

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<sup>34</sup> Tarleton, B., & Ward, L. (2007). "Parenting with support": The views and experiences of parents with intellectual disabilities. *Journal of Policy and Practice in Intellectual Disabilities*, 4(3), 194-202. doi: 10.1111/j.1741-1130.2007.00118.x

<sup>35</sup> Feldman, M. (2010). Parenting education programs. In G. Llewellyn, R. Traustadóttir, D. McConnell, & H. Bjög Sigurjónsdóttir, *Parents with intellectual disabilities: Past, present and futures*. West Sussex, UK: John Wiley & Sons.

<sup>36</sup> Women with Disabilities Australia, (2009), Parenting Issues for Women with Disabilities in Australia

<sup>37</sup> Feldman, M. (2010). Parenting education programs. In G. Llewellyn, R. Traustadóttir, D. McConnell, & H. Bjög Sigurjónsdóttir, *Parents with intellectual disabilities: Past, present and futures*. West Sussex, UK: John Wiley & Sons

<sup>38</sup> See Advocacy for Inclusion. (2013). Counting them in: Parents with disabilities and the ACT Child Protection System.

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<sup>39</sup> Feldman, M. (2010). Parenting education programs. In G. Llewellyn, R. Traustadóttir, D. McConnell, & H. Bjög Sigurjónsdóttir *Parents with intellectual disabilities: Past, present and futures*. West Sussex, UK: John Wiley & Sons

<sup>41</sup> AIHW, Appendix B: National Mapping of Care and Protection Orders, p.22

<sup>42</sup> D. Brownridge (2006), 'Partner violence against women with disabilities: prevalence, risks and explanations' 12(9) Violence against Women, p.805

<sup>43</sup> 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](http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx)

will safeguard the child's long-term stability and permanency.<sup>44 45</sup> Like any parent, there is a need for time and support to enable the parent to take grasp of their new responsibilities as a parent. This is simply not happening at present.

Article 23 of the UN *Convention on the Rights of Persons with Disabilities* explicitly states that children with disabilities shall have equal rights, shall not be separated from their parents against their will, except when the authorities determine that this is in the child's best interests, and **in no case shall be separated from their parents on the basis of a disability of either the child or the parents** (emphasis added).<sup>46</sup>

Advocacy for Inclusion does not support the proposed permanency adoption solution that is currently being enhanced under the ACT adoption process. We are concerned that the easier solution for the *Cross-Directorate Domestic Adoptions Taskforce* has become the removal of children from parents with disabilities, when there have been no disability support services in place to support them to be parents.

**Recommendation 3:** Disability awareness training is mandatory for CYPS workers at induction to facilitate the development of positive attitudes and approaches towards parents with disabilities. Additionally, regular attendance at further training to update skills and understanding is recommended for all CYPS staff.

**Recommendation 4:** Guidelines should be established to ensure that positive contact is maintained and enhanced for reunification and stability in relationships between child and birth parents.

## Data Collection

In situations where intervention is required, it is expected that CYPS may apply to the relevant court to place the child on a care and protective order. Currently, the ACT does not have a process in place for a court order to enable an assessment of the child for the purposes of determining whether the child is in need of protection.<sup>47</sup> Furthermore, with the *Adoption Act* amendments only in action for 12 months, there has not been enough time, monitoring or gathering of evidence to know whether adoptions are increasing or decreasing through the Out of Home Care package.

There is also no assessment policy in place to determine whether the parent has the ability to exercise parental responsibility of the child – it is simply assumed under both societal attitude and prejudice. It may be a provision within other orders (short-term and long-term care) but ultimately, no data has been recorded of the number of children that have been taken into care within the ACT, nor the parental 'causes' as to why they have been removed.

Assessment of parents with disabilities must consider whether parents are providing good enough care with support. Children should not be permanently removed from parents able to parent with adequate and appropriate disability supports 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.

No data is systematically collected on the prevalence of parents with disabilities in the ACT child protection system. While we know that there is a significant issue facing parents with disabilities as a result of advocacy experience and a recent ANU study,<sup>48</sup> they are invisible in government data and planning. Without data,

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<sup>44</sup> Fernandez, E (2014). Child protection and vulnerable families: trends and issues in the Australian context. *Social Sciences* 3:785

<sup>45</sup> J. Chesterman (2013), *Whatever happened to the village? The removal of children from parents with a disability Report 1: Family law – the hidden issues* (Office of the Public Advocate Victoria), 13.

<sup>46</sup> UN Convention on the Rights of Persons with Disabilities, Article 23

<sup>47</sup> Appendix B: National Mapping of Care and Protection Orders, p.23

<sup>48</sup> Hamilton, S. & Braithwaite, V. (2014). *Complex lives, complex needs, complex service systems*. Australian National University.

appropriate policies and programs cannot be developed to address child protection issues for parents with disabilities, or to meet the needs of children and families involved in the out of home care system.

Little is known of the number of families with parents with disabilities that are current within the ACT child protection system. As child protection services have not collected this kind of data, information at this level is not available in the ACT. The lack of support and educative services that are skilled in working with parents with disabilities is also a factor, embedded with societal negative attitudes within the community towards parents with disabilities.

**Recommendation 5:** ACT Government must include a strategy to routinely collect demographical data from child protection service users in the ACT, including whether or not the parent/s and child has disability and the numbers of adoptions recorded.

## Review of ACT adoption and consideration of legislation

Parents with disabilities are poorly resourced to respond to the removal of their children by CYPS, or to access the parenting supports and/or legal advocacy needed to have their children returned from Out of Home Care.<sup>49</sup> 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 decision-making rights.<sup>50</sup>

The current system works somewhat retrospectively. In the ACT, a child or young person is need of care and protection if:

(1)(a) the child or young person -

(i) has been abused or neglected; or

(ii) is being abused or neglected; or

(iii) is at risk of abuse or neglect; and

(b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from suffering the abuse or neglect.

(2) Without limiting Subsection (1), a child or young person is in need of care and protection if:

(a) if there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the chief executive) to such an extent that the care and protection of the child or young person are, or are likely to be, seriously disrupted;

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<sup>49</sup> 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](http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx) ;

<sup>50</sup> 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>

(b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry;

(c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited

Subsection 1 and 2 do not clearly identify why a parent with disability should have their child removed from them immediately after birth. The child being at risk of abuse is too often based on the misconception that having a disability automatically renders a parent incapable of adequately raising children and that they have the lack of potential to learn and develop skills as any mother would.<sup>51 52 53</sup> It might be suggested that mothers with cognitive disabilities are watched more closely and held to higher criteria than mothers without disabilities.<sup>54 55</sup>

The evidence used to judge potential parental inadequacy is based on unfair and invalid 'assessment' procedures.<sup>56</sup> Parents with disabilities, particularly cognitive disabilities, also face significant barriers to communicating within the justice and child protection process with very limited access to supports or advocacy.

Shifting the support emphasis to the beginning of any justice process and assuming that appropriate communication supports must be provided at the outset for any person whose legal capacity is in question, will provide a more holistic response to all people including parents with disabilities. It will also align more readily with Australia's obligations under the *Convention on the Rights of Persons with Disabilities* Articles 12 and 13, which insist that all people with disabilities have a right to equality of access to justice, and to be supported to make their own decisions.<sup>57</sup>

A parent with disability who is supported from the outset to participate in their justice will be in a better position to instruct their lawyer, respond to CYPS, and ultimately better understand any outcome. A parent with disability 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.<sup>58</sup>

The *Adoption Act 1993* (Division 3.3 Consents to Adoption<sup>59</sup>) provides that an adoption order cannot be made unless each parent consents to the adoption.<sup>60</sup> 'Consent' means consent freely and voluntarily given by a

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51 Booth, T., Booth, W. & McConnell, D. (2005) The Prevalence and Outcomes of Care Proceedings Involving Parents with Learning Difficulties in the Family Courts. *Journal of Applied Research in Intellectual Disabilities*, Vol. 18, pp. 7-17.

52 Aunos, M. & Feldman, M. (2002) Attitudes towards Sexuality, Sterilization and Parenting Rights of Persons with Intellectual Disabilities. *Journal of Applied Research in Intellectual Disabilities*, Vol.15, pp. 285-296.

53 Aunos, M., Goupil, G. & Feldman, M. (2003) Mothers with Intellectual Disabilities Who Do or Do Not Have Custody of Their Children. *Journal on Developmental Disabilities*, Vol. 10, No. 2, pp. 65-79.

54 McConnell D., Llewellyn G. & Ferronato L. (2006) Context contingent decision-making in child protection practice. *International Journal of Social Welfare*, Vol. 15, pp. 230-239.

55 McConnell, D., Llewellyn, G. & Ferronato, L. (2000) Parents with a Disability and the NSW Children's Court. The Family Support & Services Project, University of Sydney, NSW.

56 AIHW, Appendix B: National Mapping of Care and Protection Orders, p.22  
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129557084>

57 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](http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)

58 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.

59 *Adoption Act 1993*, division 3.3

person with capacity to give consent, including information that is assessable to the parent and an appropriate time period for providing consent, the process of revocation of consent, alternatives to adoption and future contact with the child.<sup>61</sup> 'Capacity', particularly to consent to an adoption, means capability to understand the nature and effect of the adoption freely and voluntarily make decisions regarding the adoption and communicate the decision in some communicative way.<sup>62</sup> We do not see 'capacity' as being taken into account when the general consensus of CYPS and the ACT Government is a presumption that a parent with disability is unable to understand or exercise capacity at all.

Further, Division 3.3 or Part 3 of the *Adoption Act 1993* requires that:

1. Biological parents and guardians have given consent to the adoption<sup>63</sup>
2. The person giving the consent has given proper consideration to his/her decision providing that the person providing the consent must have received the appropriate form at least 14 days before he/she signs the appropriate form;<sup>64</sup> and
3. The person providing the consent had received legal advice from the 'primary witness' to his/her signature<sup>65</sup>

In particular to Regulation 7 of the *Adoptions Regulations 1993*, the list of 'primary witnesses' is:

1. A commissioner for declarations under the *Statutory Declarations Act 1959 (Cth)*; or
2. A justice of the peace; or
3. A lawyer (other than a lawyer acting for the applicant(s)); or
4. A social worker approved by the Director-General<sup>66</sup>

We are concerned that there is no specific requirement that legal advice and decision-making capacity for a parent with cognitive disability has been implemented by 'primary witnesses' with our consumers involved in the child protection system, and likely the adoption process. There is a variance in the current legislation which does not align with Article 12 of the CRPD in practice, the requirement of a primary witness that often does not involve the parent with disability creates practical problems where consent is concerned as they are often not consented once their children are removed into the care of the Director-General.

**Recommendation 6:** that legislation be amended to give effect to Article 12 of the UN CRPD to ensure that parents with disabilities are treated equally before the law and where necessary, provided decision-making support in an adoption process

This corresponds with the provisions of *Guardianship and Management of Property Act 1991* which state that where an adult appears to lack capacity for a legal matter, a guardian may be appointed for legal matter not related to financial or property matters.<sup>67</sup> Decisions by a guardian for an adult's legal matter may include:

1. Obtaining a legal representative for the adult; and

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<sup>60</sup> *Adoption Act 1993*, s.26(1)

<sup>61</sup> *Adoption Act 1993*, s.27(a)

<sup>62</sup> *ACT Law Reform Advisory Council*, p.16

<sup>63</sup> *Adoption Act 1993*, s26(1)

<sup>64</sup> *Adoptions Regulations 1993*, reg.6

<sup>65</sup> *Adoptions Regulations 1993*, reg.8

<sup>66</sup> *Adoptions Regulations 1993*, reg. 7

<sup>67</sup> *Guardianship and Management of Property Act 1991*, s.8

2. Providing instructions to the legal representatives as to the further conduct of the adult's legal matters on the basis of the adult's wills, rights and preferences and legal advice received.

Advocacy for Inclusion is concerned that the appointment of a guardian for the matter of dispensation under the *Adoption Act 1993* is inconsistent with the guardianship framework under the *Guardianship and Management of Property Act 1991*, which expressively provides that a guardian is restricted in matters relating to adoption of a child.<sup>68</sup>

The idea that guardianship can fix people's problems reflects the paternalistic responses that have historically been used toward people with disabilities. As Advocacy for Inclusion argued in our recent submission:

"guardianship orders necessitate an imbalance of power, unequal access to legal assistance and uneven valuing of knowledge in both procedure and outcome. The perception that guardianship protects and cares for people with disabilities is unrealistic and must be challenged."<sup>69</sup>

To note, there is discrepancy between the guardianship provisions of the *Adoption Act 1993* and the *Guardianship and Management of Property Act 1991* with respect to parental consent to adoptions. Subsequently, the rights of adults with cognitive disabilities with perceived 'impaired capacity' may not be adequately protected in adoption matters of their child. This is an example of inherent discrimination. The *ACT Human Rights Act 2004* explains that distinction due to disability is discrimination as a family is the natural and basic group unit of society and is entitled to be protected by society<sup>70</sup> - creating families through adoption processes by denying the birth parent the right to parent due to their disability is profound discrimination.

The provisions of the *Adoption Act 1993* should clearly articulate that a guardians' role in dispensation matters does not include the provision of consent as a substitute decision-maker for the parent with disability. Rather, it should be clear that the guardian's involvement relates to assisting the parent during the proceedings. The role of the guardian is clear in ensuring that the parent is supported to work out what they want to do based on their own will and preferences.<sup>71</sup> Cases of forced decision-making in matters relating to child protection are known to Advocacy for Inclusion. Pressuring a parent to consent without considering their will and preference to make a decision of child removal is discriminatory and is not 'best for the person' in any sense.<sup>72</sup>

The current recognition of the parent's right is clearly not reflected in the guardianship requirements of the *Adoption Act 1993*. Disability is always a factor of child removal from parents with disabilities, particularly for people with cognitive disability, and is a demonstration of perceived lack of decision-making capacity at its absolute ugliest.<sup>73</sup> The Act further notes that a guardian does not act as a direct legal representative for the parent, instead the guardian should be restricted to assisting them to access to legal services. Furthermore, access to Legal Aid for persons with 'impaired capacity' in adoption cases should be mandatory and should not be reliant on those cases only deemed 'winnable' by legal parties.

**Recommendation 7:** People with disabilities must be supported to participate equally in all legal processes concerning them, and supported to retain control over their own decision making through mandatory access to Legal Aid.

Clause 36 of the Explanatory Notes to the Adoption Bill 1992 makes provision for 'guardianship of a child awaiting adoption to be solely vested in the Director or in the principal officer of a private adoption agency once

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<sup>68</sup> *Guardianship and Management of Property Act 1991*, s7B(c)

<sup>69</sup> *Ibid*

<sup>70</sup> *ACT Human Rights Act 2004*, s.10(11)(a)

<sup>71</sup> *ACT Law Reform Advisory Council Guardianship Report*, (2016), p.72

<sup>72</sup> *Ibid*

<sup>73</sup> Advocacy for Inclusion, *Counting them in: Parents with disabilities and the ACT Child Protection System Response to Out of Home Care Strategy 2015-2020* Discussion Paper



all required consents have been given or dispensed with'.<sup>74</sup> Advocacy for Inclusion has several consumers who have been denied, or have not given adequate consent to, possible adoption when their child had been removed from their care. Article 23(4) of the UN CRPD, to which Australia is a signatory, provides that 'in no case shall a child be separated from parents on the basis of disability of either the child or one or both of the parents.' We urge that the *Cross-Directorate Domestic Adoptions Taskforce* support the equal rights of the parents and children to a family relationship that should not be excessively restricted on the basis of a parent's disability.

**Recommendation 8:** The *Cross-Directorate Domestic Adoptions Taskforce* must acknowledge that continuing need for parental disability support 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, but an indication that some parents with disabilities will require ongoing support as part of their ongoing disability support needs.

**Recommendation 9:** the role of recognised sanctions in the adoption process should be expanded under the *Adoption Act 1993* to ensure parents with disabilities are given full access to the legal framework for adoption in the ACT.

**Recommendation 10:** Amend the *Adoption Act 1993* to ensure consistency with the *Guardianship and Management of Property Act 1991* for the matters of adoption and exemption with the need for the parent's consent to the adoption over CYPS and/or the Director-General alone.

**Recommendation 11:** Amend the *Adoption Act 1993* to provide clarity around the role and functions of a guardian for the matter of exemption, with greater protection and safeguards for the rights of parents with impaired capacity for matters of adoption and exemption.

## Seeing and Hearing Parents with Disabilities

Parents with cognitive disabilities are able to successfully parent their children if they are provided with education, support and resources in ways that have been demonstrated by research to be effective.<sup>75</sup> The *Cross Directorate Domestic Adoptions Taskforce* needs to have detailed statistical information regarding the involvement of parents with disabilities in the ACT child protection system and to understand the actual basis on which the disability of that parent has been identified as a risk factor for the abuse and neglect of their children.

The ACT currently has in process a written care plan for a child or young person on a care and protection order or an interim care and protection order.<sup>76</sup> The following attributes of the care plan are specifically designed to meet a child or young person's care and protection needs. It also specifies that the care plan includes who will have parental responsibility. Parental responsibility is a learning curve for any parent, and parents with disabilities are no exception to learning and receiving support to do so. The care plan is also designed to ensure the living arrangements are as stable as possible, with contact arrangements and services where needed. The removals of child/ren from parents with disabilities, particularly cognitive disabilities, are based on two prejudicial and invalid assumptions:

1. A diagnosis or label of parental intellectual disability is mistakenly taken for prima facie evidence of parental incapacity or risk of harm to the child<sup>77 78</sup>

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<sup>74</sup> Explanatory Notes to the *Adoption Bill 1992*, pg.14

<sup>75</sup> Lamont, A. & Bromfield, 2009

<sup>76</sup> *Children and Young People Act 2008*, s.455

<sup>77</sup> Women with Disabilities Australia, (2009), *Parenting Issues for Women with Disabilities in Australia*

2. Such incapacity is deemed to be a deficiency in the parent that cannot be overcome or corrected naturally or medically<sup>79</sup>

This is contrary to family legislation in the ACT that universally requires that such action should be a last resort and that the Territory has an obligation to make efforts to keep families together.<sup>80</sup>

The Final Care and Protection Order<sup>81</sup> is also a concern relevant to the discussion of current adoption processes and change. In circumstances where a parent with disability has not been given adequate time to demonstrate or care for their child, Advocacy for Inclusion is seeing orders made by CYPs requiring the child or young person of the parent to reside as directed and conferring parental responsibility in 'whole or part' to the Director General. These orders, usually long-term orders (18 years), deny the parent with disability the opportunity to parent or resume involvement in their child's lives. During the 18 year order process, adoption is further becoming more apparent as a solution to out-of-home care. Parents with disabilities and their children are overly represented in referrals to Child Protection Services and once involved, are permanently separated at a higher rate than parents without disabilities. The children of parents with disabilities are removed at high rates owing to a number of factors and new changes including:

- (1) ACT legislation which assigns parental responsibility in a care and protection order until the child is 18,<sup>82</sup>
- (2) the disparate impact of certain provisions of the amended *Children and Young People Legislation Amendment Act 2016*, including the *Adoption Act 1993*,
- (3) bias, speculation, and the 'unfit parent' standard that is the basis of inherent discrimination, and
- (4) a lack of training in relevant systems regarding parents with disabilities.

From both direct practice experience, as well as from the research literature,<sup>83</sup> it is clear some children have been removed from their families on the basis of parental disability and lack of disability responsive parenting supports. Many parents working with Advocacy for Inclusion maintain 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 are extremely reluctant or unwilling to consider exploring how the parent might be supported to have the child returned to their care despite access to support funds under the recent CSD Enhanced Service Offer and now the NDIS. When a child is on 18 year orders, it seems the parent is ruled out as a potential carer for the child, regardless of the circumstances.

Children remain in unstable, unsafe or temporary foster placements despite their parents finally having access to the disability supports they needed at the time their child was removed (through the NDIS), and when the child and parent have maintained long-term, strong and positive relationships. Under such 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.

Further, the blanket response to children on 18 year orders is to continuously reduce contact with parents, regardless of the child's wishes, the nature of their relationship with their parent, and the stability or instability

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<sup>78</sup> International Association for the Scientific Study of Intellectual Disabilities (IASSID) (2008) Parents labelled with Intellectual Disability: Position of the IASSID Special Interest Research Group (SIRG) on Parents and Parenting with Intellectual Disabilities. *Journal of Applied Research in Intellectual Disabilities*, Vol. 21, pp. 296-307.

<sup>79</sup> *Ibid*

<sup>80</sup> Women with Disabilities Australia, (2009), *Parenting Issues for Women with Disabilities in Australia*

<sup>81</sup> *Children and Young People Act 2008*, s.464-2e/f/g

<sup>82</sup> *Appendix A: Permanent care-related concepts, definitions, legislative, and policy contexts, by jurisdiction*, 2015:

<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129557083>

<sup>83</sup> 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

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.

Court involvement should be the last resort of removing a child from their parent/s. In the event of the parent having a disability, the removal is immediate as to assume that the parent cannot provide safe care and does not have support mechanisms in place. A care and protection order against a parent with disability is not assessed and is often at the first resort, not the last resort.<sup>84</sup>

**Recommendation 12:** acknowledge people with disabilities as parents and the heightened risk they face of having their children placed in out of home care.

**Recommendation 13:** 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.

**Recommendation 14:** 18 year orders should not permanently close the door on parents as carers.

**Recommendation 15:** 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.

**Recommendation 16:** There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. CYPS must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.

## LACK OF CYPS / NDIA INTERFACE

The NDIS must 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 funds.<sup>85</sup> Many parents with 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. Currently, there is inadequate interface and transparency as both organisations are different in how they work with families. Child protection workers must be aware of the NDIS and refer parents to the NDIA for appropriate disability responsive parenting supports as needed.

**Recommendation 17:** A plan for coordination between NDIS, CPS and support providers to ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed including specific specialist case management services.

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<sup>84</sup> *Children and Young People Act, 2008*, Emergency Action, s.406

<sup>85</sup> Section 13 *NDIS Operational Guideline – Planning and Assessment – Supports in the Plan - Household Tasks*  
<http://www.ndis.gov.au/document/726>

## CONCLUSION

The timeliness of the domestic adoption process in the ACT is disappointing in its initiatives, particularly the attempt to use an adoption process to lower the number of children in Out of Home Care. We are concerned that the short length of time (over 12 months) has not considered parents with disabilities and the lack of support and learning for the parent before their child is taken and placed into adoption.

We are also concerned about the disparities between the Adoption Act 1993, the Children and Young Peoples Act 2014 and the *Guardianship and Management of Property Act 1991* where the guidelines between decision-making capacity for a parent with disability, and the role of their guardian is ill-considered, confusing and potentially a breach of the ACT *Human Rights Act 2004*. We strongly recommend that the *Cross-Directorate Domestic Adoptions Taskforce*, CYPS and the Legislative Assembly review and consider an individual's human rights under each of these Acts before making a societal-biased and unnecessary decision to remove a child from a parent with disability.

To promote the development of a more efficient and sustainable child protection and adoption system the parent with disability should be given the opportunity to learn and develop their parenting skills with the right supports and services in place to assist. Advocacy for Inclusion made a number of recommendations to the Out of Home Care Strategy 2015-2020 Proposal (2014) and is actively advocating for parents with disabilities, who are overrepresented in the child protection system. It is critical that new measures do not further marginalise these parents, or remove their children into long-term care and/or adoption without their knowledge or consent.

The Adoption Taskforce is unable, without proper monitoring or data collection, to place a child into adoption without their parent's being afforded an opportunity to reunify with their child/ren and reconcile a parenting relationship. To do so is a fundamental breach of the UN CRPD Article 23 and the parent's human right to parent. The child protection system has the potential to benefit these families if the system takes responsibility to be sensitive and responsive to their needs without the force of rapid adoption practices.