

Submission in response to ALRC Review of the Family Law System: Issue Paper

Advocacy for Inclusion

May 2018

**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 is a non-for-profit Disabled People’s Organisation (DPO) community organisation in the Australian Capital Territory (ACT), Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. 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* *2004*.

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Recommendations

**Recommendation 1: Propose that the update of the *Family Law Act* should include a section detailing the features, dynamics and nature of family violence, including reflection of violence impacting people, including women and girls, with disabilities.**

**Recommendation 2: Additional funding for domestic and family violence services and shelters to include staff training on the prevalence of disability, domestic violence and their direct consequences.**

**Recommendation 3: All Commonwealth, state and territory government should support the development and implementation of national best practice standards for women and girls experiencing and escaping violence. Standards should include:**

1. **Ensure accessible and appropriate facilities and services for women and girls escaping violence with staff training to reflect the different forms of violence more likely to be experienced by people with disabilities, particularly women and girls with disabilities**
2. **Ensure accessible and appropriate information formats, including Easy and Plain English**

**Recommendation 4: All Commonwealth, state and territory governments should prioritise research and data collection aimed at improving responses and services for women with disabilities who experience violence in a Family Violence context.**

**Recommendation 5: The ALRC should acknowledge the NDIS as a resource for placement prevention for families headed by parents with disabilities and for families with children with disabilities. The Family Law system should include an initiative to ensure that all state and territory child protection systems support families to apply for and access the NDIS.**

**Recommendation 6: The ALRC to consider linking and collaborating to provide early intervention parenting supports to parents with disabilities through the NDIS as a productive response to Article 23 of the CRPD. This measure will ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed.**

**Recommendation 7: Acknowledge that parents with disabilities have disability specific support needs, to which child protection professionals must be sensitive and responsive to prevent out of home care placements and promote successful restoration of children.**

**Recommendation 8: There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. State and Territory child protection agencies and family law professionals must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.**

**Recommendation 9: All Australian jurisdictions “recognize persons with disabilities as persons before the law, having legal personality and legal capacity in all aspects of life, on an equal basis with others. This requires the abolition of substitute decision-making regimes and mechanisms that deny legal capacity and which discriminate in purpose or effect against persons with disabilities.”[[1]](#footnote-1)**

**Recommendation 10: Everybody has the right to make decisions, regardless of their assessed (perceived) decision-making capacity. This idea is reflected in the four high level principles proposed by the ALRC’s Equality, Capacity and Disability in Commonwealth Laws – Final Report in 2014and must continue to be reflected throughout the ALRC Review of Family System recommendations when considering people with disabilities and their equal legal capacity.**

**Recommendation 11: The ALRC should consider that respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (art. 3 (d)) is incompatible with granting legal capacity on an assimilationist basis. If a person expresses their will and preference through any means, this should be respected regardless of whether they are assessed as having impaired decision-making capacity.**

**Recommendation 12: All people with disabilities engaging in the legal process under the Family Law system should be provided with access to support they require to exercise their legal capacity under the ‘supported decision-making’ model consistent with Australia’s signatory obligations to the CRPD.**

**Recommendation 13: That the ALRC continue to refrain from continuing to engage in a ‘substitute decision-making’ model and refer to a facilitated decision-making model if is *absolutely necessary* to an individual case. Substitute decision-making diminishes, rather than protects, the rights of people with disabilities to enjoy legal capacity on an equal basis with others.**

**Recommendation 14: Where a person with disability’s *current* will and preference cannot be ascertained, after all steps to ascertain them have been tried, facilitated decision-making should be used.**

**Recommendation 15: Facilitated decision-making should be considered a formal model of decision-making, which requires independent monitoring and safeguards to maximise transparency and accountability.**

**Recommendation 16: The following could be considered in the development of a framework for determining whether facilitated decision-making is required:**

1. **The person’s will and preference cannot be ascertained even after *all efforts* have been made to communicate with that person and support that person to express their will and preference.**
2. ***All efforts* to ascertain a person’s will and preference include at least the following steps:** 
   1. **The person is supported to receive information and communicate their will and preferences pertaining to the relevant decision using all forms of information and communication appropriate to the person. *This includes using unconventional communication formats such as computer technology and respect for the person’s cultural and linguistic circumstances.***
   2. **Communication and decision support is attempted by the person’s significant others, including people with whom the person has existing familiar and trusting relationships and any existing formal or informal decision-supporters appointed by the person.**
   3. **Where the person does not have such relationships, the person is supported to establish relationships with volunteers with the potential to act as decision-supporters.**
   4. **Information is provided and communication attempted by other parties who might be involved in the relevant decision.**
   5. **As much time as possible is allowed for the person to undertake the steps above.**

**Recommendation 17: Ascertaining the person with disability’s *current* will and preference must be viewed as an ongoing part of the facilitated decision-making process. After it is apparent that facilitated decision-making is required, all efforts to ascertain the person’s *current* will and preferences must continue.**

**Recommendation 18: The ALRC must include a mechanism for all parents with disabilities whose children are subject to child protection intervention to be routinely offered independent advocacy, or to engage the support of another person of their choice, as soon as family law or child protection professional commence work with a family.**

**Recommendation 19: The priority for the ALRC should be to ensure that informal supported decision-making arrangements are acknowledged and supported by Commonwealth and State and Territory legislation. The wishes of the person with disability to have their chosen supporters, informal or formal, involved in decisions should be enshrined in law.**

**Recommendation 20: Disability awareness training should be mandatory for judiciary and child protection workers at induction to facilitate the development of positive attitudes and approaches towards parents with disabilities.** **Additionally, regular biannual attendance at further training to update skills and understanding is recommended for all staff.**

**Recommendation 21: An independent body should be established to provide formal monitoring and safeguards for people with disabilities in supported and facilitated decision-making arrangements. This should be a non-negotiable feature of facilitated decision-making, whilst people in supported decision-making arrangements should access this resource by choice (with support as needed).**

**Recommendation 22: The ALRC must include a provision to routinely collect demographical data from child protection service users from Commonwealth, state and territory jurisdictions, including if the parent/s and/or child have disability.**

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. In the context of the Family Law system, we work directly with parents with cognitive impairment[[2]](#footnote-2), who struggle to have their right to parent recognised and supported, particularly as recognised by Article 23 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

We work alongside parents with disabilities subject to marginalisation and indifference, lack of support and child and youth protection orders comprises a major part of our direct individual advocacy work and support. In our experience, the barriers that prevent people with disabilities participating fully in legal and justice system processes include:

1. communication and cognitive barriers associated with giving instruction to legal representatives;
2. costs associated with legal representation;
3. difficulties accessing necessary support, adjustment or aids;[[3]](#footnote-3) (a shortage of funding to legal assistance services severely undermines their capacity to meet the legal needs of specific and vulnerable groups, particularly people with disabilities);[[4]](#footnote-4)
4. the problems faced by people with disabilities because of their dependence on others for support, the compounding effect of their disability on their lack of power and control in a relationship, and the fact that their disability is exploited by their abusers;[[5]](#footnote-5) [[6]](#footnote-6)
5. highly formalised and ritualised procedures and complicated legal language that people with cognitive disabilities find confusing, incomprehensible, alienating or intimidating;[[7]](#footnote-7) and,
6. cognitive and/or sensory impairments require extra time and specialist assistance to address.

The *Family Law Act* *(Cth)* refers many times to family violence, but apart from the definition, there are no provisions which further explain the nature of family violence. The term ‘violence’ is used as a broad term in this submission to encompass abuse, neglect, and restrictive practices, because they all stem from misuse of power against people with disabilities, whether deliberate acts or otherwise. It is understated that violence against people with disabilities, particularly women and girls[[8]](#footnote-8) [[9]](#footnote-9), can manifest in unique ways compared to violence against non-disabled people, and for this reason it often goes unrecognised in our society.

The types of violence experienced by people with disabilities include physical violence, sexual assault, verbal abuse, and living in fear of the threat of harm. Many live with intimidation, financial exploitation, and suffer retribution for decisions, choices or complaints they have made[[10]](#footnote-10). Women with disabilities face different forms of violence than women without disabilities. For example, forced sterilisation and abortion, chemical restraint, withholding of aids and equipment, having services or activities withheld, continual belittling and demeaning treatment based on the disability, and threats to remove children.[[11]](#footnote-11)

The ALRC Issues Paper provides a thorough analysis of the legal and practice issues regarding equal recognition before the family law and the need for access and engagement for people with disabilities. It includes several progressive proposals that Advocacy for Inclusion supports, including:

1. Improved awareness of the types of violence experienced by people with disability, including cross-sector collaboration with disability specific services;
2. Training and accreditation for family law professionals to enhance their competency in working with parents and children with disability; and
3. Incorporating relevant provisions of the *Convention on Rights of Persons with Disabilities* (CRPD) into the *Family Law Act*

In addition, Advocacy for Inclusion is concerned that there remains a heavy focus on the decision-making capacity and the need for guardian involvement instead of the decision-making rights of parents with disabilities in the ALRC Issue Paper.[[12]](#footnote-12) The concept of ‘substitute decision-making’[[13]](#footnote-13) is particularly problematic and does not reflect the universality of legal capacity of CRPD Article 12.

Such changes to the current Family Law System will support an acknowledgement of decision-making rights and equal legal capacity for people with disabilities navigating the justice system. The case studies included in this submission may or may not reflect the Family Law System but will instead focus on example reflected in the justice system entirely.

Not always a Family-Like context

Advocacy for Inclusion acknowledges the broad terms of Domestic and Family Violence (DFV) used in Commonwealth, state and territory legislation, where the terms of references can be defined with reference to various circumstantial elements such as relationships, location of offences, and/or domestic arrangements; and may be interpreted differently depending on the legal, policy, service provision, or research view being taken.[[14]](#footnote-14) [[15]](#footnote-15)

Not all relationships in which people with disabilities experience violence can be defined within a family-like context. Any definition of ‘domestic violence’ needs to be sufficiently broad to cover spousal relationships, intimate personal relationships (including dating relationships and same sex relationships), family relationships (with a broad definition of relative), and formal and informal care relationships.

People, including women and girls, with disabilities live in a diverse range of domestic settings including, a community based group home or residential institution, a boarding house, hospital, psychiatric ward, or nursing home. It is highly common that women and girls with disabilities who have only experienced living in supported accommodation have no knowledge about alternatives and no readily accessible means to acquire that knowledge. It is under these living arrangements that many women with disabilities are particularly isolated, with limited ability to have relationships and confidants outside the ‘family’ where the abuse is taking place.

The lack of recognition which captures the range of relationships and various dimensions and experiences of violence experienced by people with disabilities living in group or congregate living arrangements is not included under the wide definition of ‘family violence’ as recognised by the current Family Law System. Relationships, consensual or not, are not recognised if the person with disability is experiencing violence in a ‘home setting’ by support workers, co-residents with disabilities, or kinship carers.

Even within Commonwealth legislation[[16]](#footnote-16), there is no classification or consensus as to what constitutes violence against people with disabilities, particularly women with disabilities. The definitions used vary in the context of ‘domestic’, ‘spousal’, ‘intimate partner’ or ‘family violence’ which frequently excludes the violence that people, particularly women with disabilities experience in the many settings in which they live.[[17]](#footnote-17) [[18]](#footnote-18) For people with disabilities this is totally inappropriate and denies the violence experienced in their own homes as domestic violence.

The Australian Law Reform Commission (ALRC) 2010 report *A National Legal Framework* recommended that all Commonwealth jurisdictions provide a definition of family violence that is violence of threatening behaviour, or any form of behaviour that coerces or controls a family member.[[19]](#footnote-19) It should be recognised that people with disabilities living in congregate living or kinship arrangements do not fall into the definition of family violence, nor do they all live in a family-living context – yet they experience violence as legally described.

Any person experiencing DFV should be able to make a choice to leave or remain, regardless of whether they live in a disability specific arrangement. As in all other cases brought to court, the court is responsible for determining whether the user of violence should be held criminally responsible, and how the user of violence should be appropriately relocated and supported, including paid support staff and carers who use violence in a ‘family-like setting’.

**Recommendation 1: Propose that the update of the *Family Law Act (Cth)* should include a section detailing the features, dynamics and nature of family violence, including reflection of violence impacting people, including women and girls, with disabilities.**

**Perspective from the Australian Capital Territory (ACT)**

Advocacy for Inclusion works consistently with women with disabilities, who are also parents, experiencing violence and have found the contexts in which these crimes occur are not recognised by the wider community as being forms of violence. For example, violence between residents in disability residential care facilities or perpetrated by caregivers.

In 2016, the ACT legislated and passed the *Family Violence Act 2016*.[[20]](#footnote-20) Unfortunately, this new legislation further erodes the options for women with disabilities escaping violence as it removes previous ambiguities about their domestic circumstances and excludes the types of domestic arrangements of many women with disabilities. Women with disabilities live in such places, and circumstances, because government policy prefers those places, yet they are outside the provisions of the *Family Violence Act 2016*. This results in denial of coverage by domestic violence protection orders, leaving common assault provisions as the only alternative to seek protections or redress, both are inadequate in responding to women with disabilities escaping violence in their home.

The ACT *Domestic Violence and Protection Orders Act 2008* provide victims of violence in domestic relationships a “greater level of protective response”. Although people with disabilities experience high rates of violence, this Act does not recognise the relationships common among people with disabilities as “domestic”. For example, relationships in disability supported accommodation and informal arrangements such as home-sharing1. People with disabilities are excluded from the “greater level of protective response” afforded to other members of the community. Domestic violence legislation must extend protection to all people with disabilities regardless of their domestic settings.

With women with disabilities potentially being a large majority of the consumer base in the ACT[[21]](#footnote-21), problems of definition emerge with much of the limited data that is available through the information sharing method unable to distinguish what is considered to be ‘family abuse’.[[22]](#footnote-22) People with disabilities living in congregate living arrangements, residential shared accommodation or living in a ‘kinship’ arrangement are not covered by the new ‘Safer Families’ package to be included in the data collection. For these individuals, data collection is non-existent when finding out who is doing what to whom and their lack of privacy becomes further eroded because the safeguards in place for “family violence” victims will not be applied to them.

In our individual advocacy work, we note a level of complacency towards violence by disability service providers when we raise issues of violence in their facilities with them. It seems to be systemically accepted. Disability support staff seem inured to it after years of having no alternative to offer, or perhaps having succumbed to a “culture of violence”. It seems that workers and managers in the disability service system are also not trained to recognise and respond appropriately to these incidents. This means that women with disabilities can be subjected to violence and abuse in their home for years.

Isolation is a primary factor contributing to the difficulties faced by people with disabilities, particularly women and girls, understanding DFV legislation, services available and the means of accessing them safely. Isolation, both social and physical, can heighten vulnerability by the absence of family, social support and the lack of means to report abuse, particularly if the perpetrator is a carer or family member. The combination of lack of resources, isolation, social margination and the potential requirement of reporting the violence to police is a deterrent for women with disabilities experiencing violence.

In our experience, domestic violence services are not catered to support the various levels of needs of women with disabilities. Several programs in the ACT provide women with funding to remove themselves from a violent situation but women still must organise their own supports with the funding. This creates a large barrier particularly for a woman whose disability had been aggravated by the violence and stress of rebuilding her supports after escaping. This is an added stress upon the woman when support and services are not available and ready for her escape. Our experience shows that many women are unable to overcome this initial barrier to safety.

Facilities without ramps and lifts, communication equipment; attendant care via support workers; interpreter services for Deaf/Hard of Hearing; information in alternative formats such as Easy English; suitably trained staff in disability and so on, are not ready for women with disabilities seeking shelter. In addition, women with disabilities with children who flee violent situations run the risk of losing custody of their children because child protection authorities may question their ability to care for them alone on top of their own support needs.[[23]](#footnote-23)

The issue of disability specific supports being readily unavailable, and people, particularly women with disabilities, being expected to respond to escaping violence while simultaneously reorganising entire support arrangements from scratch, is prevalent. The consequence of support services not being readily available is that women with disabilities remain in the relationship for ease of retaining disability supports, particularly if the perpetrator is the primary caregiver.

Despite the heightened vulnerability and instances of violence experienced by women with disabilities, there is little in the way of legislative protections, programs and resources in response. For example, crisis accommodation appropriate to the needs of women with disabilities scarcely exists in Australia. Some women with disabilities have specific and significant support needs that would never be catered for in a women’s domestic violence shelter.

A coordinated approach to ensuring services and reasonable adjustment is immediately provided is urgently required, as misinformation and ignorance about disabled people that is common among the public, health and human service professionals makes it difficult for agencies to provide the same quality services to their disabled clients.

**Recommendation 2: Additional funding for domestic and family violence services and shelters to include staff training on the prevalence of disability, domestic violence and their direct consequences.**

**Recommendation 3: All Commonwealth, state and territory government should support the development and implementation of national best practice standards for women and girls experiencing and escaping violence. Standards should include:**

1. **Ensure accessible and appropriate facilities and services for women and girls escaping violence with staff training to reflect the different forms of violence more likely to be experienced by people with disabilities, particularly women and girls with disabilities**
2. **Ensure accessible and appropriate information formats, including Easy and Plain English**

**Recommendation 4: All Commonwealth, state and territory governments should prioritise research and data collection aimed at improving responses and services for women with disabilities who experience violence in a Family Violence context.**

Being a Parent with Disability in the justice system

Australian studies show a marked overrepresentation of parents with cognitive impairments in child protection proceedings, with parents with intellectual disability being at greatest risk of having their children removed[[24]](#footnote-24). It is thought that this is due to a pervasive false belief that parents with intellectual disability are unable to learn parenting skills[[25]](#footnote-25). Studies show that parents with intellectual disability can learn parenting skills with adequate and appropriate support.[[26]](#footnote-26) [[27]](#footnote-27) [[28]](#footnote-28) [[29]](#footnote-29) [[30]](#footnote-30) [[31]](#footnote-31) [[32]](#footnote-32) [[33]](#footnote-33) [[34]](#footnote-34)

In 2012, Colleen Pearce, Public Advocate of Victoria, stated:

*“I am increasingly concerned that children are being removed from parents with a disability based solely on that disability, and not because the cases meet the relevant tests… Very often their child is removed not because the parent has harmed or neglected them, but because the child is seen as being at risk of neglect. The appropriate response to this is to provide support, encouragement, help and education”*.[[35]](#footnote-35)

Although people with disabilities have more recently achieved greater recognition of their family and reproductive rights, these entrenched attitudes remain a major problem[[36]](#footnote-36). People with disabilities are widely viewed as ‘childlike’ and therefore are not understood and accepted as people who can or should become parents.[[37]](#footnote-37)

For almost a decade, Advocacy for Inclusion has been highlighting concerns regarding the disproportionate removal of children from the care of their parents where one or both parents may have a cognitive, neurodiversity or physical disability. It is suggested that children and families who encounter the child protection system often share common marginalisation and demographic characteristics. Parents with cognitive disabilities are over-represented in the child protection system and face significant barriers to equitable participation in the legal processes arising from this.[[38]](#footnote-38)

Locally, a significant portion of Advocacy for Inclusion’s individual advocacy cases have included parents with cognitive disabilities who are involved with ACT Child and Youth Protection Services (CYPS). Each parent faces the common concern among child protection workers, and other pertinent health professionals, that their child is at serious risk because the parent has a cognitive impairment. We observe the common assumption that the person with disability is unable to parent purely because of their cognitive impairment and most parents simply understand that it’s about their disability and they are simply “wrong”.

Australia is a signatory to the CRPD, which places obligations on the Commonwealth, state and territory governments to fulfil the right for parents with disabilities to care for their children under Article 23 - with “appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities”. [[39]](#footnote-39) Parents with disabilities are currently an incredibly marginalised group in Australia. Accessible resources that meet the needs of this group are non-existent. In several Advocacy for Inclusion cases, children have been removed from parents because no appropriate support was available to help them to care for their children. In all these cases no supports were tried or offered before removal was undertaken.[[40]](#footnote-40) 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.[[41]](#footnote-41)

**Utilising the NDIS**

The launch of the National Disability Insurance Scheme (NDIS) presents an important opportunity for parents with significant and enduring disabilities to access the individualised supports they need to learn parenting skills and carry out parenting responsibilities. It will be the responsibility of all arms of government to have the capacity to refer people with disabilities to the National Disability Insurance Agency (NDIA). One component of this involves acknowledgement of the NDIS as a placement prevention resource for families that can be interacted between the Commonwealth Family Law system and state and territory child protection systems.

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

**Case study**

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

Mandy used an advocate to assist her in liaising with CYPS and the National Disability Insurance Agency (NDIA) for support services to be established for herself, and her children. Both CYPS and NDIA had refused to collaborate with each other, and there had been several changes in caseworkers in CYPS, fracturing communication further.

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

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

Since the rollout of the NDIS in the ACT, Advocacy for Inclusion has pushed for protocols to be developed to ensure Child Youth Protection Services engage directly with the NDIS whenever supports are required for a parent with disability to maintain custody of their children. This support was rarely called on by either agency and both regularly fail to engage. Advocacy for Inclusion has now intervened in numerous cases to bring the two agencies together so that custody can be retained, supports put in place, or in some cases restoration has been successful.

**Recommendation 5: The ALRC should acknowledge the NDIS as a resource for placement prevention for families headed by parents with disabilities and for families with children with disabilities. The Family Law system should include an initiative to ensure that all state and territory child protection systems support families to apply for and access the NDIS.**

**Recommendation 6: The ALRC to consider linking and collaborating to provide early intervention parenting supports to parents with disabilities through the NDIS as a productive response to Article 23 of the CRPD. This measure will ensure gaps are filled and the complex needs of families headed by parents with disabilities are addressed.**

**Recommendation 7: Acknowledge that parents with disabilities have disability specific support needs, to which child protection professionals must be sensitive and responsive to prevent out of home care placements and promote successful restoration of children.**

**Recommendation 8: There must be flexibility in placement prevention and restoration supports to ensure supports provided through the NDIS are recognised and accessed by parents with disabilities. State and Territory child protection agencies and family law professionals must work collaboratively with the NDIA to achieve good outcomes for families headed by parents with disabilities.**

Access and Engagement under Decision-Making Principles

Any person who can in some way convey their will and preference through any means of communication should be considered able to make their own decision, even if the person needs support to understand and weigh information pertaining to the decision. This approach shifts emphasis toward supporting a person with disability to make decisions rather than subjectively assess their decision-making capacity.

Advocacy for Inclusion continues to commend the four high level principles proposed by the ALRC’s *Equality, Capacity and Disability in Commonwealth Laws – Final Report* in 2014.

### All adults have an equal right to make decisions that affect their lives and to have those decisions respected

### Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives

### 3. The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

### 4. Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence. [[42]](#footnote-42)

In particular, the shift in focus brought by Principle 1 toward decision rights rather than capacity is highly important. It is consistent with the General Comment on CRPD Article 12, which asserts:

Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (art. 3 (d)) is incompatible with granting legal capacity on an assimilationist basis.[[43]](#footnote-43)

Tests and assessments used to determine decision-making capacity are subjective and anchored in socially constructed norms around what it means and looks like to have decision-making capacity. They are based in the assumption that the inner workings of a person’s mind can be accurately and objectively assessed, when this is simply not the case. The CRPD General Comment on Article 12 explains:

The concept of mental capacity is highly controversial in and of itself. Mental capacity is not, as is commonly presented, an objective, scientific and naturally occurring phenomenon. Mental capacity is contingent on social and political contexts, as are the disciplines, professions and practices which play a dominant role in assessing mental capacity. [[44]](#footnote-44)

When a person is assessed as not having decision-making capacity, they are effectively being judged upon whether they assimilate to decision-making capacity norms. They can be denied their legal capacity based on this judgement. Any models that allow the denial of a person’s legal capacity on the basis of their assessed decision-making capacity are not compliant with CRPD Article 12. Beginning with the principle that all persons have the right to make decisions is a helpful shift towards recognising the universality of legal capacity.

Importantly, the principles refer to all adults having an “equal right to make decisions”. Currently, the law and legislation permits discriminatory treatment towards people with certain disabilities which are considered likely to impair decision making ability – people with disabilities may be required to demonstrate a competency in decision making that other members of the population are not.

The ALRC’s assertion in 2014 that any such assessment “should be much further along a spectrum, with the focus being squarely on supporting decisions, rather than assessing whether or not a person can make a decision”[[45]](#footnote-45) was progressive and should be implemented within the Family Law system.

Furthermore, given the current culture surrounding decision-making for people with disabilities, the preoccupation with measuring a person’s decision-making capacity will continue for some years to come. There is already a presumption of capacity across Commonwealth, state and territory Guardianship legislation, yet this has not deterred a cultural focus on assessing the capacity of a person with disability.

**Recommendation 9: All Australian jurisdictions “recognize persons with disabilities as persons before the law, having legal personality and legal capacity in all aspects of life, on an equal basis with others. This requires the abolition of substitute decision-making regimes and mechanisms that deny legal capacity and which discriminate in purpose or effect against persons with disabilities.”[[46]](#footnote-46)**

**Recommendation 10: Everybody has the right to make decisions, regardless of their assessed (perceived) decision-making capacity. This idea is reflected in the four high level principles proposed by the ALRC’s Equality, Capacity and Disability in Commonwealth Laws – Final Report in 2014and must continue to be reflected throughout the ALRC Review of Family System recommendations when considering people with disabilities and their equal legal capacity.**

Changing ‘risk management’ in Guardianship matters

It is not just parents with disabilities who face restrictions to parent effectively and engage in the justice process. There continues to be a preoccupation with risk management and the pervasive attitude that people with disabilities, particularly those with cognitive and intellectual disabilities, do not know their own interests and require protection from themselves and from society. Guardianship practices are a product of this culture, with a presumption that a person with a disability needs to be spoken on behalf of. A stronger focus on the need for a cultural change in the Family Law System is required to support societal transition in accordance with Australia’s obligations under Article 12 of the CRPD as a form of access and engagement.

The Convention on the Rights of People with Disabilities (CRPD) General Comment on Article 12 says:

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. **The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests** (emphasis added).[[47]](#footnote-47)

Allowing people with disabilities to enjoy legal capacity on an equal basis with others and should be provided access to the support they require to exercise their legal capacity under the CRPD Article 12 does not mean they need to be provided with ‘substitute decision-making’ out of fear of ‘very serious consequences’ for parties involved.[[48]](#footnote-48) There are no cases in which substitute decision-making is needed or can protect the rights of people with disabilities. The ‘substitute decision making’ model propositioned by the ALRC in the Issues Paper[[49]](#footnote-49) is unable to protect the rights of people with disabilities and litigation guardians should not continue to be used as a protection mechanism.

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 a 2015 submission directed to the ACT Law Reform Advisory Council:

“*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.”[[50]](#footnote-50)*

People with disabilities, particularly parents with disabilities, are often left in the dark about how their case is progressing, are forced to place their trust in others to speak *for* them and are yet not provided the support they need to understand and engage in the process.

**Case study**

Daniel has a cognitive disability and was recently charged with a serious criminal offence. Daniel didn’t know what was going on. His lawyer, Paula, didn’t explain much to him and instead insisted that she talk to his uncle, who is his primary support person.

Daniel does not have a guardian.

When Daniel asked about the details of the court proceeding Paula refused to disclose the information. She said that she would only talk to Daniel’s uncle. Daniel asked Paula to communicate directly with him to explain what is going on.

Paula replied to Daniel “this offense could result in jail time and this case has to be treated very carefully”. She felt that Daniel didn’t really understand what is going on because of his disability. There was not really any point in explaining it all to him. Paula continued, “I’ve been talking to your uncle about it. He is your main carer and is responsible for you.”

Daniel was devastated. He knew things were serious but nobody would take the time to tell him exactly what was happening. Paula finally disclosed some the details of what she was planning to do, including applying for Daniel to have his fitness to plead assessed. She also advised Daniel’s uncle to apply for a guardianship order. “He needs somebody to make decisions on his behalf. A guardianship order would have stopped him from getting into this mess in the first place.”[[51]](#footnote-51)

Daniel’s uncle was convinced that a guardianship order would improve the situation, even though Daniel has always made his own decisions with informal support as needed.

Daniel’s family was pressured to apply for a guardianship order, seemingly because it would support the case that Daniel was “unfit to plead”. It was assumed that a guardianship order would be the solution to Daniel’s problems.

The ramifications for Daniel were serious: he would lose recognition of his authority to make decisions about his own life, and there would be no solution to his criminal matters. Even without the guardianship order, the lawyer treated Daniel as though he already had no such authority simply because of his disability.

Paula stopped taking Daniel’s phone calls and now only discusses the matter with Daniel’s uncle. It’s easier for her that way.

Daniel has been effectively excluded from participating in his own legal defense.

Any model that does not regard the person with disability as the decision-maker cannot be considered a supported decision-making model. Supported decision-making is about supporting the person with disability to make their own decisions. The person appoints their own decision supporter/s. A decision supporter can never be appointed to a person by someone else on their behalf. Advocacy for Inclusion cannot see how the ‘substitute decision-making’ model considered beneficial by the ALRC[[52]](#footnote-52) could operate any differently in practice to current substitute decision-making practices, especially as they can be imposed on a person with disability based on subjective assessments of decision-making capacity.

If a person expresses their will and preference through any means, this should be respected regardless of whether they are assessed as having impaired decision-making capacity. The person decides about their own life, relative to their own capacities, values, beliefs, preferences, knowledge, experiences and circumstances, which is how everyone makes all decisions. However, in order for the person to exercise their decision-making capacity and legal capacity to the fullest extent, the person might choose to access decision-making support.

In cases where a person’s will and preference cannot be ascertained, the term ‘substitute decision-making’ is wrong because the current will and preference of the person with disability is unknown under litigation guardianship, and therefore they are not actively making decision in their own justice processes. Instead, it is done in their *best interests*. The CRPD General Comment on Article 12 notes:

The right to equal recognition before the law implies that legal capacity is a **universal attribute** inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others.[[53]](#footnote-53) (emphasis added)

Therefore, legal capacity cannot be removed from a person under any circumstances. The most important difference between substitute and supported decision-making is not the different application of “best interests” and “will and preferences” approaches, although these are significant. The key difference is who is recognised as having decision-making authority; in other words, “legal capacity”.

Whereas substitute decision-making allows for a person’s legal capacity to be removed and an alternative decision maker appointed, supported decision-making is where the person with disability is recognised as the decision maker. This must be held as a non-negotiable, fundamental characteristic of supported decision-making. Supporting the person’s will and preference is inherent in this model, since the person with disability is regarded as having the authority over their own decisions.

**Recommendation 11: The ALRC should consider that respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (art. 3 (d)) is incompatible with granting legal capacity on an assimilationist basis. If a person expresses their will and preference through any means, this should be respected regardless of whether they are assessed as having impaired decision-making capacity.**

Where concerns for the wellbeing of a person with disability arise, for example concerns about violence or exploitation, the person with disability should be provided with the social, emotional, physical, practical and decision-making support to find safety. Many people without cognitive impairment find themselves in unsafe, unhealthy situations and relationships. Everyone is entitled to make their own decisions about how to respond to such circumstances, with appropriate support. It is pertinent not to further traumatise and remove control from a person who is being abused by taking away their decision-making authority. Support and encouragement for that person is the best way to protect their rights and wellbeing under a supported decision-making model that is consistent with Australia’s signatory obligations to the CRPD.

For these reasons, substitute and best-interest decision-making regimes do not protect people with disabilities. Rather they make them more vulnerable by reinforcing the idea that the views and concerns of people with disabilities are unreliable and invalid. The *Family Law Rules 2004* (Cth) state that a person with a disability ‘may start, continue, respond to, or seek to intervene in, a case only by a case guardian”.[[54]](#footnote-54) The appointment of a litigation or case guardian is based on the risk management of legal liability and restrictions on the role a litigation guardian, an appointee whose job is to speak for the person with disability during court proceedings.

**Recommendation 12: All people with disabilities engaging in the legal process under the Family Law system should be provided with access to support they require to exercise their legal capacity under the ‘supported decision-making’ model consistent with Australia’s signatory obligations to the CRPD.**

Facilitated Decision-Making as a last resort[[55]](#footnote-55)

Facilitated decision-making would be used when the person with disability’s *current* will and preference cannot be ascertained, after all steps to ascertain them have been tried and a litigation guardian is to be appointed if *absolutely necessary*. The person with disability is still regarded as having legal capacity with decision-making authority. However, as their will and preference cannot be ascertained a decision facilitator is required to interpret the person’s will and preference based on available information. Facilitated decision-making should be limited in scope, be proportionate and apply for the minimum time.

This model is also different to substitute decision-making because the person with disability retains their legal capacity. They are regarded as having the right to make their own decisions. However, their decision – their will and preference – cannot be ascertained even after all efforts, including decision-making support, have been undertaken. The person’s legal capacity is given effect by decision facilitators, who consider the persons will and preferences and human rights, rather than “best interests”.

It is also different to supported decision-making where the person’s current will and preferences are known and the person is supported to actively and directly make their own decision.

Facilitated decision-making would be used only as a last resort when the person’s current will and preferences are completely unable to be ascertained, and where a decision is required in order for the person to access their human rights. We envisage that this model would be applied rarely and affect very few people in very specific circumstances. An example of a circumstance where facilitated decision-making might be required is when a person is comatose.

Facilitated decision-making should be considered a formal model of decision-making, which requires independent monitoring and safeguards. Transparency and accountability measures would be critical to ensure power is not abused, that the person’s will and preferences are being respected, and that all efforts to ascertain the person’s will and preferences are being undertaken. This is important as the person with disability is not actively expressing her own decisions and therefore does not have the opportunity to seek out or choose if offered to access monitoring and safeguards at that point in time.

Advocacy for Inclusion suggests the following could be considered in the development of a framework for determining whether facilitated decision-making is required:

1. The person’s will and preference cannot be ascertained even after *all efforts* have been made to communicate with that person and support that person to express their will and preference.
2. *All efforts* to ascertain a person’s will and preference include at least the following steps:
   1. The person is supported to receive information and communicate their will and preferences pertaining to the relevant decision using all forms of information and communication appropriate to the person. *This includes using unconventional communication formats such as computer technology and respect for the person’s cultural and linguistic circumstances.*
   2. Communication and decision support is attempted by the person’s significant others, including people with whom the person has existing familiar and trusting relationships and any existing formal or informal decision-supporters appointed by the person.
   3. Where the person does not have such relationships, the person is supported to establish relationships with volunteers with the potential to act as decision-supporters.
   4. Information is provided and communication attempted by other parties who might be involved in the relevant decision.
   5. As much time as possible is allowed for the person to undertake the steps above.

When it is apparent that facilitated decision-making is required, all efforts to ascertain the person’s *current* will and preferences must continue to be made by decision facilitator/s throughout the decision-making process using the framework above. Ascertaining the person’s *current* will and preference must be viewed as an *ongoing* process of facilitated decision-making, not simply part of determining whether facilitated decision-making is required.

**Recommendation 13: That the ALRC continue to refrain from continuing to engage in a ‘substitute decision-making’ model and refer to a facilitated decision-making model if is *absolutely necessary* to an individual case. Substitute decision-making diminishes, rather than protects, the rights of people with disabilities to enjoy legal capacity on an equal basis with others.**

**Recommendation 14: Where a person with disability’s *current* will and preference cannot be ascertained, after all steps to ascertain them have been tried, facilitated decision-making should be used.**

**Recommendation 15: Facilitated decision-making should be considered a formal model of decision-making, which requires independent monitoring and safeguards to maximise transparency and accountability.**

**Recommendation 16: The following could be considered in the development of a framework for determining whether facilitated decision-making is required:**

1. **The person’s will and preference cannot be ascertained even after *all efforts* have been made to communicate with that person and support that person to express their will and preference.**
2. ***All efforts* to ascertain a person’s will and preference include at least the following steps:** 
   1. **The person is supported to receive information and communicate their will and preferences pertaining to the relevant decision using all forms of information and communication appropriate to the person. *This includes using unconventional communication formats such as computer technology and respect for the person’s cultural and linguistic circumstances.***
   2. **Communication and decision support is attempted by the person’s significant others, including people with whom the person has existing familiar and trusting relationships and any existing formal or informal decision-supporters appointed by the person.**
   3. **Where the person does not have such relationships, the person is supported to establish relationships with volunteers with the potential to act as decision-supporters.**
   4. **Information is provided and communication attempted by other parties who might be involved in the relevant decision.**
   5. **As much time as possible is allowed for the person to undertake the steps above.**

**Recommendation 17: Ascertaining the person with disability’s *current* will and preference must be viewed as an ongoing part of the facilitated decision-making process. After it is apparent that facilitated decision-making is required, all efforts to ascertain the person’s *current* will and preferences must continue.**

**Independent advocacy to aid access and engagement**

Independent advocacy support is widely documented in the research literature as highly important for people with disabilities, including parents with disabilities, to assist them to engage effectively within the justice system, including interacting with state and territory child protection system[[56]](#footnote-56). Due to their cognitive impairment, parents often find it difficult to navigate and comprehend the justice process and the child protection concerns being raised. This creates significant barriers for parents to work with the family law system to identify the sorts of assistance they need to become ‘good enough’ parents and to prevent the child being removed.

For example, parents are called to attend large case conference meetings with many community and health professionals who are considered ‘experts’. This is a highly intimidating environment for any parent, let alone a parent who has cognitive impairment. Plain language is not used in these meetings and often the pace of the meetings is too quick for parents, especially those with learning difficulties so the access and engagement is non-existent. Parents feel it is highly difficult if not impossible to influence the discussions in these meetings and to be heard and respected. This perpetuates the often already tense relations between parent and the child protection system.

Conversely, parents at Advocacy for Inclusion and parents in the research literature report that they are treated with greater respect when they are supported by an advocate or another person of their choosing throughout interactions with child protection services[[57]](#footnote-57). Parents with disabilities should be routinely offered the assistance of an independent advocate or other person of their choosing to assist them to speak up and be heard during child protection processes, and to enhance their engagement with the family law system.

**Recommendation 18: The ALRC must include a mechanism for all parents with disabilities whose children are subject to child protection intervention to be routinely offered independent advocacy, or to engage the support of another person of their choice, as soon as family law or child protection professional commence work with a family.**

Where people with disabilities are involved, as a parent or not, the priority for the Family Law system should be to ensure that informal decision-making relationships are acknowledged and supported by Commonwealth, state and territory legislation. The wishes of any person with disability to have their chosen supporters, informal or formal, involved in decisions should be enshrined in law.

The lack of recognition of supported decision-making in law is a major barrier to decision-making rights of people with disabilities. For this reason, we support the idea of formally acknowledging supported decision-making in the changes of the Family Law system. However, we share the concern raised among other stakeholders about over-formalising supported decision-making.

By over-regulating supported decision-making there is the risk of hindering the autonomy and decision-making rights of people with disabilities. It takes away their control by potentially setting out how decision-making arrangements should operate, who they could appoint as a supporter, and what the supporter might be obliged to do. This should all remain at the discretion of the person with disability with access to safeguards and monitoring if they choose.

There will be cases where a person with disability does not have access to respectful, trusting, natural relationships. In these cases, if the person with disability chooses they should be supported to establish relationships with formal supporters who have undergone the appropriate checks, and who have undertaken training in supported decision-making. Supported decision-making should be considered a mostly informal arrangement, while facilitated decision-making should be considered a formal arrangement.

**Recommendation 19: The priority for the ALRC should be to ensure that informal supported decision-making arrangements are acknowledged and supported by Commonwealth and State and Territory legislation. The wishes of the person with disability to have their chosen supporters, informal or formal, involved in decisions should be enshrined in law.**

**Training the Judicial**

*All* members of the community carry some level of unconscious prejudice in this regard, and judicial and child protection professionals are not immune. Advocacy for Inclusion observes that judicial and child protection workers are preoccupied with the *disability* and assume that fairness and enjoyment of legal capacity does not apply.

In a family law context, parents with disabilities feel that they are judged and treated more harshly because of their disability despite placing all efforts into becoming ‘good enough’ parents. This has major adverse consequences for the family and hinders the parent’s capacity to reach their potential as parents. Similarly, numerous studies, including one in Australia, indicate that existing services, such as child protection agencies, are experienced by parents with disabilities as incomprehensible, judgmental, intimidating and disrespectful. Many parents report feeling doubted and not listened to during the family law process.[[58]](#footnote-58) [[59]](#footnote-59) [[60]](#footnote-60) [[61]](#footnote-61)

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

*“more time to understand and answer questions or… a support person to explain things to them and ensure that they are not overwhelmed by the stress of a new and confronting situation (like a court or police station)”*[[62]](#footnote-62)

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

Usually, they also lack the time that is required to ensure full participation by a person with significant cognitive or communication barriers. The need for support is not considered - instead legal presumptions and processes are applied to remove or downgrade the client’s legal personhood, such as through substitute decision-making via litigation guardianship.

Due to the weight of decisions and actions made by judicial and child protection professionals in a family law context, it is crucial that they are trained and supported to identify and challenge any negative and culturally imposed assumptions they may hold regarding parents with disabilities. This is an important part of placement prevention to prevent children from being removed because of perceived risks associated with the parent’s disability, and to enable productive relationships between child protection workers and parents. To address this, all child protection workers should access mandatory disability awareness training in Commonwealth, state and territory jurisdictions. Additionally, regular biannual attendance at further training to update skills and understanding is recommended.

It is now widely recognised that disability awareness training should be delivered within a human rights framework by people with disabilities. It is important that the recommended training correspond with this expectation.

**Recommendation 20: Disability awareness training should be mandatory for judiciary and child protection workers at induction to facilitate the development of positive attitudes and approaches towards parents with disabilities.** **Additionally, regular biannual attendance at further training to update skills and understanding is recommended for all staff.**

**Monitoring with Data Collection**

Until the commitment of national data collection in 2022[[63]](#footnote-63), there remain no national studies on the prevalence of violence against people with disabilities in institutional settings, or in the general community. However, it is widely documented that people with disabilities experience higher rates of violence than the general population, and women with disabilities are at risk.[[64]](#footnote-64) [[65]](#footnote-65) [[66]](#footnote-66)

The CRPD recommends that Australia develops nationally consistent data collection and public reporting of disaggregated data across the full range of UN CRPD obligations, including the right to be safe from violence, and that all data be disaggregated by age, gender, disability status, place of residence and cultural background.[[67]](#footnote-67) This remains critical to gain a real understanding of the issue to support the development of policies and legislation that enable people with disabilities to access basic human rights that protect them from domestic violence.

The need for data collection remains essential in building an evidence base for DFV approaches and responses, particularly for people with disability to be included in such evidence in guiding future policy and legislation.

People with disabilities in supported and facilitated decision-making arrangements should have access to the safeguards like those outlined in the ALRC’s proposal:

* Guidelines on decision supporter duties;
* Affirming the person with disability as the decision maker with the right to revoke the appointment of a decision supporter at any time;
* Recognising multiple decision supporters where the person with disability has appointed more than one supporter (formally or informally);
* The provision of culturally appropriate guidance and training to people who require decision-making support, supporters and departments interacting with supporters.

Additionally, people with disabilities should have access to an independent body set up to monitor and provide safeguards to people with disabilities in supported and facilitated decision-making arrangements.

People with disabilities in supported decision-making arrangements should have the opportunity to access safeguards and monitoring resources as they choose (with support as needed). Facilitated decision-making should be considered a formal arrangement, automatically subject to independent monitoring and safeguards. This is highly important in terms of transparency and accountability. A significant power imbalance would be present in any facilitated decision-making arrangement as the person with disability’s direct will and preferences are not known. Thorough and frequent transparency and accountability measures exercised by an independent body would be critical in safeguarding against misuse of power.

**Recommendation 21: An independent body should be established to provide formal monitoring and safeguards for people with disabilities in supported and facilitated decision-making arrangements. This should be a non-negotiable feature of facilitated decision-making, whilst people in supported decision-making arrangements should access this resource by choice (with support as needed).**

**Recommendation 22: The ALRC must include a provision to routinely collect demographical data from child protection service users from Commonwealth, state and territory jurisdictions, including if the parent/s and/or child have disability.**

**Conclusion**

People with disabilities are some of the most vulnerable members of the Australian community to all forms of violence and abuse. However, women with disabilities experience more barriers than the rest of the community in accessing shelter and services when escaping domestic violence. Advocacy for Inclusion believes that not enough is being done in the ACT to promote people with disabilities’ right to be free and safe from violence.

Existing guardianship laws are incompatible with Article 12 as clarified the UN Committee in its 2014 General Comment – implementation requires “the abolition of substitute decision-making regimes”. The Committee recommended that Australia replace substitute decision making with supported decision making.

Guardianship compounds defenselessness, it does not negate it. The need for ‘substitute decision-making’ models using litigation guardians over ‘supported decision-making’ models 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.

Advocacy for Inclusion envisages adults with disabilities in our community exercising their decision-making rights, with the support they need to do so. This vision requires law reform driven by and committed to the rights of people with disabilities to self-determination, equal recognition before the law and equal enjoyment of legal capacity.

The successful implementation of Article 12 will require coordinated reforms to other areas of family law. Consistent and supportive measures to drive cultural attitudinal change across all policy areas and sectors will be integral to this success. Considerable investment will be needed to ensure the provision of appropriate support and training is available to parents with disabilities, family members, carers and support workers and to personnel across judicial and child protection bodies.

Advocacy for Inclusion appreciates the opportunity to contribute to the ALRC *Review of the Family Law System*. We look forward to further engaging further with the ALRC and other stakeholders.

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3. Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws – Final Report*, ALRC Report 124, p192. [↑](#footnote-ref-3)
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12. ALRC (2018) *Review of the Family Law System: Issues Paper*, n.78 [↑](#footnote-ref-12)
13. Ibid, n.80 [↑](#footnote-ref-13)
14. Australian Bureau of Statistics. (2009) (revised 2013) *Conceptual Framework for Family and Domestic Violence*. [↑](#footnote-ref-14)
15. Standing Committee on Justice and Community Safety (2017) *Discussion Paper: Domestic and Family Violence – Policy Approaches and Responses*. [↑](#footnote-ref-15)
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19. Australian Law Reform Commission (2010*) Family Violence – A National Legal Response. ALRC Report 114. The Intersections of Child Protection and Family Laws.* <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>. P. 36. [↑](#footnote-ref-19)
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