



**Joint Submission to ACT Budget 2020-21
Advocacy for Inclusion (AFI) and ACT Disability Aged and Carer Advocacy Service
(ADACAS)**

**Equitable experiences for Parents with Disability where Child and Youth Protection
services are involved**

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Introduction

Both AFI and ADACAS provide independent, individual advocacy for people with disabilities and mental ill health in the ACT, among other services. Both organisations receive requests for support in matters with CYPS often where parents require advocacy to maintain their parenting roles. In the ACT, there is currently limited support available specifically for parents with disabilities to enable equitable access to systems or supports.

The ACT Budget 2020-21 will be considering the importance of services for the ACT and how the ACT Government can deliver current services more efficiently and productively to better meet the needs of Canberrans. Our cohort is parents with disabilities and mental ill health* interacting with Child Youth and Protection Services (CYPS), who are currently overrepresented and poorly supported in interaction with this system.

The following recommendations are made with rationale illustrated throughout this submission:

1. ACT Government to fund intensive independent advocacy support for all parents with disability or mental ill health interacting with CYPS
2. Provide training and ongoing internal and external mentoring for CYPS staff, to assist with a change in approach and more equitable experiences for parents with disability/parents with mental ill health.
3. Provide early intervention parenting supports to parents with disabilities through the ACT Disability Justice Strategy, in collaboration with the NDIA as a jurisdictional approach.
4. ACT Government to consider funding and elevating similar early support programs piloted and successful in other jurisdictions that are specifically designed for parents with disabilities to access appropriate services under ACT Health or key community health organisations.
5. Conduct a comprehensive review of pre-birth notifications to CYPS to establish basic demographic details about parents in the ACT, including the presence of any disability and the reasons given for the making of notifications to interrogate discriminations and inform future practise improvements.
6. ACT Government to fund a pilot program via Office for Disability and Office for Mental Health to provide 'big picture' gap analysis and research of parents with disability and mental health from the community sector and advocacy viewpoints. This pilot is envisioned to combine and analyse sector delivery of support for parents with disabilities alongside the ACT Government by ADACAS and AFI.
7. There should be adequate legal funding made available so that all parents with disability or mental ill health can have ongoing legal representation in the lead up to and the entire way through any legal processes.

*Please note that the fact that a parent has a disability or is experiencing mental ill health is not a reason that CYPS would become involved: CYPS only becomes involved in situations where they are alerted to concerns about a child's welfare, and also have assessed that their involvement is require

Parents with Disabilities and Mental Health – The Advocacy Gaps

Parents with disabilities have high exposure to the child protection system.^{1,2,3,4,5,6,7} Whilst ACT data in relation to the number of situations in which CYPS is working with families where a parent has disability or mental ill health is not currently available, both ADACAS and AFI continue to advocate for parents with disabilities and mental ill health who enter the CYPS system. Both of our organisations have contributed extensively to previous ACT Government consultation highlighting the role of advocacy with parents with disabilities and/or mental ill health.

The power imbalance between CYPS workers and parents with disability/mental ill health contributes to a gap that it is impossible for parents with disability/mental illness to bridge for equitable experience of CYPS processes. Without ongoing and independent advocacy and legal support, parents fall through the cracks. Our organisations both recognise that parents with disability generally need additional individual advocacy where advocates are able to attend meetings, provide support for the parent with disability to develop and build self-advocacy skills and/or allow their chosen advocate to speak up on their behalf when they can't, as part of a network of support. We recognize the self-advocacy supports and services currently provided by Red Cross Birth Family Advocacy Service (not disability specific), as necessary and important.

In our experiences, parents with disabilities and mental health interacting with CYPS without advocacy support, have reported feeling:

- Intimidated by the process and the amount of people 'around the table' or 'in the room';
- Inadequately prepared with accessible adequate information or support beforehand to understand the decisions and why orders are being proposed;
- Confused about ongoing communication and their case management contacts, particularly if an 18-year-order or less have been proposed without their consultation and without an advocate present or aware of proceedings;
- Disempowered about decisions around matters related to them.

The supports available for parents with disability and mental health to enable active participation in their CYPS case process has been inconsistent when child protection workers or social workers are in high turnover. The person who they are allocated to is the 'luck of the draw' in terms of understanding of disability/mental illness, empathy and knowledge of support and alternatives that can be provided.

^[1] Lamont, A., & Bromfield, L. (2009). 'Parental intellectual disability and child protection: Key issues', National Child Protection Clearing House, (31), 118.

^[2] McConnell, D., Llewellyn, G., & Ferronato, L. (2000). Parents with a disability and the NSW Children's Court. Sydney: University of Sydney

^[3] 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

^[4] 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

^[5] Refer to Advocacy for Inclusion. (2013). Counting them in: Parents with disabilities and the ACT Child Protection System.

^[6] 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

^[7] Mildon, R., Matthews, J., & Gavidia-Payne, S. (2003). Understanding and supporting parents with learning difficulties. Melbourne: Victorian Parenting Centre

The services for parents with disabilities need to be consistent, fair and informed. The ACT government, in line with Australia's obligations under the UNCRPD (Article 23)⁸, has committed to uphold the rights of parents with disabilities and to eliminate discrimination or inequitable processes. The ACT Disability Justice Strategy, as stated in its release, must be integrated across the ACT Government, with an emphasis on the provision of support required by people with disability and mental ill health. To uphold human rights and address these issues - external accountability is crucial.⁹ ADACAS and AFI strongly support the interests and human rights of the child and young person as placed first and foremost. However, to achieve the best outcomes for children, it is also important that the human rights of parents are adequately supported and the right to family is recognised for all participants.

Article 9 of the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disability (CPRD) reminds the ACT Government that:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. 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.¹⁰

Under the CYP Act, Section 350(1)(e),¹¹ it remains concerning that the parent with disability, without transparent process of consideration, is deemed unfit to parent if they have not been provided opportunity. Provision of supports to enable equitable access to parent must be part of the consideration.

Areas of Service Improvement

Intensive and independent advocacy support the entire way through all CYPS process

ADACAS and AFI, in consultation with advocates from both organisations, continue to see inconsistency where service gaps can be improved. With additional funding through Office for Disability, we encourage the ACT Government to fund programs for each organisation to create and produce resources and training to enable us to better:

- Support parents and families to understand CYPS processes and their rights,
- Support parents to build a productive working relationship with CYPS workers,
- Counter the power imbalance between CYPS workers and parents with disability and/or mental ill health
- Ensure that reasonable adjustments, restorative approaches and supported decision-making processes occur when needed
- Ensure that parents are supported to have their voices and wishes heard

8. See also articles 5, 9, 12, 18, 20, 21, 22 and 40 of the CRC, article 14(4) of the ICCPR, article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and articles 3(h), 7, 18(2) and 23 of the Convention on the Rights of Persons with Disabilities (CRPD).

9. As expressed in *Review of child protection decisions in the ACT: Discussion paper. April 2019*, p.19

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

11. UN CRPD Article 23(4), underlining as own emphasis

Additionally, ongoing and long-term support and advocacy funding will be needed in instances:

- If the parent is an NDIS participant to achieve an NDIS plan that meets their needs, implement it and maintain it within the tight CYPS timeframes which are understandably driven around the child's needs.
- If the parent is not an NDIS participant (but should be eligible) – obtaining expedited entry to the scheme, a plan and implementation within the timeframes
- If the parent is not eligible for the NDIS, or needs supports additionally from other service sectors – sourcing appropriate and suitable alternative support services as required.

Ongoing legal representation in preparation and duration of any legal or court processes

Given the complexity of individual circumstances, both ADACAS and AFI support the need for all parents with disability and/or mental ill health to have access to ongoing legal representation in the lead up and the entire way through all legal processes.

It is often noticed that CYPS always has legal representation, (solicitors and often barristers), in situations where it is likely a child might be removed from their family yet the parent may find themselves with no legal representation. Access to advocacy support, CCL or Legal Aid services may be an option but it remains possible for some parents with disability and/or mental ill health to end up in situations where they are in court arguing against CYPS without legal representation, excepting situations where a parent can self-fund. Due to funding restrictions, Legal Aid make decisions about prospects of success, and may withdraw before a matter has concluded. Alternatively, legal aid may act only in a “duty” capacity, where the lawyers do not have sufficient time to build rapport with family members, work differently with parents with disability when these are the adjustments needed so that a parent can have an equitable experience of the CYPS and legal processes.

The imbalance of these circumstance is not positive and is often intimidating for the parent to face with limited support. As a result, ADACAS and AFI continue to recommend that there should be adequate legal funding made available so that all parents with disability or mental ill health can have ongoing legal representation in the lead up to and the entire way through any legal processes.

Aboriginal families where a parent has disability or mental ill health

We continue acknowledge the over-representation of Aboriginal families in the child protection system, and the fact that Aboriginal people experience disadvantage in health and disability outcomes and service access.¹² We make especial representation with regards to the need for increased funding for Aboriginal organisations to be provided with additional ongoing funding for Aboriginal families to have equitable access to both independent advocacy and legal support.

12. Australian Human Rights Commission (2019), Closing the Gap report “Our Choices, Our Voices”, available via: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-report-our>, accessed in October 2019.

We draw attention to the Our Booris our Way steering committee recommendation that an Aboriginal controlled Child Care Organisation be established and that it offers advocacy support to Aboriginal parents (including those with disability) in situations where CYPS is involved.¹³ We support the principle that Aboriginal parents and families should be able to access independent advocacy support from Aboriginal workers and/or Aboriginal led organisations if they wish to, (such as Winnunga and/or Gugan Gulwan), and would strongly support these organisations receiving funding to make independent advocacy support available.

Ongoing training and external mentoring for CYPS staff

ADACAS and AFI continue to restate the need for all CYPS workers to have strong knowledge of disability/mental ill health, good knowledge of the obligation to uphold human rights of all family members and experience in making reasonable adjustments to processes as required.

Currently, there are some CYPS staff with strong skills, knowledge and experience of working with people with disabilities and mental ill health, however, there is a continued need for CYPS staff to further develop their knowledge and understanding. We encourage all efforts to embed training in induction processes, and for CYPS to offer ongoing professional development (and internal and external mentoring) on these topics. Both organisations have offered to provide training utilizing expertise in advocacy and disability and mental illness.

Recommended Service Program for Consideration

This joint submission strongly endorses the recommendation made by WWDACT¹⁴, to gain “relevant experiences and learnings from other jurisdictions”.

Victoria introduced the Cradle to Kinder program in 2012¹⁵ to provide “an intensive ante and postnatal support service for Victorian families”. The target group was young pregnant women under 25 where a report to child protection had been received for their unborn child and where indicators of concerns regarding the wellbeing of the child regardless of the parent not yet being involved in the child protection system. Priority was provided to women who had been part of out-of-home care, Aboriginal and Torres Strait Islander women and women with disabilities. The program continues to be successful in its approach to apply a ‘whole of family’ approach to parenting and with further support extended by health, education and community government portfolios. Other programs such as the Health Start program at the Parenting Research Centre at the University of Sydney¹⁶ an initiative that supports professionals working with parents who have learning difficulties and The BOLD Network run by WWILD in Brisbane supporting professionals and organisations seeking social change for parents with intellectual disabilities in Queensland are useful resources.

13. Australian Human Rights Commission (2019), Closing the Gap report “Our Choices, Our Voices”, available via: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-report-our>, accessed in October 2019.

14. Emphasised in Women With Disabilities ACT (2019) *Submission to the Inquiry into Maternity Services in the ACT: Standing Committee on Health, Ageing and Community Services*, p.11

15. <https://www.parentingrc.org.au> information on the Cradle to Kinder program is available via www.DHHS.vic.gov.au

16. <https://www.parentingrc.org.au6.h>

17. <https://wwild.org.au>

The Pilot Project

AFI and ADACAS request the ACT Government consider the cost benefits of a pilot program that evaluates the circumstance of parents with disability and mental health from the community sector level. We envision a collaborative cross-sector analysis funded at the community service level and connecting with people with disability, parents with disability, government and community service providers to identify the gaps and pool expertise to identify solutions. We believe this is critical going forward and overdue.