



**Royal Commission**  
into Violence, Abuse, Neglect and Exploitation  
of People with Disability

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# Research Report

## Parents with disability and their experiences of child protection systems

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July 2023

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Jumbunna Institute for Indigenous Education and Research, UTS Law and Western Sydney University acknowledge the ongoing custodianship of Country of First Nations peoples and pay our respects to Elders past and present. We acknowledge the ongoing resistance of First Nations peoples, particularly regarding the forced removal of First Nations children and young people from their families.

This project was commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

## Suggested citation

Terri Libesman, Paul Gray, Eloise Chandler, Linda Briskman, Aminath Didi and Scott Avery, *Parents with Disability and their Experiences of Child Protection Systems*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023).

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# Acknowledgements

This project would not have been possible without the enormous generosity of the parents, advocates, service providers, peer support workers, lawyers and clinicians who shared their depth of knowledge and experience with us. We especially want to thank parents who have shared painful stories of their experiences with child protection systems. We hope that we have honoured their stories in this report. We ask that governments and the public also honour their stories through reforming child protection systems and practice, including by actively addressing social inequalities that risk child protection involvement.

We also thank the many First Nations, Disability and children's organisations who shared information and facilitated interviews. To maintain the confidentiality of participants and the organisations they work for we have not named individuals or organisations. We offer gratitude to our research partner, SNAICC – National Voice of Our Children for supporting our work engaging with First Nations children's organisations and providing expertise with respect to First Nations parents with disability's experiences of child protection systems.

We would also like to thank the child protection departments which provided responses to our questions. Much about child protection systems is not transparent or open to public scrutiny, despite them exercising their authority in our collective name. Participants' experiences contribute to bringing information about parents with disability's experiences to light. This is necessary for greater justice for parents with disability who have contact with child protections to be achieved.

We thank Dr Susie Latham for providing research assistance and Mr Matthew Sidebotham for his editorial work. Finally, we thank the Disability Royal Commission for the opportunity to do this important work.





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# Executive summary

This research sought to improve understanding of the experiences of parents with disability of Australian child protection systems, paying particular attention to the experiences of First Nations and culturally and linguistically diverse parents with disability. It addressed the following questions:

1. What are the experiences of parents with disability across the spectrum of engagement with child protection systems from initial reports of child protection concerns to out-of-home care ('OOHC') and restoration or permanent removal?
2. How do child protection systems meet or breach parents with disability's rights, including their rights to be supported?
3. What reforms are necessary to reduce the risk of parents with disability and their families coming into contact with child protection systems and, when in contact, prevent escalation of the severity of interventions?
4. What are some examples of promising practices that work to improve outcomes for parents with disability and their families?

The project has three components: (1) an extensive critical review of published English-language research; (2) a primarily paper-based review of Australian policy and practice, and (3) qualitative fieldwork with parents, advocates, caseworkers, service providers, Children's Court clinicians and lawyers in NSW and Victoria. All data was evaluated with respect to internationally recognised human rights principles – in particular, those rights articulated in United Nations *Convention on the Rights of People with Disabilities ('CRPD')*, *International Covenant on Civil and Political Rights ('ICCPR')*, *Convention on the Rights of the Child ('CRC')* and the *Declaration on the Rights of Indigenous Peoples ('UNDRIP')*.<sup>1</sup>

The scope of the fieldwork was limited by the short timeframe and limited project budget, precluding fieldwork across all jurisdictions. Consistent with the critical human rights and intersectional standpoint of the project and informed by gaps in the research identified in the literature review, the fieldwork focussed on investigating and elevating the voices of parents with disability, advocates who work with them and service providers who are engaged in supporting them. While this research makes a contribution to addressing this gap, further research is necessary. This includes particular foci on First Nations and culturally and linguistically diverse parents with disability and parents with disability's experiences across all Australian states and territories, and spanning the continuum of child protection involvement.<sup>2</sup>

## The (un)known involvement of parents with disability in child protection systems

Data collection systems utilised by child protection services in Australia do not routinely record or publish the numbers of parents with disability under their purview.<sup>3</sup> This widespread failure breaches Australia's obligations under Article 31 of the *CRPD*, which requires state parties

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to 'collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to' parents with disability's human rights. Without this data, attempts to design policy, services and infrastructure supportive of people with disability's rights to parent with privacy, dignity and without prejudice, are compromised.<sup>4</sup>

Despite this data gap, Australian and international research over several decades has identified that parents with disability are over-represented as subjects of child protection allegations, investigations and proceedings. Parents, particularly mothers, with psychosocial disability appear to constitute the largest cohort of parents with disability engaged by child protection systems.<sup>5</sup>

The literature and fieldwork indicate that once involved in child protection systems, parents with disability are significantly more likely to have their children removed from their care.<sup>6</sup> They experience differential treatment with respect to where, how long and with whom their children are placed following their removal.<sup>7</sup> Child protection authorities are less likely to work towards reunifying parents with disability and children or to refer parents with disability to parenting support services.<sup>8</sup> For many parents with disability involved in the child protection system, the removal of their children from their care is permanent,<sup>9</sup> and often extends to subsequent children. This is magnified for First Nations parents with disability.<sup>10</sup> There is little published research available with respect to culturally and linguistically diverse parents with disability.

## Framing parents with disability as potential risks to their children

The conflation of disability and risk is one of the most explicit forms of discrimination parents with disability face.<sup>11</sup> The conflation is ostensibly based on past numbers of parents' involvement with child protection systems. It attests to the social, systemic and individual prejudice and absence of support faced by parents with disability historically and today.<sup>12</sup>

As fieldwork participants and scholars assert, the assumption of "potential risk" lends itself to child protection authorities imposing lower thresholds for intervention on parents with disability, particularly parents with intellectual disability.<sup>13</sup> Disturbingly, the literature and fieldwork participants regularly cited examples of assessments of risk being conducted in ways that were neither disability or culturally appropriate, nor by assessors who had the requisite tools, skills or knowledge to do so.<sup>14</sup> They also cited failures by child protection authorities to refer parents to services prior to instigating court proceedings to remove children from their care.<sup>15</sup>

The conflation of risk with disability contributes to an identified disability being the primary framework through which other, and often unrelated challenges are understood.<sup>16</sup> While policy, and in some cases legislation, prohibit statutory intervention on the grounds of a parent living with disability, the literature and fieldwork reveal the way assumptions about disability nevertheless pervade risk assessment and child protection practice. Exposure to family violence

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and structural failings including poverty and inadequate housing are thus often attributed to the individual failings of parents or as confirmatory evidence of parents with disability's incapacities to ensure their children's safety.<sup>17</sup> Parents who actively seek support or help from family or services can find their actions construed as signalling their inability to care for their children.<sup>18</sup> Parents, advocates, lawyers and other fieldwork participants noted that linking risk and disability often led to assumptions about apparent risks being immutable.

Unsurprisingly, this culminates in many parents with disability resisting health treatment, domestic or family violence or parenting support or help due to fears of child protection repercussions.<sup>19</sup> This is particularly the case for First Nations parents whose lived experiences, including the intergenerational trauma of the Stolen Generations, means that many are highly attuned to the associated risks of increased surveillance of parents and families, and exposure to child protective services.<sup>20</sup>

## Systemic failures to provide disability and culturally safe and inclusive support services to parents

The discrimination faced by parents with disability is reflected in, and reinforced structurally by, the current scarcity of inclusive, accessible or specialised support services.<sup>21</sup> This is compounded for First Nations and culturally and linguistically diverse parents.<sup>22</sup> It is exacerbated outside metropolitan centres, with few specialised or inclusive services accessible to parents in regional and remote communities.<sup>23</sup> It is also persistently identified as jeopardising the health and safety of parents, particularly mothers, who seek support due to domestic or family violence.<sup>24</sup>

A consistent finding of parliamentary and independent inquiries over the last twenty years, reinforced by the fieldwork, is that disability support services lack the capacity and training to provide parenting or domestic violence support, while many parenting and domestic violence support services lack the capacity or knowledge to identify or address the specific and diverse needs and realities of parents with disability.<sup>25</sup> The roll out of the NDIS does not seem to have addressed this.<sup>26</sup>

For many parents with disability subject to child protection system involvement, the possibility of family preservation – or, in cases where children are separated from their parents, family reunification – is foreclosed by the lack of safe and appropriate services available. Across the board, poverty and related issues such as inadequate and insecure housing or homelessness are identified as significant underlying factors driving parents with disability's involvement with child protection systems.<sup>27</sup> Without access to effective services and support, parents are frequently unable to demonstrate to child protection authorities that they can or have addressed child protection concerns.

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Strict legislated timeframes introduced as part of legal ‘permanency’ provisions across Australia provide that parents whose children have been removed from their care must address child protection concerns within a short period, usually two-years, in order for them to be restored.<sup>28</sup> At the same time, once children are removed from their care, many parents are precluded from accessing family support services.<sup>29</sup> Socioeconomic vulnerabilities that may have contributed to their involvement in child protection systems can become further entrenched after removal,<sup>30</sup> with loss of significant social welfare support<sup>31</sup> and social housing.<sup>32</sup> The legislated timeframes fail to account for the reality of services that are available and accessible to parents with disability. Instead, parents’ capacities are being determined because of the system’s failures to support them, resulting in the avoidable, legally permanent separation of children from their parents, and exposing children to long-term risks associated with out-of-home care.

## Funding and Redesigning Disability and Culturally Inclusive Services

Political and social failure to ensure disability-appropriate, culturally responsive and inclusive services contributes to the over representation of parents with disability in child protection systems. Government funding must be directed to preventative, trauma-informed, social and community-based support services which are guided by consultation with families with disability. Advocates, although themselves often under-resourced,<sup>33</sup> provide integral support to parents across their engagement with child protection services. As fieldwork participants and several authors also discern, there needs to be greater emphasis on supporting peer-led advocacy within the child protection space.

There is an urgent need to develop and fund both specialist disability services that address the intersectional support needs of people with disability who are *parents and* inclusive child protection parenting services that provide culturally and disability safe and accessible support. That this has not occurred to date reflects the degree to which parents with disability have been expected to ‘fit into’ existing services<sup>34</sup>, as well as arguably the invisibility or neglect of this cohort in service system design and administration.

Principles of First Nations self-determination and participation are embedded in UN human rights instruments and the jurisprudence of human rights committees. First Nations peoples’ rights across treaties and declarations, including the *CRPD*, *UNDRIP*, *CRC* and *ICCPR*, are indivisible. Effective support for First Nations parents with disability who have contact with child protection systems is integral to realising these principles. This includes effective funding for self-determining First Nations children’s institutions.

There is a tendency to erroneously conflate support for parents who have recently migrated with support that addresses and responds to cultural identity and subsequent specific community needs, customs and belief systems.<sup>35</sup> Furthermore, while there is an identified need for greater resourcing of interpreter services, it must be recognised that delivering culturally safe and responsive services means comprehending the relevance of culture, ethnicity or religion alongside language needs.<sup>36</sup>

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Until all the above is achieved, child protection systems will continue to violate the rights of parents with disability to equal opportunity and access to services as provided for in the CRPD.

## Legal advice and Children's Courts

It is often only after child protection agencies have intervened to remove children and commenced legal proceedings that parents are referred to legal services or informed of their rights to access legal representation. It is also often only then that parents become aware of the full nature of child protection concerns and the legal ramifications of the child protection processes they have already been involved in or subject to. Such processes include meetings with child protection workers, parents' participation or non-participation in services, and parenting or disability assessments. They can also include parents being asked to sign documents by caseworkers, or temporarily relinquishing the care of their children at their suggestion. All have legal ramifications and are collated by departments as evidence in court.

In the fieldwork, lawyers shared that at the commencement of court proceedings, they often felt 'cornered' into advising parents to 'consent' to child protection concerns and the removal of their children at first instance. This was due to the lack of time parents had to produce counterevidence, particularly by seeking alternative assessments by independent experts. International and Australian studies suggest that most parents generally, and parents with disability specifically, consent to the establishment of child protection concerns in court.<sup>37</sup> Parents' legal acquiescence to child protection concerns and the removal of their children in these circumstances should not be confused with their agreement that the department's child protection concerns are substantiated.<sup>38</sup>

Magistrates, like lawyers, often lack training in how to recognise and respond to the needs of parents of disability.<sup>39</sup> This includes how to communicate and adjust court proceedings to support parents' rights to equal and informed participation. Parents often felt that their perspectives and experiences were not heard in Court or adequately informed of court orders at the conclusion of proceedings. While these issues may broadly affect all parents facing child protection involvement, the implications for parents with disability are stark, and compounded by systemic barriers

## Conclusion

Discriminatory attitudes and systemic failures to provide culturally and disability safe and appropriate services work in tandem with the enormous power imbalance between parents and child protection departments. Entrenched structural biases appear to deepen as parents with disability are propelled through the system from initial reports to more intensive interventions, and are not balanced by Court processes intended to examine the exercise of child protection department's authority. The result is that parents with disability and their children's rights are serially violated. These include their rights to be supported to safely remain

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legally together as a family, to be treated with dignity, respect and without discrimination. They include their rights to be informed, be heard and participate in child protection proceedings. They also include their rights to equal access to justice. To address these breaches, fundamental changes in law, policy and funding are necessary both with respect to child protection services and more broadly with respect to social services and supports. Recommendations for reform are made in the conclusion to this report.

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# Chapter 1: Introduction

This research, commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission'; 'DRC') sought to improve understanding of how parents with disability become involved with and navigate child protection systems, with particular attention to the experiences of First Nations parents and parents from culturally and linguistically diverse communities. It sought to synthesise available evidence, contribute to building the evidence base, identify opportunities for subsequent research and develop recommendations for reforms to laws, policies and practice that align with, respond to and promote the human rights of parents with disability involved in Australian child protection systems. In doing so, the project foregrounded the relationship between contemporary experiences of parents with disability and deep-seated historic and ongoing discrimination against them, and the compounding intersectional inequalities affecting First Nations and culturally and linguistically diverse parents.

The research addressed the following questions:

1. What are the experiences of parents with disability across the spectrum of engagement with child protection systems from initial reports of child protection concerns to out-of-home care ('OOHC') and restoration or permanent removal?
2. How do child protection systems meet or breach parents with disability's rights, including their rights to be supported?
3. What reforms are necessary to reduce the risk of parents with disability and their families coming into contact with child protection systems and, when in contact, prevent escalation of the severity of interventions?
4. What are some examples of promising practices that work to improve outcomes for parents with disability and their families?

The project investigated the experiences of parents with disability across the spectrum of child protection involvement. This includes the reporting of parents to child protection departments, casework practice, child and family services and supports, risk assessment processes, legal interventions and advice, Children's Court processes, OOHC and restoration or permanent removal. The project gathered evidence from a number of sources and triangulated this evidence to produce detailed insights into the experiences of parents with disability with child protection systems. For discussion of the methodology and methods, see below.

The evidence across the report presents a disturbing account of routine and damaging breaches of human rights spanning generations, contributing to the intergenerational trauma of parents with disability who have contact with child protection systems. The findings offer proximity to the experiences of harm and the compounding impacts of structurally unjust systems on all participants, but particularly on parents. To break the cycle of harms and respect the dignity and human rights of parents with disability affected by child protection systems, these systems must be completely overhauled. The systems are permeated by ableist, class-based and racist assumptions that disproportionately attribute responsibility to parents

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for factors that are structurally and systemically driven and are largely outside parents' control. Directly or implicitly, disability is blamed for parenting risks or understood as a risk. A human rights approach requires that all parents, including those across disability, First Nations and culturally linguistically diverse communities, be supported to preserve their families and safely look after their children.

This report presents evidence about individual, family and structural factors that drive the over-representation of parents with disability in child protection systems. It makes recommendations for reforms that address underlying social and economic vulnerabilities. It also recommends reforms to child protection laws, policies and practice to better respect the human rights of parents with disability and to improve the effectiveness of child protection systems for parents with disability, their children, families, communities and others engaged with them. While finding that child protection systems need to be completely overhauled, and that supports and systems beyond the child protection system which impact the underlying drivers of engagement with child protection systems also require significant reform, the report also makes recommendations with respect to reforms of existing systems. These reforms, which can be implemented in the short term until such time as deeper structural reforms are implemented, will significantly improve compliance with minimum human rights standards.

## A note on language

There is great diversity among people with disability, including how people collectively and individually define themselves. The different language used across the report reflects this. When known to us, we have respected the preferences of particular people and groups, especially in relation to how they self-identify. When quoting academic and non-academic literature we have left original usage intact, the diversity of which reflects a variety of publication conventions as well as differences that arise across national and international borders. We aim throughout this report to use language in a way that reflects the equality, diversity and humanity of parents with disability.

One of the issues that impedes recognition of parents' rights is the failure of the child protection system, researchers and others to recognise the diversity of their experiences of disabilities or impairments. This then makes opaque the social barriers preventing or undermining some parents' capacities to look after their children safely and the supports necessary for parents to have their minimum human rights respected. The term 'disabilities', when used in this report, is not a plural for people with disability, in line with the preference of the DRC. Rather, it is used to recognise that there is no homogeneous experience and that diverse impairments can require different supports. The capacity to parent is not, and should not be, determined by impairments or disabilities. Rather, individual impairments and disabilities can inform identification of the supports necessary for parents to enjoy their human rights within an inclusive society. See below for a more detailed discussion with respect to defining disability.



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First Peoples in Australia and internationally have diverse cultures, languages and collective identities. The use of a centralised or collective name to define or designate all First Peoples within colonial boundaries such as states, territories or nationally in Australia has arisen because of the politics of colonisation and resistance. While the respectful way to refer to peoples is by their own name, which is usually in a local language and defines a community with a complex set of historical, kin, land and community relations, the appropriate language to refer to First Peoples collectively remains unsettled. Some of the terms used in Australia include First Peoples, First Nations, Indigenous peoples, and Aboriginal and Torres Strait Islander peoples. We have used the term 'First Nations' in this report consistent with the language of the DRC. The report sometimes uses language other than First Nations if this is the preference of participants or if referencing academic and or non-academic literature that uses another term.

The term 'culturally and linguistically diverse' refers to the many diverse cultural communities who may be affected by child protection systems. This term, like other centralising terms, does not capture the particularity and diversity of the needs, experiences and values of the people and communities it references. However, like other broad nomenclature, it is useful for identifying common experiences and it is used in this report in accordance with the DRC's usage.

## Definitions of disability and their interactions with child protection systems

Multiple definitions and models of disability exist and coexist in tension within child protection spaces. As the United Nations *Convention on the Rights of People with Disabilities* ('CRPD') states in its preamble, 'disability is an evolving concept'. Identifying and or being identified as a person with disability has multiple and changing political, social, cultural, institutional and personal ramifications.<sup>40</sup> The language used to describe disability, and the choice to identify disability, can both empower and disempower according to who is identifying, why, and the context in which this is occurring.<sup>41</sup> This extends to what 'counts' or is included within definitions of disability, something that, within child protection systems, is dictated by 'those who are in institutional or professional positions'.<sup>42</sup> As the First Peoples Disability Network (Australia) notes, the limited studies conducted with First Nations communities in Australia and elsewhere 'all settle on a conclusion that "disability" is not a concept that readily translates in Aboriginal languages and cultures'.<sup>43</sup> Indeed, as they and others point out, Western concepts of 'disability' and ableist 'normality', which monopolise much of the English-language scholarship as well as policy, legal and service frameworks, fail to acknowledge or correspond with the diversity of First Nations belief systems and lived experiences, including and beyond the disabling effects of historic and contemporary colonisation.<sup>44</sup>

The literature, both from within Australia and across the Western world, and the fieldwork findings presented in subsequent chapters suggest that a medical or individual model of disability continues to dominate and shape laws, policies and practices across Australian child protection systems and elsewhere. As several disability activists and scholars assert,

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the medical or individualised model approaches and defines disability in terms of individual deficit against an 'able' norm. Disability, and individuals experiencing disability, become framed as a 'problem to be fixed through expert intervention'.<sup>45</sup> Socially imposed barriers faced by peoples with disability are thus depicted as a consequence of the impairment or disability itself.<sup>46</sup> Critical disability scholarship has further challenged the presumption of a binary between 'disabled' and 'abled'.<sup>47</sup> It has also repudiated the 'tragedy lens' adopted in policy and research that frames parents with disability as people to be pitied or lacking.<sup>48</sup> As Susan Flynn argues, by doing so it challenges the presumption that 'disabled people wish to be "normal" or to achieve ableist ideals'.<sup>49</sup>

This individualist, medical model of disability persists in child protection systems despite the inroads made by disability activists and scholars who have advanced social and human rights models of disability. The social model, rather than casting disability as the main source of, or justification for, individual disadvantage, looks to the ways in which social, cultural, political, institutional and environmental norms and discourses serve to oppress, discriminate against, marginalise or otherwise 'disable' people with diverse disabilities.<sup>50</sup> To this end, many scholars and activists have argued in favour of a linguistic and analytical distinction between an individual's embodied experience of 'impairment' – their personal experience of their bodily or mental functioning – and 'disability' that arises through discrimination and oppression.<sup>51</sup> Social models of disability have been critiqued for failing to address 'the impact of impairments on life'<sup>52</sup> and for paying inadequate attention to intersectional differences.<sup>53</sup> Within child protection systems, social and human rights models underpin reform efforts undertaken by disability advocates and others to identify, address and overcome barriers to parent's equal and informed participation in decisions that impact upon their families. Social models contributed to the drafting of the United Nations *CRPD*, which contains several provisions directed at ensuring that the human rights and dignity of parents with disability are respected throughout their involvement with child protection systems.<sup>54</sup> These include:

- the right of parents to equal and effective legal protection against discrimination on all grounds.<sup>55</sup> Signatory states are subsequently obliged to 'take all appropriate steps to ensure that reasonable accommodation is provided' and to recognise and support parents with disability's equal rights to participate in legal proceedings, including through the promotion of training for those in positions of authority;<sup>56</sup>
- the rights of persons with disabilities to appropriate assistance in performance of their child rearing responsibilities, with elimination of all discrimination and provision of effective and appropriate support.<sup>57</sup>
- the right of persons to access services, systems, and information on an equal basis to others;<sup>58</sup> and,
- the general prohibition against removing children from their parents due to the child's or parent's disability. Accordingly, children may only be separated from their parents when such separation is deemed necessary for the best interests of the child in accordance with law.<sup>59</sup>

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Sara Stefánsdóttir and colleagues have noted that the *CRPD* reflects four dimensions of substantive equality:

These include redressing disadvantage (the redistributive dimension); addressing stigma, stereotyping, prejudice and violence (the recognition dimension); facilitating voice and participation (the participative dimension) and accommodating difference, including through structural change (the transformative dimension).<sup>60</sup>

As is addressed across this report, the social model of disability and the human rights framework as articulated in the *CRPD* coexist in tension with the prevailing medical model of disability across child protection systems in the Western world. This individualised focus is also at odds with rights under the UN *Convention on the Rights of the Child* ('*CRP*') and other human rights instruments, including the *International Covenant on Civil and Political Rights* ('*ICCPR*') and the United Nations *Declaration on the Rights of Indigenous Peoples* ('*UNDRIP*').<sup>61</sup> The relationship between First Nations collective rights and individual rights, particularly with respect to cultural rights, has been affirmed under the above-mentioned instruments.<sup>62</sup>

## Methodology and methods

This qualitative project undertook a case study of the experiences of parents with disability who have contact with child protection systems. The project triangulated evidence from multiple sources to provide detailed evidence of the experiences of parents with disability at all stages of engagement with child protection systems. These included a review of national and international literature, a review of national policy and practice, and fieldwork which recruited participants with experience and expertise of how child protection systems engage parents with disability in New South Wales and Victoria. Participants included parents, advocates, caseworkers, clinicians and lawyers. The limited timeframe and scale of the project restricted the scope of the fieldwork. The inclusion of multiple categories of participants, with a significant inclusion of First Nations organisations and participants, brought diverse experiential and professional knowledge to the project. The research team was also enhanced by its diversity. The team included researchers with disability and First Nations researchers, and researchers with legal, psychology, sociology and social work disciplinary backgrounds.

The methodological approach adopted human rights, feminist and Indigenous standpoints to inform the analyses. Drawing on the foundational work of Linda Tuhiwai Smith, the methodology was centrally concerned with the implications of the research for participants and their communities.<sup>63</sup> The perspectives of parents with disability and those who work closely with them have been minimised or absent in much of the child protection research. This project aimed to foreground their experiences and views. The research methodology therefore needed to be consistent with according agency, with a ground-up understanding of the experiences of parents with disability who have contact with child protection systems, paying particular attention to the intersectional experiences of First Nations and culturally and linguistically diverse parents.

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Researcher reflexivity was an integral part of the research process. We were mindful of our own standpoints, the institutional positioning of this research and historical and contemporary ableism, racism and the colonial context in which child protection systems are embedded. The project partnered with the peak First Nations children's organisation SNAICC – National Voice for our Children, which also supported the project's engagement with First Nations organisations. Chief Investigator Scott Avery provided leadership with respect to disability communities. Chief Investigator Paul Gray provided leadership with respect to First Nations communities' engagement with child protection systems. The research team brought extensive advocacy and research experience with respect to the historical and contemporary impacts of colonial child protection systems on First Nations parents who have contact with child protection systems.

With a paucity of research relating to parents with disability who have contact with child protection systems, and a commitment to elevating lived experiences, the project adopted constructionist grounded theory as a methodology to inform and interpret the fieldwork.<sup>64</sup> Grounded theory is a qualitative research methodology for interpreting empirical data, which is gathered and analysed systematically.<sup>65</sup> Constructive grounded theory is suited to qualitative studies where little information has been published as it allows themes to emerge from the data. For this reason, it is also well suited to research exploring experiential points of view. It aims to understand and elevate perspectives from the ground up. Constructive grounded theory is less prescriptive than the original grounded theory methodology developed by Glasser and Strauss<sup>66</sup> and then Strauss and Corbin<sup>67</sup> in that it facilitates interactive and non-mechanical engagement with participants and the interview data.<sup>68</sup> For further detail, see discussion of fieldwork methods below.

The data collected was evaluated applying human rights principles. While attention was paid to normative UN human rights instruments and jurisprudence, we adopted a nuanced and discursive approach to human rights. This means we were attentive to the particular knowledge and standpoints of participants, and to direct and indirect epistemological biases in western child protection and human rights values. The human rights instruments focused on included the *CRPD*, the *CRC*, the *UNDRIP* and the *ICCPR*. While paying particular attention to these instruments, it is important to emphasise that rights across UN human rights instruments are indivisible. The increasing recognition of collective non-state human rights separately and associated cultural rights in international human rights instruments supports the analysis of structural and systemic factors which transcend individual experience and impact collective groups including parents with disability, First Nations parents and culturally and linguistically diverse parents who have experiences with child protection systems.

## Methods

### The literature review

The literature review undertook a detailed critical analysis of existing research with respect to parents with disability who have contact with child protection systems. It examined national and international, academic and non-academic English-language literature with respect to parents

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with disability who have contact with child protection systems. However, it also acknowledged a broader body of child protection literature and literature related to the underlying reasons for engagement with child protection systems, including domestic or family violence, inadequate and insecure housing and homelessness, mental illness, addiction and poverty. The review explores published research across the spectrum of parents' engagement with child protection systems. This includes studies examining particular trends in intervention, the prevalence of parents with disability within child protection systems, casework and service provision, risk assessments, legal processes and decision-making, characteristics of effective services and supports, outcomes and evaluations of better practice initiatives. Specific attention was given to the structural and systemic factors which underlie parents with disability's experiences with child protection systems, in particular First Nations parents and culturally and linguistically diverse parents.

We began our search for relevant materials in online academic databases. The databases we accessed were Taylor & Francis Online Journals and eBooks Complete; Sage Knowledge and Journals Online; Wiley Online Library; Hein Online; JSTOR; Westlaw; ScienceDirect; Informit; Academic Search Complete; ProQuest; and Project Muse. We then widened the net by conducting Google searches (using the main search engine and Google Scholar) and reading through publication lists available on government, advocacy and civil society websites. We also followed the trail of references to articles, reports, books and other papers within the footnotes or reference lists of the publications we progressively identified.

Ultimately, we examined academic, civil society, government and online media publications. These related to both Australian and international experiences, with most of the published international material relating to experiences of child protection systems within 'the Anglosphere' (the United Kingdom, United States, Canada and New Zealand) and to a lesser extent Europe (in particular, Iceland). We largely confined our analysis to materials published between 1999 and April 2022, although we have included some literature before and after this period where it relates to particularly under-researched experiences, populations or subject matter.

## Policy and practice review

The policy and practice chapter assembled information from two main sources. A desk-based review and content analysis was conducted for each of the eight Australian state and territory jurisdictions, based on publicly available materials from online sources. As a supplement, requests were made to state and territory child protection departments for information on policies that show how they engage with parents with disability. This included information on what supports were available, practice standards, risk assessment tools and training offered to staff in working with parents with disability. National policies were also examined, including the National Disability Insurance Scheme ('NDIS').

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## Quantitative data collection

Existing national child protection reports were used to identify available data regarding the interactions of child protection systems with parents with disability. This included the annual Report on Government Services, as well as the Australian Institute of Health and Welfare Child Protection Australia reports. The project also scanned recent sector reports and inquiries which review child protection systems, such as the New South Wales *Family is Culture Review*, for data inclusions. In addition, the project wrote to child protection authorities seeking data regarding the prevalence of child protection involvement with parents with disability. Very little data is publicly available and/or collected. The paucity of data collection nationally and internationally with respect to parents with disability who have contact with child protection systems is also addressed in the literature review.

## Fieldwork

The fieldwork was designed to build from the literature review, add to the evidence base with respect to parents with disability's experiences of child protection systems, and test departmental policy and practice claims against contemporary Australian experience in New South Wales and Victoria. The scale and timeframe for the project – July 2021 to September 2022 – limited the jurisdictions which could be included. The jurisdictions were selected based on the locations and experience of the research team.

## Ethics approval

Ethics approval was granted by the UTS Human Research Ethics Committee (UTS HREC –ETH21-6553) and the Aboriginal Health and Medical Research Council Ethics Committee (AH MRC 1867/21). The ethics application process was used to focus attention at each stage of the fieldwork on respect for participants, and principles of equality and non-discrimination. While not exclusively focused on First Nations or culturally and linguistically diverse parents, ethical issues arise out of the particular impacts of child protection systems on parents with disability within these groups. This heightened the likelihood of participants from these groups experiencing negative emotions and distress, which all parents with disability and those who work closely with them might feel when discussing their experiences with child protection systems. Draft consent forms, participant recruitment materials, information sheets, a distress protocol and semi-structured questions for the different participant groups were prepared for ethics review.

In accordance with ethical principles for research with First Nations communities, the project was attentive to how principles of First Nations self-determination and accountability in child protection could be supported through the research.<sup>69</sup> The project focused on communities who have historically been subjected to harmful and exploitative research. It was therefore critical that the ethical principle of causing no harm was upheld.

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## Recruitment and interviews

Purposive recruitment of participants who could provide detailed experience and expertise as or about parents with disability who have had experiences with child protection systems was undertaken.<sup>70</sup> The researchers contacted advocacy and service organisations that work with parents, legal services, OOHC services, and clinicians who work with Children's Courts. Organisations were sent a participant information sheet which provided information about the research aims and methods and invited people who wished to participate to contact the research team. The organisations themselves disseminated this information to potential participants. Particular attention was paid to contacting First Nations organisations. Parents were invited to have a support person with them and offered post-interview follow-up. Participants were recruited from urban and regional areas in New South Wales and Victoria. With the ongoing COVID-19 pandemic, interviews took place via Zoom and were recorded with the participants' consent. All participants were provided their interview transcript and given the opportunity to clarify, correct or alter it prior to inclusion in analysis.

Forty-three participants were interviewed from 26 organisations. Most interviews were conducted individually to ensure greater confidentiality with respect to the sensitive information participants might choose to disclose, and to encourage a depth of narrative. However, participants were invited to choose whether they participated individually or with others. Subsequently, two interviews included two participants and two focus groups were conducted with multiple participants. In an effort to preserve their confidentiality, in accordance with the project ethics requirements, neither organisations nor participants are identified by name. Instead, participants are cited through generic attributions that reflect their experience, such as parent, advocate, lawyer etc. and by the number of the interview session that they participated in. There were 26 interviews and two focus groups. In the attribution of participants, sessions 27 and 28 are labelled as focus groups to avoid confusion with respect to multiple participants being attributed to these sessions. To provide an additional level of protection for parents they are not identified by session. Where more extended narratives are presented, pseudonyms are used.

The interviews conducted with professionals were semi-structured, with separate but related questions for the different participant groups including parents, advocates, lawyers, caseworkers and clinicians (see Appendix A). Interviews with parents were largely unstructured, with the interviewer inviting parents to narrate their experiences with child protection systems on their own terms. The interviewers did, however, use prompts to assist with clarification and to follow up certain themes. All parents were invited and some elected to have a support person present during their interview.

## Data analysis

Constructivist grounded theory was adopted because it suits the intersectional and critical standpoint of the research. Constructionist grounded theory supports contextualising participants' contributions historically and socially and enables active engagement between

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researchers and participants. This requires researchers to engage with ‘the structural contexts, power arrangements and collective ideologies on which the specific analysis rests.’<sup>71</sup> The interviews were coded and analysed inductively, drawing themes from a series of particular experiences to make more general findings. An iterative process was adopted through a repeated refining of codes, themes and ideas. Charmaz defines qualitative coding as ‘the process of naming segments of data with a label that simultaneously categorizes, summarizes and accounts for each piece of data’.<sup>72</sup> An initial coding template was developed after the first three interviews were analysed. The critical literature review, which preceded the fieldwork, and a human rights lens informed the analysis of the interview data.

A shared coding sheet that allowed for further codes to be added as additional themes emerged was developed by the research team. The codes and themes were then categorised into broader concepts for chapters. The findings chapters were drafted using the categorised themes and codes. Generating theoretical explanations from the data is a central task for researchers engaged in constructivist grounded theory. As Charmaz notes “Constructivist grounded theory provides tools for studying power and inequality... It supports researchers to move their analyses to make statements about injustice, inequities, and human rights”.<sup>73</sup>

## Limitations

The project was undertaken over a period of just over a year – July 2021 to September 2022 – with a limited budget. These constraints limited the scope and scale of the project. Limitations with respect to existing research further curtailed the project. This literature review provides the most comprehensive and only international and national review of the intersection between child welfare and disability as at April 2022. However, the review is limited by research available in particular with respect to First Nations and culturally and linguistically diverse parents. Further, most literature with respect to children’s court processes and experiences is more than a decade old. It is however notable that the fieldwork for this project corroborates the findings in earlier court studies, suggesting that the issues identified in these studies remain pertinent. Further, little research has been undertaken directly with parents with disability or service or support agencies which work for and with parents with disability. This is particularly marked in Australia and more so in regional and remote areas. However, sufficient research is available to make findings and recommendations which will result in greater equality and justice for parents with disability who have contact with child protection systems.

A comprehensive overview of policy and practice across all Australian jurisdictions would have required a separate and larger project in and of itself. The project was reliant largely on published information from child protection departments on their websites. Reflective of the low focus on parents with disability who have contact with child protection systems little specific information is available publicly on child welfare departments’ websites. The response to requests for information from departments was, as outlined in chapter 7, also limited. These constraints limited the scope of the policy and practice review.



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The time- frame and scale of the project created significant constraints with respect to fieldwork. The fieldwork was limited to NSW and Victoria. The issues and experiences of parents with disability who engage with child protection systems are impacted by historical, cultural, geographic and political differences. Further research is required to capture the specificity of parents with disability's experiences, particularly in regional and remote areas. The choice of Victoria and NSW was pragmatic and related to limited time and resources and location of the researchers. While the fieldwork intentionally paid particular attention to First Nations and culturally and linguistically diverse parents with disability, the historical lack of attention to these parents warrants further specific research.

Consistent with the critical human rights and intersectional standpoint of the project, and informed by gaps in the research identified in the literature review, the fieldwork focussed on investigating and elevating the voices of parents with disability, advocates who work with them and service providers who are engaged in supporting them. However, the gap in understanding with respect to these experiences is extensive. While this research makes a contribution to addressing this gap, further research is necessary. This includes particular foci on First Nations and culturally and linguistically diverse parents with disability and parents' experiences across all Australian states and territories.

The literature and fieldwork demonstrate the need to invest across the spectrum of child protection engagement with parents with disability, from early intervention and support services to out of home care. However, further research is necessary to identify the types of support most effective for parents with diverse disabilities. The literature review and fieldwork provide clear evidence of effective supports that can be implemented immediately such as peer support networks, wrap around advocacy services, specialist disability trained workers and investment to support poverty related risks which are associated with underlying causes of child protection interventions. However, additional research is needed to identify specific early intervention and support services which are most effective for parents with diverse disability and from First Nations and culturally and linguistically diverse backgrounds. It must be noted that there is a lack of funding for services and supports which have already been demonstrated to be effective. Therefore, although further research is necessary, findings and recommendations based on current evidence can and should be implemented.

There is very limited data collected with respect to parents with disability and even less with respect to parents with disability who have contact with child protection systems. The largest literature is with respect to parents with intellectual disability and mental health or psychosocial disability who have contact with child protection systems. This placed a severe limitation on the capacity of this project to identify the scale and scope of parents' with disability's engagement with child protection systems. However, consistent findings in qualitative research and the limited data which could be identified through for example studies which undertook data matching, provides consistent evidence with respect to the gross over representation of parents with disability in child protection systems. It highlights the need for immediate reforms to reduce this over-representation and for data to be collected to enable appropriate planning for service provision and support in accordance.

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## Structure and overview of the report

The report is divided into three parts. Part I comprises the literature review in chapters 2 to 6 and the Policy and Practice Review in Chapter 7. Part II comprises findings of the fieldwork in chapters 8 to 11. The evidence across the literature review and fieldwork demonstrates a revealing level of consistency with respect to the ongoing failings of child protection systems, breaches of rights, and poor experiences and outcomes. The policy and practice review, which is based largely on publicly available materials on child protection websites, presents a stark dissonance between the claims and aims of departments and the research and experiences in practice. Finally, in Part III, Chapter 12, synthesises and summarises the findings from the literature and fieldwork and makes a number of recommendations. Below, we provide an overview of each chapter.

### Part I – Literature, policy and practice review

#### Chapter 2: The (un)known involvement of parents with disability in child protection systems'

Data regarding parents with disability in contact with child protection systems is not routinely collected. However, the data and studies that are available consistently suggest that parents with disability are over-represented, nationally and internationally. They also suggest that parents with disability are more likely to experience the most severe form of intervention – the removal of children from their care. Furthermore, child protection authorities appear to be much less likely to determine that children of parents with disability should be restored to their parents' care. This is magnified for First Nations parents with disability. Little research is available with respect to the extent to which parents from culturally and linguistically diverse communities are engaged by child protection systems. Parents with psychosocial disability appear to constitute the largest group of parents engaged by child protection systems. There are also very high estimates of parents with intellectual disability who have had children removed by child protection systems, nationally and internationally.

The high level of involvement of parents with disability has led some to argue parenting is 'the last frontier' for people with disability. Many have asserted that their over-representation is demonstrative of the enduring legacy of the eugenics movement.<sup>74</sup> Recommendations have been made for over two decades with respect to the need to collect data on parents with disability's engagement with child protection systems in order to plan and fund appropriate service provision.

#### Chapter 3: Disability as risk and the best interests of the child

This chapter reflects on a major theme in the literature – namely, the conflation of parents with disability with risk in child protection systems across Australia and the Western world. Indeed, it appears to be one of the most explicit forms of discrimination parents with disability face.

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Discrimination against parents with disability is both reflected in and reinforced structurally through the absence of appropriate services. It is also reinforced by contemporary risk assessment tools, and by the relatively low number practitioners and professionals in the field who possess relevant knowledge about parenting with disability or ways to work respectfully and effectively with parents with disability. Socioeconomic disadvantage and structural factors, such as inadequate housing, poverty or a lack of services, are often misattributed to parents' disability despite being outside an individual's control. An additional discriminatory impact is increased surveillance of parents with disability. This leads to increased intervention and records of that intervention which then, in a circular way, come to be used as markers of risk. Furthermore, prejudice surrounding parents with disability's rights and capacities to parent has created a false binary in which the rights of parents with disability to be supported, as articulated in human rights instruments like the *CRPD*, are cast in opposition to 'the best interests of the child'.

## Chapter 4: Access to support services or programs

This chapter presents the literature with respect to systemic failures to provide culturally and disability safe, appropriate and accessible support to parents with disability who have contact with child protection systems. This is magnified with respect to culturally appropriate supports for First Nations and culturally and linguistically diverse parents and for parents who reside in rural and remote areas. Disability support services do not provide support for, or prioritise supporting, parents engaged with child protection services. On the other hand, many parenting support services lack the capacity or specialist knowledge to either identify or address the specific and diverse needs and realities of parents with disability. Parents with disability are often not identified and, when identified, are not able to access support services.

Resources committed to parents with disability tend to be forensic rather than supportive, and parents are often not informed of the implication of engaging with child protection services or processes such as departmental assessments. Further, parents with disability are not receiving services around the critical social issues that drive child protection engagement. For example, the literature shows that many people working in domestic or family violence services lack confidence, knowledge and awareness with respect to parents with disability, in particular intellectual disability. There are also numerous reports of children being removed after parents seek support in relation to domestic or family violence.

The literature identifies that the social issues which parents experienced prior to removal of their children often deepen afterwards, through loss of services such as housing, parental payments and failures to provide them with grief counselling. It also identifies problems with cooperation and integration across services. Critical and effective advocacy services are under-resourced, limited geographically and often restricted in terms of the scope of their involvement with parents, such as how or when they can support them.

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## Chapter 5: The legal system

This chapter reviews national and international research on parents with disability experiences of child protection legal systems. Legal systems are conceived as encompassing laws, legal processes, access to legal advice and representation and court proceedings. Studies suggest many parents enter and leave the child protection legal process feeling disempowered, not heard and with little understanding about what has occurred or what orders have been made. Legal training and funding are inadequate for the task of taking instructions and litigating clients' interests. Further, legal advice is received too late in the child protection process, making it difficult to contest removals. Parents with disability are engaging in processes and entering into agreements with child protection departments that significantly impact their rights without legal advice. While specialist independent advocates improve the experiences of parents with disability through their child protection engagement, including across legal proceedings, they are not available for most parents.

A range of problems have been identified with the expert reports, most commonly parenting assessments, which play an important role in child protection authorities' decision-making. These include lack of resources for parents to obtain independent assessments, the absence of appropriate assessment tools for parents with disability in particular parents with intellectual disability, assessor's lack of adequate and up-to-date knowledge about parenting with disability or communication skills to engage with parents with intellectual disability. Furthermore, unreliable and inappropriate measures, such as IQ as a proxy for parenting capacity, continue to be used by some assessors.

The presentation of evidence in Children's Courts through affidavits, which respond to allegations of neglect or abuse, structurally directs the focus to deficits rather than both strengths and weaknesses of parents. First Nations extended family members and children's organisations are usually not engaged by child protection systems or lawyers and therefore do not prepare affidavits that might provide critical context on the capacity of parents and care networks more broadly, and relatedly the best interests of children. This limits decision-making with respect to how First Nations children can be looked after safely in family and community.

## Chapter 6: Better practice

The literature demonstrates that there needs to be a fundamental paradigm shift in child protection services and decision-making with respect to parents with disability who have contact with child protection systems. Firstly, systems and services need to address pervasive and institutionalised discriminatory presumptions about parents with disability. Secondly, they need to establish frameworks to support parents that are strength-based, address systemic and structural failings, and respect the human rights of parents with disability to look after their children safely in family and community. With respect to First Nations communities, this requires the implementation of principles of self-determination, cultural appropriateness and cultural safety, adequate funding and accountability to First Nations organisations, communities and families.

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Research, national action plans and reports have recommended that funding for early intervention and support needs to increase significantly to reduce contact and escalation of child protection interventions with parents. Poverty and related issues such as inadequate and insecure housing or homelessness are significant underlying factors driving parents with disability's engagement with child protection systems. Reforms to raise social payments above the poverty line, for payments to account for the cost of disability and to address housing affordability are evidenced as necessary.

The literature with respect to best child protection practice includes models for statutory and policy reforms and reforms to make services more inclusive and to establish and fund specialist disability designed and delivered services. It also emphasises the need to develop and fund culturally competent and specialised advocacy and peer support services that are available to parents before, throughout and following their formal involvement with child protection services. Finally, it points to the need for ongoing professional training and community education and outreach on the experiences, needs and rights of parents with disability involved in child protection systems.

The literature identifies the *Indian Child Welfare Act ('ICWA') 1978 (US)* as adaptable to providing models for legislative and policy reforms in all Australian jurisdictions. A key provision of the *ICWA* which would enhance the human rights of parents with disability is its mandate that departments make 'active' rather than 'reasonable' efforts to preserve and or reunify families. It also stipulates that a failure to provide appropriate services is evidence that active efforts have not been made. Research suggests that all government and child and family service providers should undergo specialist training on how to safely work with parents with diverse disabilities. There is extensive evidence that existing services which might help address underlying reasons for parents contact with child protection systems – such as family or domestic violence services, drug and alcohol rehabilitation and support services, psychosocial and mental health services, and homelessness and housing services – are inappropriate for parents with disability. One key support that is essential to addressing the power imbalance between child protection and other departments and families, and many of the entrenched ableist child protection systems and practices, is independent parent advocacy and peer support services. These, however, require adequate funding to support all parents with disability across different regions and from diverse cultures.

## Chapter 7: Policy and practice

The Policy and Practice chapter analyses child protection policy and practice from sources that include web-based material, government department responses to questions posed by the research team, submissions to the DRC and previously conducted reviews. The available evidence suggests: limited policy development with respect to parents with disability; limited training; and a default to overly standardised tools with an emphasis on 'risk', with scant attention to advocacy. An analysis of policies and practices in each of Australia's eight jurisdiction reveals policies and associated practice guidelines that are unclear and provide

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limited insight into casework practice with parents with disability. Compounding the identified difficulties in each jurisdiction is the unclear relationship between child protection systems, services and the NDIS. The artificial binary between parents and children in child protection systems has led to a centring of policy and practice attention on children to the detriment of parents who encounter these systems. Parents with disability are disadvantaged by an array of procedures that reveal disproportionate departmental power, stigma and recourse to deficit approaches, and minimise the support some parents require. Decades of entrenched approaches to child protection have ignored and discriminated against parents with disability, consistent with the findings of the literature review and from narratives from research participants in the fieldwork findings chapters. The chapter draws attention to necessary reforms across a range of areas including advocacy and the privileging of prevention, with commensurate resources required to rectify the imbalances.

## Part II – Findings from the fieldwork

Part II presents the findings from fieldwork conducted with parents, advocates, child protection practitioners and other service providers, lawyers and clinicians. We have divided these findings into four chapters. The first two, Chapters 8 and 9, present participants' perspectives on the child protection system more generally: the services that operate under its auspices and casework practices. The second two, Chapters 10 and 11, present participants' observations of parents' experiences of child protection legal systems. The insights of participants echo the human rights concerns and systemic problems identified in the literature review.

### Chapters 8 and 9: Experiences of child protection systems and casework

These chapters present participants' experiences of child protection engagement, casework, services and supports for parents. Parents often found child protection systems impossible to navigate, with complex information provided in inappropriate and inaccessible formats. Parents were reluctant to clarify concerns or request help for fear this would confirm authorities' perceptions of their alleged inadequacies. One of the most resounding recommendations to emerge was the importance of engaging advocates and navigators to facilitate communication between child protection authorities and parents. Advocates were identified as redressing the power imbalance in such interactions, informing parents about appropriate supports and assisting them to access them.

Participants identified high caseworker caseloads as major obstacles to providing parents with the support they need. They also identified the need to improve the competency of caseworkers in their engagement with parents by providing training in disability and First Nations and culturally and linguistically diverse cultures. Participants informed that services should be disability-specific and culturally appropriate rather than generic. They also stressed these services should be: accessed early in child protection and perinatal planning; long-term rather than time-limited; tailored to parents' learning strengths; and holistic. That is, services should be able to address the complexity of issues which some parents face, such as family

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violence, substance abuse, psychosocial problems and public housing. Many also discussed the need for services to offer or refer parents to peer support groups or peer advocacy services. Most also highlighted that parents should be offered ongoing support in situations where children were removed from their care, to assist in contact and their case for reunification.

Participants identified the limited circumstances in which child protection authorities supported people with disability to access parenting assistance services. Long waiting times to access services, particularly in regional areas, were identified as particularly problematic. This was exacerbated due to the legislative move, across jurisdictions, towards expediting the time courts have to decide on the permanent legal placement of children who are removed from their parents' care. While some saw the NDIS as offering help, many noted that several parenting support services had been defunded since its introduction. Parents and service providers reported that the NDIS was extremely difficult to navigate, expensive and could exclude parents with disability who did not meet eligibility criteria.

## Chapter 10 and 11: Experiences of child protection legal systems

The findings from the fieldwork with respect to legal systems echoes experiences in the Child Protection Systems and Casework chapter and the national and the international literature review with respect to experiences of discrimination and denials of justice. Participants described how discriminatory experiences compound as parents with disability progress through the more interventionist stages of child protection proceedings. Both structural features of child protection legal systems and individual discriminatory behaviours towards parents with disability who engage with these systems were identified as undermining and or denying parents' human rights.

The structural features include timing, availability and varying quality of legal advice and representation. They also include the weight given to 'expert' assessments in court proceedings, often based largely on information provided to the assessors by departments. Parents are frequently unable to access or are denied access to independent assessors who might provide a counter-perspective. Laws and court processes that set short timeframes in which parents can address child protection concerns have a disproportionately discriminatory impact on parents with disability, particularly parents with intellectual disability.

The tendency of child protection legal proceedings to be decided on the basis of written affidavits often led by the department can constrain parents in their ability to respond by presenting their parenting strengths. However, the adversarial nature of child protection litigation often means that parents are advised not to take the stand in court, in order to avoid cross-examination. Most parents do not have access to legal or professional advocates with the training, skill and experience to respond to their needs and help them navigate, participate in or understand the processes and outcomes. However, there are also many professionals who are committed to respecting parents with disability's rights and provide outstanding service to parents with disability, despite structural and systemic failings.

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Participants reported discriminatory attitudes held by many professionals engaged in legal proceedings, including caseworkers, lawyers and ‘expert’ assessors. All were identified as having a greater say than parents in legal proceedings, particularly in the advice given to court about whether children should be removed, and subsequently whether restoration or permanent legal placement with others should be pursued. Discriminatory attitudes include beliefs that people with disability cannot parent, that parents with disability pose risks to their children’s welfare, and that the challenges faced by parents with disability are irremediable regardless of whether services or support are made available to them.

The combined impact of these structural failures and prejudices is profound. They have consequences with respect to parents’ rights to informed participation in legal processes, including their rights to respond to child protection concerns and present their own evidence. Parents often experience legal decision-making and processes as arbitrary, weighted against them, incomprehensible and crushing. Many parents with disability are not made aware of the child protection concerns about them until court proceedings commence. Many leave court proceedings without understanding what has happened or what orders that have been made. The cumulative result of structural and individual ableism across the legal system is that decisions about parents’ fundamental human rights to care for their children are being made without reasonable attempts to facilitate their rights to understand, respond to or address child protection concerns.

Parents, children, families and communities are subsequently experiencing avoidable, traumatic and permanent separation. Child protection decision-making processes are flawed and ill equipped to enable parents with disability equal access to justice and support. While systems and processes have not been reformed to remedy this, participants in this project – parents with disability, professionals and institutions – and others continue to work towards change to produce fairer outcomes for parents with disability, their children and families.

## Part III – Summary and recommendations

Chapter 12 synthesises key findings from the national and international literature review, national policy overview and empirical fieldwork in New South Wales and Victoria, noting limitations and highlighting areas for future research. Recommendations are made on the basis of the research findings with the aim of aligning child protection services and related supports with minimum human rights principles and contributing to improved experiences and outcomes for parents with disability and their children.



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# Part I: Literature, policy and practice review

## Introduction to Part I

In Part I of this report, we critically review published English-language research on the experiences and needs of parents with diverse disabilities in contact with child protection systems. The literature review methodology is described under methodology in chapter 1. In carrying out this literature review, we have paid particular attention to research that has examined the experiences of First Nations parents with disability and parents with disability from culturally and linguistically diverse communities. Such research or published knowledge is sparse, in Australia and internationally. Indeed, while scholars have increasingly adopted an intersectional lens in other fields, few have examined the ways in which race, culture and disability combine to shape *parents'* experiences, needs and outcomes throughout their involvement in child protection.<sup>75</sup> Remarkably, this vacuum has persisted despite advocates highlighting the need to address the intersectional experiences of First Nations parents with disability and culturally and linguistically diverse parents with disability over several decades.<sup>76</sup>

Until very recently – and particularly in Australia – scholarship undertaken with or about parents *with disability* in child protection systems rarely included in-depth or additional consideration of cultural identification or discrimination.<sup>77</sup> Studies of the experiences of culturally and linguistically diverse parents' interactions with child protection systems – notably few and far between – have likewise tended to exclude consideration of experiences of parents with disability.<sup>78</sup> Australian research examining the experiences of First Nations parents, while more frequently *acknowledging* parents' lived experiences of disability, has tended not to examine more fully the intersectional and compounded experiences, needs and discrimination faced by First Nations parents with disability.<sup>79</sup> Research exploring the experiences of First Nations peoples with disability and culturally and linguistically diverse people with disability has rarely foregrounded their experiences as parents, either generally or in relation to their involvement with child protection regimes.<sup>80</sup>

While we include findings from these respective 'bodies of research', we do not mean to suggest that the experiences of First Nations parents with disability or parents with disability from culturally and linguistically diverse communities can be understood by simply *adding together* the findings of this disparate literature. We are mindful of David Hollinsworth's observation that academic inquiry has more frequently approached First Nations peoples with disability 'simplistically ... with Aboriginality and disability being added together to constitute a "double disadvantage"'.<sup>81</sup> Indeed, as Julie Maybe has cautioned,

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We should be wary ... of what might be called addition models of oppression, according to which experiences of oppression that involve more than one social category can be understood simply by adding together the effects of the different categories – as if black women’s experience could be understood according to the formula ‘black + woman + disabled’ ... Some combination of social categories of oppression may sometimes produce surprising results at the level of experience ... It is important not to oversimplify thinking about the ways in which multiple social categories of oppression may be experienced in everyday life.<sup>82</sup>

Notably, across the broader literature on child protection involvement over the last two decades there has been a discernible move towards embracing an intersectional frame to examine relationships between socioeconomic inequality and racial and cultural identity in child protection involvement.<sup>83</sup> Such research demonstrates that while First Peoples and certain culturally and linguistically diverse groups are over-represented in child protection systems internationally and within Australia, the vast majority of these families live in situations or neighbourhoods of socioeconomic deprivation.<sup>84</sup> It should be noted, however, that Australian empirical research directed at examining the nexus between the child protection involvement of culturally and linguistically diverse families and socioeconomic status is still in its infancy.<sup>85</sup> Similar socioeconomic inequalities have been noted among non-First Nations families and families from ethnic majority backgrounds involved in child protection systems.<sup>86</sup> This is not to say that racial and cultural bias, or rather racist discrimination, is irrelevant – far from it. Rather, it points to a ‘complex interplay’ between race, culture and class in producing inequalities in child protection involvement.<sup>87</sup> Indeed, such findings demonstrate how historical, social and structural inequalities (entrenched through legacies of systemic racism including through the historic and ongoing colonisation in Australia) continue to produce racialised inequalities within child protection systems.<sup>88</sup> While researchers have begun to probe the intersection between race, ethnicity, poverty and disability in increasing the likelihood of child protection involvement, to date the focus of such studies – frequently quantitative in nature – has been on *children* with disability rather than parents.<sup>89</sup>

The parallel literature on *parents* with disability has likewise identified a significant relationship between poverty, parental disability, ableist discrimination and child protection involvement. Studies of parents with disability involved in child protection systems suggest that many live in conditions of compounded disadvantage. Many are financially vulnerable and live in conditions of poverty, have housing instability and insecurity, are socially isolated and lack family or community support.<sup>90</sup> They are often single and mothers.<sup>91</sup> Many have histories of involvement in child protection systems themselves as children.<sup>92</sup> Several have endured multiple forms of abuse, including institutional, familial and intimate partner violence.<sup>93</sup> Many experience what Rachel Mayes and Gwynnyth Llewellyn describe as the ‘serial removal’ of their children from their care.<sup>94</sup> Many live with multiple disabilities.<sup>95</sup> Almost universally, the literature demonstrates that these parents experience high levels of stigmatisation and systemic discrimination leading to and throughout their child protection involvement.

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In writing this review, we recognise that the experiences, needs, capabilities and desires of parents with disability who are in contact with child protection systems are individual and diverse.<sup>96</sup> Too frequently policy, law and research have failed, for example, ‘to consider the important distinctions among disabilities and the differences in functional levels even within one category’.<sup>97</sup> As Megan Kirshbaum and Rhoda Olkin point out, exemplifying this is the extent to which research findings on the experiences and needs of parents with intellectual disabilities – a major focus of the published scholarship – are universally framed to reflect the experiences and needs of parents with mental health, sensory or physical disabilities.<sup>98</sup> Likewise, acute, episodic and longer-term or more permanent disabilities are often uncritically ‘lumped together, though the former may be much more of a disruption or crisis for a family’.<sup>99</sup> Furthermore, as the Parents with a Disability Community Network cautions, ‘it must be remembered that even those with similar diagnosis differ in strengths, interests, personalities and needs’.<sup>100</sup>

Alongside, few researchers have considered the unique experiences and needs of parents with diverse sexualities and genders. Most research on experiences of parents with disability have foregrounded the experiences of biological or birth mothers.<sup>101</sup> Few have sought or provided insight to the experiences and support needs of fathers or non-biological or non-birth parents.<sup>102</sup> To the extent that sex and gender analysis has featured, it has largely been used to describe the experiences of (presumed) heterosexual biological birth mothers with disability. Indeed, there is a remarkable (albeit largely unremarked) gap in the literature on the experiences of parents with disability from LGBTQIA+ communities generally, and specifically within the context of child protection systems.<sup>103</sup> We also note that First Nations extended family structures, with what Wharf describes as ‘intermittent flowing care’ for children between extended family members, are rarely recognised, let alone accounted for, in child protection decision-making.<sup>104</sup>

We are also mindful of the diversity of communities and lived experiences referenced in our use of umbrella terms ‘First Nations’ and ‘culturally and linguistically diverse communities’.

As Paul Bywaters and colleagues caution, the use of such broad identity categories across policy and scholarship has meant this diversity remains to a large degree unacknowledged. It has also tended to obscure the diverse ‘material circumstances’ of the individuals and particular communities subsumed within them.<sup>105</sup> As we will address in subsequent chapters, research measures that have attempted to gather data on cultural and linguistic diversity have been extraordinarily limited in design to the extent that the cultural or ethnic identity of parents with disability is rarely captured. Indeed, underlying this is the tendency for such identification to be externally imposed by researchers or child protection workers, rather than enabling and subsequently recording chosen or self-identification.<sup>106</sup>

The widespread failure to adopt an intersectional and nuanced approach in research on parents with disability’s involvement in child protection systems risks homogenising or universalising the diverse and individual experiences of parents with disability, including First Nations parents and parents from culturally and linguistically diverse communities. This, in turn, is mirrored in child protection policies, practices and services that fail to recognise parents’ individual strengths and needs, or the complex interplay of systemic and structural discrimination on the basis of culture, race, class, sexuality, gender and disability, and subsequently fail to support them in preserving their families.

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For ease of reading, we have divided this literature review thematically into five chapters.

The first, Chapter 2, '(Un)Known Involvement of Parents with Disability in Child Protection Systems', examines literature on the prevalence of parents with disability within child protection systems in Australia and internationally. In doing so we highlight identified gaps in the data and explore researchers' attempts to quantify parents with disability's involvement and trends in outcomes for them and their families across different systems.

Chapter 3, 'Disability as Risk and the Best Interests of the Child', addresses an over-riding theme across the literature – the extent to which contemporary child protection systems in Australia and elsewhere continue to stigmatise and discriminate against parents with disability by framing them as potential risks to the welfare of children, explicitly and by implication in law, policy and practice guidelines. As will be discussed, an identified and related issue is that the rights of parents with disability to reasonable accommodations to ensure equal access to services and justice are being undermined by a position widely held by decision-makers that such rights can conflict with the best of interests of children.

Chapter 4, 'Access to Support Services or Programs', reviews literature on timely access to culturally and disability responsive and safe support and services. In particular, this chapter examines what has been published in regard to whether and how parents with disability are referred to services and the nature of the services being provided to families following child protection involvement. It further examines literature examining the services available to parents with disability who experience family violence, the extent which services are withdrawn when children are temporarily and/or permanently removed from their parents, and proposals for greater service integration.

Chapter 5, 'The Legal System', probes the literature on parents with disability's experiences of access to justice, particularly as it relates to child protection legal processes and procedures. We begin by reviewing what has been published internationally and within Australia on access to legal advice and representation. We then turn to the literature on parents' experiences of legal proceedings, examining research on the extent to which parents are able to participate and be heard, including reflections on the high incidence of consent orders and the role of, and emphasis placed on, expert evidence in court.

Chapter 6, 'Better Practice' provides an overview of research and evaluations of initiatives undertaken in Australian and international jurisdictions to address the systemic discrimination parents with disability face throughout their involvement in child protection systems. Such initiatives include reforms to legislation and policy to remove the equation between parents with disability and potential risks to child welfare, the introduction of explicit statements in laws and policies that respecting and supporting the rights of parents to equal access and participation in services and justice is in the best interests of children, and requiring active, as opposed to reasonable, efforts to support families to stay together. Initiatives also include statutory funding of advocacy services, mandatory and annual professional education for all key actors in child protection on disability and culturally safe and responsive practice, and the establishment of peer-led support and advocacy groups.

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Chapter 7 concludes Part I with an overview of policy and practice across state and territory child protection jurisdictions. It also considers national policy with respect to disability that interests with child protection service delivery, such as the National Disability Insurance Scheme (NDIS). The overview is derived primarily from publicly available information and supplemented by responses from state and territory departments and submissions to the Disability Royal Commission where available. Echoing many of the findings in the critical literature review, it outlines an apparent lag in attention to the needs and rights of parents with disability in their encounters with child protection systems. Accessing specialised services and support remains a challenge, further complicated by the advent of the NDIS. The division of responsibility between child protection departments and the NDIS with respect to parental responsibilities of parents with disability who engage with child protection systems is unclear. Together with the preceding chapters, it provides context for the examination of the experiences of parents with disability through the fieldwork, reported in Part II.



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## Chapter 2: The (un)known involvement of parents with disability in child protection systems

It is unknown how many parents with disability are involved in child protection systems worldwide. Both in Australia and internationally, there is a lack of reliable data on: (1) the numbers of parents with disability within the broader community/general population,<sup>107</sup> and (2) the numbers of parents with disability against whom child protection allegations are made and/or who become involved with child protection systems.<sup>108</sup> Data collection systems utilised by child protection services in Australia and elsewhere appear to not routinely record either the numbers of parents with disability under their purview or the nature of the disabilities themselves.<sup>109</sup>

In its review of the experiences and rights of parents involved in the Victorian child protection system, for example, the Office of the Public Advocate noted that the relevant child protection statutory authority in that state did not record information about the disabilities of parents.<sup>110</sup> The Victorian Department is by no means alone in this. As the *Family is Culture Review* of Aboriginal children and young people in OOHC in New South Wales documented, the New South Wales child protection authority, when asked to provide data on the prevalence of parents with disability involved in the New South Wales child protection system, was unable to do so. As it noted, the department ‘does not capture disability prevalence for parents’.<sup>111</sup> As discussed in the Policy and Practice chapter of this report, in carrying out this research, we requested data on the prevalence of parents with disability from each state and territory child protection department. None provided this data. Studies conducted in different states in the USA and Canada have likewise highlighted the failure of respective child welfare systems to record the known involvement of parents with disability.<sup>112</sup>

Given the absence of data recording contact between child protection systems and parents with disability generally, it is likewise unknown how many First Nations parents with disability or culturally and linguistically diverse parents with disability live in the general population or are involved in child protection systems, although there is a general acknowledgement that they are over-represented.<sup>113</sup> Notably, while the Australian Survey of Disability, Aging and Carers (‘SDAC survey’) – the only disability-dedicated survey for the Australian population – indicates that just under a quarter of First Nations participants reported living with disability in 2018, the *published* data provides little indication of how many also identified as parents.<sup>114</sup> This is not to say the data does not exist; rather, the Australian Bureau of Statistics (‘ABS’) and Australian Institute of Health and Welfare (‘AIHW’) appear not to have *publicly* released it to date. Indeed, using data obtained through the 2009 SDAC survey, Nicola Wing Man, Catherine Wade and Gwynnyth Llewellyn estimated that around 17,000 parents with intellectual disability resided in private dwellings in Australia (approximately 8 per cent of people with intellectual disability in Australia). They also estimated 21 per cent of people with other disabilities (approximately 398,000) were parents.<sup>115</sup> Their study did not provide insight into First Nations parents with disability or culturally and linguistically diverse parents with disability within the Australian population. That said, the SDAC survey only captures data on parents who are primary caregivers and reside with their children in private dwellings within metropolitan and regional communities.<sup>116</sup>

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It therefore precludes insight on parents who may have been separated from their children through child protection involvement, those 'who live in care accommodation or special dwellings (no questions about parenthood), people living in gaols and correctional institutions and those living in very remote parts of Australia'.<sup>117</sup> It also excludes participation by people who are homeless, living in crisis accommodation, guest accommodation or boarding houses or in discrete First Nations communities.<sup>118</sup> There are also limited insights to be gleaned with respect to culturally and linguistically diverse parents with disability in Australia: the survey appears to only collect information on the participant's country of birth and 'main language' spoken at home.<sup>119</sup> Thus, it seems to capture cultural and linguistic diversity only with reference to people who have migrated to Australia in their lifetime or otherwise predominantly speak a language other than English within their household.

It is unknown how many First Nations parents with disability or culturally and linguistically diverse parents with disability are in contact with child protection services. What is known is that on 30 June 2021, 39 per cent of children subject to child protection orders across Australia, and 42 per cent of children removed from their families and placed in OOHC, were identified as First Nations children.<sup>120</sup> This means that First Nations children were subject to child protection orders at 10 times the rate, and in OOHC at 11 times the rate, of non-First Nations children.<sup>121</sup> The majority were placed with non-First Nations carers.<sup>122</sup> In its analysis of data from the 2015 National Aboriginal and Torres Strait Islander Social Survey ('NATSISS') administered by the ABS, the First Peoples Disability Network (Australia) identified that First Nations people with 'severe and profound disability' were 50 per cent more likely than First Nations people without disability to report having been removed from their families as children or having had a close family member so removed.<sup>123</sup>

The placement of First Nations children who are in OOHC within culture and community is one of five key elements of the Aboriginal and Torres Strait Islander Child Placement Principle ('ATSICPP'). These elements are intended to safeguard the rights of First Nations children to family, community and culture.<sup>124</sup> As outlined by the peak First Nations children's organisation SNAICC, the five components include prevention through early intervention and supports, connection through culturally appropriate placement of children who need to be in OOHC, community partnership in the design and delivery of services and in case-based decision-making, and family participation in child protection decision-making.<sup>125</sup> The ATSICPP is enshrined in legislation, to different extents, across Australian jurisdictions. However, the 'placement' element is perhaps the most well-known, requiring First Nations children to be placed in accordance with a hierarchy of preferences. The first preference is that First Nations children are placed in the care of First Nations relatives or extended family members, or other non-First Nations relatives. If this is not possible, children should be placed with members of the child's First Nation community or, if this is not possible, with other First Nations carers. It is only when these options are exhausted that First Nations children should be placed with a non-Indigenous carer or in residential care. However, just 54.3 per cent of First Nations children were placed with family – which, as stated previously, can include non-First Nations family and kin – in 2021.<sup>126</sup>



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This blunt measure of compliance with the ATISCPP conflates placement of First Nations children with family and community with the broader intent of the ATISCPP to preserve their cultural connections. As such, while the statistics show that just over 60 per cent of First Nations children removed from their parents were placed with kin, closer analysis reveals that two-fifths of these children were in fact placed with non-First Nations family members. It is in this way, and others, that child protection authorities present placements as compliant with the ATISPP while in fact entrenching children's disconnection from First Nations family, community, culture and Country. While the data is not disaggregated with respect to parents with disability, emerging research suggests that the rate of non-compliance for First Nations parents with disability is likely even higher.<sup>127</sup>

There are additional limitations with respect to the data reported on the implementation of the five elements of the ATISCPP, which, as referred to above, include prevention, partnership connection, participation and placement. It has been noted that the ATISCPP is often misunderstood and misapplied by being reduced to a simple placement hierarchy, which fails to reflect its full breadth.<sup>128</sup> The absence of robust measures contributes to this.<sup>129</sup> There have been recent efforts to improve such measures.<sup>130</sup> However, these only partially relate to two of the five elements of the placement principle (placement and connection), with three remaining elements (prevention, partnership and participation) still awaiting further development.

To our knowledge, no like data has been published on the numbers of children involved in Australian child protections systems with culturally or linguistically diverse parents. In their exploratory study of children and young people from non-English speaking backgrounds who had been placed in OOH in New South Wales, published in 2008, Sharon Burke and Marina Paxman noted that unpublished departmental data indicated three per cent of children who had been separated from their families spoke a language other than English at home. According to the authors, however, the NSW Child Protection Department's Multicultural Services Unit believed this was likely to be 'under recorded by five' as the then centralised recording system utilised by child protection workers, KiDs, did not include linguistic diversity or country of birth as mandatory fields. Even had it done so, however, such fields would not include people from culturally and linguistically diverse communities who spoke English at home or were born in Australia – in other words, they did not capture cultural identity.<sup>131</sup> A decade later, Manjula Waniganayake and colleagues likewise found that the New South Wales child protection system failed to reliably collect or publish statistics on its contact with culturally and linguistically diverse families.<sup>132</sup>

The widespread failure to collect data on parents with disability generally, and those in contact with child protection systems in particular, is inconsistent with the obligations of Australian jurisdictions under the *CRPD*.<sup>133</sup> Specifically, it violates Article 31, which requires state parties to 'collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to' the human rights articulated within the Convention. This failure, which persists despite successive calls by human rights advocates and scholars for it to be addressed, has been attributed to a general absence of political will to build knowledge about, and provide appropriate services that support, parents with

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disability across communities.<sup>134</sup> It has also been argued to reflect a prevailing and profoundly prejudicial, uninformed and – given what is known about parents with disability’s involvement in child protection systems – inaccurate assumption by policy-makers that people with disability are unlikely to parent.<sup>135</sup> As several have noted, without this data, attempts to design policy, services and infrastructure supportive of the human rights of people with disability to parent with privacy, dignity and without prejudice, are inevitably compromised.<sup>136</sup> Indeed, as Ella Callow and Jean Jacob have written,

without knowing this information, it is impossible to know what trainings and services are most needed and how much capacity (and therefore funding) is required to adequately serve a diverse and complex population of families.<sup>137</sup>

However, research efforts to quantify the involvement of parents within different child protection systems have demonstrated that even if state record-keeping practices accorded with human rights obligations under the *CRPD* today, it is likely the numbers would still under-estimate the prevalence of parents with disability within child protection systems. As several studies have found, in situations where disability is not immediately apparent or disclosed, parents with disability are often not identified by child protection workers, particularly in the absence of policy, practice guidelines, training, and disability awareness and competence across the profession.<sup>138</sup> While disability may be referred to in case notes there is no transparent way of knowing if or what measures are put in place in response to this identification. Additionally, as several authors have noted, parents with disability may choose not to identify themselves as such to professionals involved in child protection systems, due to well-founded fears and wariness of the repercussions of doing so.<sup>139</sup> The research suggests this might particularly be the case for First Nations parents or culturally and linguistically diverse parents with disability, who may be reluctant to expose ‘another potentially discriminatory aspect of their life’ that could magnify their ongoing experiences of marginalisation and racial discrimination.<sup>140</sup> On top of this, many parents with disability may not be diagnosed or may choose not to identify as living with disability for political or cultural reasons.<sup>141</sup> Barton and colleagues have also suggested that the dominant diagnostic paradigm utilised in government policies and service provision can conflict with some First Nations communities’ understandings of disability.<sup>142</sup> Furthermore, across health and disability practice and scholarship there are multiple approaches and variations in how different disabilities are defined, screened for and operationalised.<sup>143</sup>

Despite these obstacles to gleaning a full picture of the extent to which parents with disability are involved in child protection systems, for several decades it has been widely recognised in both international and Australian literature that parents with disability are over-represented as subjects of child protection allegations, investigations and proceedings across the Western world. Indeed, as James Rice and Hanna Sigurjónsdóttir note, the disproportionate rate at which children are removed from the care of parents with disability has been the major focus of international scholarship ‘at the intersection of critical disability studies and child protection matters’.<sup>144</sup> Studies suggest that once involved, parents with disability are significantly more likely to have their children removed from their care.<sup>145</sup> They also indicate differential treatment with respect to where, how long and with whom children are placed following their removal.<sup>146</sup>

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They further report that child protection authorities are less likely to work towards reunifying parents with disability and children or to refer parents with disability to family preservation services.<sup>147</sup> Recent research conducted by Sharyn DeZelar and Elizabeth Lightfoot identified that at least 19 per cent of children in OOHC in the United States ('USA') were children of parents with disability.<sup>148</sup> However, this percentage reflected the proportion of children in the USA who had been removed from their families explicitly *on the basis of* their parent's disability; as the authors noted, the true number of children of parents with disability removed from their families was likely to be significantly higher.<sup>149</sup>

As the Public Advocate in Victoria has noted, once children are placed in OOHC parents will very rarely be given access to their children for more than one or two hours per week or fortnight, even in situations where child protective services are ostensibly supporting family reunification.<sup>150</sup> Often occurring under conditions of strict supervision in unfamiliar environments, the constrained contact between parents and children can lend itself to assertions by caseworkers of reduced attachment, undermining parents' cases for reunification.<sup>151</sup> While studies on reunification are scarce, the research to date suggests that firstly, children with 'shorter stays' in OOHC are more likely to be reunified with their families; and, secondly, that greater family contact during out-of-home placements tends to be positively associated with reunification.<sup>152</sup> If permanent placement outside the family is ordered, contact is substantially reduced again – often to only three or four times a year.<sup>153</sup> For many parents with disability involved in the child protection system, the removal of their children from their care is permanent.<sup>154</sup> With reforms to legislation that reduce timeframes to either restore children or permanently remove them, this is now more likely. See discussion of legal permanency reforms in Chapter 3.

Regrettably, until very recently there was a lull in research examining the general prevalence of parents with disability involved in Australian child protection systems. Most published studies that foregrounded the involvement of parents with disability in court proceedings were based on data collected in late 1990s and early 2000s.<sup>155</sup> In their examination of child protection proceedings initiated over a 9-month period in two New South Wales Children's Courts between 1998 and 1999, David McConnell, Gwynnyth Llewellyn and Luisa Ferronato found that parents with disability were involved in around one-third of child protection cases.<sup>156</sup> Parents with mental health disability were most prevalent, constituting 21.8 per cent of cases; parents with intellectual disability were involved in 8.8 per cent of cases.<sup>157</sup> While parents with physical and sensory disability were also involved in proceedings, together these cases constituted under 2 per cent and 1 per cent of all proceedings respectively.<sup>158</sup> To our knowledge, McConnell, Llewellyn and Ferronato's study – which culminated in several papers and whose findings will be discussed thematically throughout this literature review – is the last published study that sought to foreground the prevalence of parents with disability within child protection proceedings *before the courts* in New South Wales. A 2014 study of Children's Courts, while not focusing on disability, did however note the disadvantages parents with cognitive and intellectual disability and parents with English as a second language experience navigating Children's Courts and accessing appropriate services.<sup>159</sup>

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More recently, Susan Collings and colleagues conducted a case file review of parents with intellectual disability involved in child protection proceedings in New South Wales. This was based on a sample of 45 parents who accessed a specialised legal service for people with intellectual disability.<sup>160</sup> Collings and colleagues' study, by examining active case files between 2014 and 2016, sought insight to the intersectional experiences of First Nations parents with intellectual disability involved in child protection proceedings. They compared reasons for initial investigations and outcomes of child protection proceedings involving First Nations parents with intellectual disability with a cohort of non-First Nations parents with intellectual disability. They found that First Nations parents with intellectual disability were twice as likely to have been subject to initial investigations due to their own involvement in child protection proceedings – as children or otherwise – because a caseworker 'queried their parenting capacity'.<sup>161</sup> While the incidence of permanent removal of children for both cohorts was high, this was the outcome in all cases involving First Nations parents with intellectual disability, with their children less likely to be placed with kin.<sup>162</sup>

Of the few remaining studies assessing the prevalence of parents with disability in child protection proceedings *before the courts* in Australia, all were conducted in Victoria. In their case file audit of 86 child protection matters before a Victorian Children's Court in 2000, Phillip Swain and Nadine Cameron found that parents with disability were identified in 30 per cent of all proceedings examined.<sup>163</sup> As the court files did not routinely disclose parental disability, however, the proportion of parents with disability involved may have been greater.<sup>164</sup> Of *identified* parents with disability involved in child protection proceedings, parents with mental health disability featured most prominently, constituting around 88 per cent, with mothers with mental health disability forming three-quarters of this sample.<sup>165</sup> Around 23 per cent comprised parents with intellectual disability (again with mothers constituting most of this group); and around 7 per cent involved parents with physical or sensory disability.<sup>166</sup> In their later study of the prevalence of parents with identified mental health disability involved in child protection proceedings before the Melbourne Children's Court in 2002, Rosemary Sheehan and Greg Levine found that one-quarter of all proceedings involved parents with mental health disability.<sup>167</sup>

Indeed, parents with mental health disability appear to constitute the greatest proportion of child protection cases involving parents with disability internationally. In research conducted by Ella Callow and Jean Jacob on behalf of the National Centre for Parents with Disabilities and their Families across three US child protection jurisdictions, for example, the percentage of cases involving parents with mental health disability was higher than the combined percentages of all cases involving parents with other disability.<sup>168</sup> Some studies suggest cases involving parents with mental health disability constitute a majority of child protection cases overall.<sup>169</sup> Recent Australian research supports this. Using intergenerational and linked data from the New South Wales Child Development Study, Melissa Green and colleagues found that children with mothers with known mental health disability were six times more likely to be involved in the New South Wales child protection system, and 4.8 per cent more likely than other children involved in the system to be placed in OOHHC.<sup>170</sup> Likewise, Melissa O'Donnell and colleagues' retrospective cohort study of children born in Western Australia between 1990 and 2005 – also drawing on

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linked data from government health and child protection databases – identified that around one in ten children whose mothers had documented mental health diagnoses were involved in the child protection system.<sup>171</sup> Almost half the children identified as involved in the Western Australian child protection system had mothers with mental health records.<sup>172</sup> Furthermore, First Nations mothers were more likely to have both documented mental health disability and child protection involvement than non-First Nations mothers.<sup>173</sup> Demonstrative of the different definitional paradigms used by researchers and professionals in the field, in this study mental health diagnostic groups encompassed diagnosed intellectual disability.<sup>174</sup> Indeed, intellectual disability was associated ‘with the highest proportion of maltreatment allegations, followed by substance-related disorders and personality disorders’.<sup>175</sup>

O’Donnell and colleagues’ findings on the prevalence of parents with intellectual disability within the Western Australia child protection system resonates with a significant body of international research that identifies parents with intellectual disability as significantly over-represented in child welfare proceedings across the Western world. Notably, most of the literature examining parents with disability’s involvement with child protection systems in Australia and elsewhere has focused on parents with intellectual disability. These studies indicate that children of parents with intellectual disability are significantly more likely to be removed from their families and placed in OOHC.<sup>176</sup> They also indicate that when this occurs, children are less likely to be placed with kin.<sup>177</sup> It has been estimated that more than 20 per cent of all children removed by child protection systems internationally have parents with, or believed to live with, intellectual or cognitive disability.<sup>178</sup> In Laura Pacheco and colleagues’ study, based on a secondary analysis of data drawn from the Canadian Incidence Study of Reported Child Abuse and Neglect, which included a final sample of 15,980 children, one in four children with parents with cognitive disability was removed from their families.<sup>179</sup>

Recently published research by Fernando Lima and colleagues, which examined the involvement of mothers with intellectual disability in the Western Australian child protection system, likewise found that mothers with intellectual disability were over four times more likely to have contact with child protection services than mothers without intellectual disability.<sup>180</sup> They also found that children of mothers with intellectual disability were six times more likely to be placed in OOHC.<sup>181</sup> Echoing findings elsewhere, these risks increased when their children were also diagnosed with intellectual disability, when mothers had mental health records, or substance use was identified.<sup>182</sup>

Lima and colleagues also examined whether there were any discernible differences in involvement in child protection or placement in OOHC for First Nations children of mothers with intellectual disability. Notably, while they found that both First Nations children and non-First Nations children with mothers with disability had elevated risks of both, the risk of child protection involvement and removal from families with a mother with intellectual disability appeared considerably higher for non-First Nations children.<sup>183</sup> This is likely affected by the already disproportionate intervention by child protection systems in First Nations families more generally. The presence of diagnosed intellectual disability among non-First Nations mothers was identified as multiplying the risk of child protection involvement by 12, while

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for First Nations mothers this doubled the risk.<sup>184</sup> At the same time, however, across Western Australia First Nations children were more involved in child protection services and substantially overrepresented in OOHC.<sup>185</sup> The authors subsequently concluded that while intellectual disability increased the likelihood of child protection involvement for First Nations parents, this population was also more likely to be affected by poverty, racial discrimination and entrenched disadvantage that rendered them more vulnerable to state intervention across the board.<sup>186</sup>

The over-representation of parents with disability as a group in child protection systems across the Western world has led some to argue that parenting is ‘the last frontier for people with disabilities’.<sup>187</sup> Scholars and disability advocates have asserted that the continued and increasing intervention of child protection authorities in the lives and families of parents with disability demonstrates the enduring legacy of the eugenics movement across Western legal, medical and social institutions.<sup>188</sup> Others have been less reticent, characterising child welfare systems as the backdoor of eugenics movements today.<sup>189</sup> As Robyn Powell has written, the violent and prejudicial stereotypes that manifested (and continue to manifest) in legally sanctioned practices of forced sterilisation, coerced contraception and forced pregnancy terminations, persist in both explicit and more subtle forms of structural and systemic discrimination within the child protection context. As Powell notes, this has culminated in large numbers of children removed from parents with diverse disabilities across the Anglosphere and Europe.<sup>190</sup>

As we discuss in the next chapter, the literature highlights that too frequently child protection authorities intervene to remove children from their families, not due to evidence of child maltreatment, but on the basis of perceived potential or future risk deriving from the identification of parents with disability. The conflation of parents with disability and risk pervades child protection systems in Australia and across the Western world. Indeed, it is one of the most explicit forms of discrimination parents with disability face. It further reflects the absence of adequate services for or knowledge on the diverse experiences and needs of parents with disability, which as some have argued are deemed too complex and difficult in a society which fails to address or accommodate them.<sup>191</sup> The discrimination against parents with disability is both reflected in and reinforced structurally through the absence of appropriate services.

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## Chapter 3: Parents with disability as ‘risks’ and the best interests of the child

A major theme that emerged across the literature was the continued and explicitly discriminatory conflation of parents with disability with ‘risk’ across Australian and international child protection systems. In several jurisdictions across the world, disability persists as a statutory ground to be considered in determinations of a person’s ‘fitness’ to parent. This is despite Article 23(4) of the *Convention on the Rights of Persons with Disabilities* (the ‘CRPD’) which unequivocally states that children should not be separated from their parents on the basis of their or their parents’ living with disability. In a paper published in 2010, Elizabeth Lightfoot, Katherine Hill and Traci LaLiberte identified that 37 of 50 states in the USA – that is, just under three-quarters of states – have child protection legislation that explicitly includes whether a parent lives with disability as a relevant consideration in determining their parenting capacity.<sup>192</sup> As the authors note,

while no states have criteria indicating that having a disability is, by itself, grounds for termination, it is one of the only grounds for termination based on a contributing factor to a parent’s behaviour rather than the parent’s behaviour itself.<sup>193</sup>

Indeed, studies of the trajectories of parents involved in child protection systems suggest that even in jurisdictions where having or being a parent with disability is not in itself a ground for the removal of children from their families, it is nonetheless treated ‘as a risk factor at crucial stages of the child protection process’.<sup>194</sup> This appears to be the case in Australia: while having or being a parent with disability alone is not listed in child protection statutes as a ground for child removal, it is nonetheless frequently noted in policy, practice guidelines and child protection publications as posing a potential ‘risk’ to child wellbeing.<sup>195</sup> This is particularly evident in government literature relating to parents with mental health disability and intellectual disability.<sup>196</sup> While systems continue to identify parents with disability as ‘risks’ in these ways, this discriminatory assumption will likely trigger their involvement and over-representation in child protection systems. Several have argued that this conflation is a telling and key dimension of ‘institutional ableism’ throughout child protection systems, one that creates the risk of child protection involvement for many parents with disability.<sup>197</sup> As Robyn Powell and Joanne Nicholson emphasise, it is therefore incumbent on legislators, researchers and the wider community to recognise that parents’ involvement in child protection systems is not ‘a proxy for child maltreatment’.<sup>198</sup>

### Risk assessments and the removal of children from parents with disability at birth

The widespread conflation of parents with disability and risk across child protection systems has led to extraordinary levels of scrutiny of parents with disability, including prior to their children’s birth. As Sarah Wise and Tatiana Corrales note, across Australia expectant parents with intellectual disability and mental health disability are identified in state and territory guidelines as ‘relevant considerations’ for health practitioners and others in their determinations of whether to file unborn child reports.<sup>199</sup> These reports are based on whether parents are perceived as posing risks of future harm to children following their birth. Other considerations include family

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or intimate partner violence, substance use, homelessness and previous involvement in child protection systems.<sup>200</sup> Although data is often not made public by child protection authorities, what is known is that it is typically parents with these 'attributes' against whom unborn child reports are made.<sup>201</sup> There is also evidence that First Nations parents are disproportionately subject to them.<sup>202</sup> Furthermore, as Wise and Corrales have observed, in Australia as in most of the Western world, the rate of removals of children at or close to the date of the birth 'has increased substantially' in recent years. While the actual number of parents with disability whose children are removed at or close to their birth is unknown, the discrimination and surveillance of parents with disability in the lead-up to and immediate aftermath has been described as 'obstetric violence'.<sup>203</sup>

As the Public Advocate has noted, in 2013 the Victorian Department of Health and Human Services published advice that encouraged health practitioners and others to report pregnant women with intellectual disability or mental health disability to child protective services if it was felt their disability might compromise their ability to care for their child.<sup>204</sup> While this Guidance Note was issued to accord with a legislative intent to provide 'preventative' support to pregnant women with disability, it demonstrated a continued and explicit conflation of disability – in particular, intellectual disability and mental health disability – with risk and parental incapacity.<sup>205</sup> In the absence of published data on how many times such pre-birth child protection notifications are made or their outcomes (including whether supports were actually forthcoming or if families remained intact following birth), it is impossible to assess whether the legislative intent of providing preventative support translated to practice. Without such data, and the reasons given for making the initial report, it is impossible to verify whether the human rights of mothers and children, including and extending beyond those articulated in the *Convention of the Rights of the Child* (the 'CRC') and the *CRPD*, were respected.<sup>206</sup> As noted previously, this includes the obligation of states to ensure that children are not separated from their parents on the basis of their or their parents living with disability.<sup>207</sup> To quote the Office of the Public Advocate, 'it is a very small step from identifying risk factors to those risk factors becoming the actual practice criteria for the removal of children from their parents'.<sup>208</sup>

Several more recent Australian reports suggest, however, that this 'small step' may be well-trodden. In their qualitative review of a select sample of cases involving First Nations parents with intellectual disability who were subject to pre-birth notifications, for example, the New South Wales *Family is Culture Review* found that 'in a number of cases, including cases where children were assumed at birth, options for parents ... to safely care for their children – such as supported accommodation arrangements – were not explored'.<sup>209</sup> In many of the cases they reviewed, 'no steps were ever taken to assess the parents' abilities or develop appropriate casework strategies which would ensure effective and appropriate approaches and engagement'.<sup>210</sup> Furthermore, the Review found that when assessments did occur, they were not 'appropriate to the parent's disability or culturally appropriate'.<sup>211</sup> Ultimately, the Review noted

a routine lack of specialist consultation and assessment [that] appeared to result in children being removed from their parents due to reasons that, at least in part, appeared to be based on assumptions about (rather than assessments of) the parents' intellectual capacity.<sup>212</sup>



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A similar conclusion was reached by the Parents with Disability Network in relation to parenting assessments conducted at the time of, or soon after, the birth of children in Victoria. A recurring theme in their consultations with parents with disability was the perception that such parenting capacity assessments reflected the capabilities of assessors and broader systems to understand parents with disability, rather than an assessment of their abilities as parents. It was noted that assessors and facilities ‘do not always have the necessary equipment, physical access and ability to develop systems or specialist knowledge’ necessary for valid assessments. Such flawed assessments were identified as far too often becoming the basis of caseworker’s recommendations for child removal.<sup>213</sup> Notably, in 2015 the Parenting Research Centre advised that there were ‘no adequate tools or resources in place in Victoria to properly assess the functional parenting of parents with disabilities’.<sup>214</sup> In the absence of appropriate assessments – that is, evidence-based parenting assessments – a major concern is that parents with disability have indeed become a ‘the practice criterion’ for determinations of irremediable risk, leading to child protection interventions including removal of children from their care.

Susan Collings and colleagues have noted that parents with intellectual disability – mothers in particular – face ‘pervasive disablism from the moment they begin their reproductive journeys’, with risk discourses dominating their interactions with health professionals, service providers, child protection agencies and their wider community.<sup>215</sup> Studies conducted with women with physical disability also indicate that many are often discouraged from pursuing pregnancy, while expectant mothers are often ‘questioned by professionals about their capacity to parent’.<sup>216</sup> Critical disability scholars have also highlighted the extent to which mothers with disability – particularly mothers with intellectual disability and mental health disability – are infantilised within child protection discourse, depicted as needy, naïve, passive and childlike.<sup>217</sup> As Mosoff and colleagues have argued, such depictions are especially prevalent in discussions of mothers with intellectual disability who ‘not uncommonly ... are described as having the mental age of a child’.<sup>218</sup> This ‘child stereotype’ works to ‘naturalise the eventual termination of their legal rights to be parents. Children cannot parent children and thus, by implication, nor can those who are “childlike”’.<sup>219</sup>

Some scholars have argued that such discourses of risk while already dominating child protection discourses in relation to parents with disability are compounded in situations where their children are diagnosed with disability.<sup>220</sup> Such discourses, proceeding from outdated and prejudicial stereotypes of their parenting capacities, tend to ignore, if not contribute, to the structural barriers and stigma experienced by parents with intellectual disability.<sup>221</sup> Subsequently, when parents with intellectual disability experience difficulties deriving from structural factors such as poverty, inadequate housing or family support, for example, such difficulties are frequently misattributed to their disability, or alternatively seen as signalling their incapacity to parent.<sup>222</sup> Furthermore, the permanent or ongoing nature of a disability coupled with the diagnostic overshadowing of individual parenting abilities often results in child protection authorities presuming any difficulties parents face are unlikely to be resolved or improved through service support.<sup>223</sup>

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Alongside this, there is evidence to suggest that parents who actively seek support or help from family or services can find their actions construed by child protection services as signalling their inability to care for their children.<sup>224</sup> The extensive scrutiny of parents with intellectual disability in particular has led some authors to conclude that the child protection system imposes higher benchmarks for their parenting capacity.<sup>225</sup> Indeed, because of this it has been argued that ‘parents with intellectual disability are [effectively] blamed for the failures of [the system] to adequately support them’ or to address prevailing discriminatory attitudes held by child protection workers, health professionals and members of the legal profession.<sup>226</sup> The enduring and extensive discrimination faced by parents with disability within the child protection system has been characterised as ‘systemic’ or ‘institutional’ abuse.<sup>227</sup>

## Disabling assumptions and circular reasoning in policy, practice, and research

The conflation of disability with risk not only betrays the continued stigmatisation of parents with disability in child protection systems, but it also runs counter to a now substantial body of empirical evidence which has steadily debunked past prejudicial assertions of causal relations between particular disabilities and parenting incapacity.<sup>228</sup> The measure itself hinges on a kind of circular or tautological reasoning with the hypothesis of ‘potential risk’ based on the numbers of parents with disability previously involved in child protection systems. Subsequently, the measure increases the likelihood that parents with disability will continue to be so involved, not due to evidence of maltreatment but an assertion of hypothesised risk, devoid of qualitative and structural critique. As the Office of the Public Advocate has written,

it is difficult for the community and child protection professionals not to succumb to the closed-loop thinking inherent in any paradigm, with the increase in the number of parents with a disability whose children are in the child protection system too often taken as evidence that they have failed as parents.<sup>229</sup>

As substantial empirical literature attests, such risk assessments based as they are on past numbers of parents’ involvement with child protection systems are more telling of the social, systemic and individual prejudice and discrimination and absence of support faced by parents with disability, than any generalised risk inherent to parents with disability.<sup>230</sup> Furthermore, as Judith Mosoff and colleagues warn, the present-day pre-occupation with risk assessment ‘can distort and deflect attention from the relations of race, class and gender that are structured into child protection processes’ – all through the ‘supposedly neutral application of the best interests of the child’.<sup>231</sup> Many of these factors are likewise structured into supposedly neutral risk assessment tools, further entrenching their impact while downplaying or even rendering invisible their presence in the decision-making process.<sup>232</sup> Arguably, the large gap in research literature addressing the intersectional experiences of parents at the intersection of ‘race’ and racism, disability and ableism, class and classism, and gender and gender/sexual discrimination has contributed to this.

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It has been observed that the widespread presumption of risk across child protection systems has produced a dynamic ‘whereby parents must prove otherwise if they wish to retain the care of their children’.<sup>233</sup> Lending support to this, in their study of the involvement of parents with mental health disabilities in child protection proceedings before the Melbourne Children’s Court, Rosemary Sheehan and Greg Levine found that while child protection concerns tended to relate to the nature and consequences of mental health disabilities, child protection reports provided negligible information on how parents’ mental health diagnoses impacted on their children or their parenting capacities.<sup>234</sup> Likewise, Judith Mosoff’s research on the involvement of mothers identified with mental health disability in child protection cases found that

the label [of mental illness] raises immediate concerns that her children are in jeopardy, not because of what she has done but what she might do in the future, based on who she is as defined by an expert.<sup>235</sup>

In her historical review of judicial decisions in child protection matters involving mothers with mental health disability between 1980 and 1995 in Canada, Mosoff found that the cases tended to revolve around the existence of the mental health diagnosis without a clear articulation or examination of why or how the ‘mother’s diagnosis’ necessarily compromised or related to her child’s best interests.<sup>236</sup> Also writing in the context of parents with mental health disability, Rachel Patterson has noted the presumption of risk has forced parents to

decide whether to confirm their mental illness in the hopes of receiving better quality and sufficiently tailored services or deny their mental illness in hopes that their mental illness will not be seen as a barrier to reunification with their children.<sup>237</sup>

Indeed, in their case review of mothers with mental health disabilities involved with the Canadian child protection system, Mosoff and colleagues found that mothers often with multiple diagnoses would trigger heightened levels of state surveillance, with many subsequently having their interactions with their children constantly monitored by child protection workers.<sup>238</sup>

As James Rice and Hanna Sigurjónsdóttir have written, such hypotheses of risk as they manifest in notifications, investigations and orders are by no means ‘objective representations of facts.’ Instead, they are ‘productive’ of how parents with disability become ‘known’ within the system.<sup>239</sup> Records of child protection notifications and subsequent involvement in child protection systems are non-erasable, even in situations where allegations are unsubstantiated.<sup>240</sup> Such records can trigger later scrutiny of parents, in relation to younger siblings or in times of future pregnancy, and will often be introduced as evidence of risk in child protection proceedings should cases proceed to court, amounting to a form of ‘legal stigmatisation’.<sup>241</sup> Furthermore, as the Office of the Public Advocate has argued, once protection orders are made on the hypothesis of future harm, far too frequently the existence of an order becomes construed as evidence or proof of actual harm (i.e., that the parent had abused or neglected their child).<sup>242</sup> As Lisa Morriss cautions, ‘futures are not merely imagined, they are *made* with concrete material consequences for the lives of the mothers and children who are subject to [child protection] orders’.<sup>243</sup>

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A similar caution can be levelled against the growing body of published research directed at gauging potential ‘risk factors’ to child protection involvement. As Roscoe and colleagues have argued, such studies, often based on linked government databases indicating child protection involvement, tend to ‘identify mental illness and substance abuse as risk factors for child removal without explaining how either constituted a threat to child safety during the protection decision-making process’.<sup>244</sup> Few address or factor in variables such as structural discrimination or practice guidelines such as those referred to above in their attempts to predict ‘risk’ of child protection involvement. In their omission, such studies can lend support to, rehearse, reproduce and reiterate the equation that disability equals risk. Disturbingly, as researchers have uncritically harnessed past involvement in child protection systems as indicative of parenting incapacity, some have called for the increased surveillance of parents with disability as a means of pre-empting or triaging *potential* harm to children.<sup>245</sup> In other words, they suggest that government-held administrative data identifying parents with diagnosed disability might be used to *prospectively* identify cases of future child maltreatment, even as some acknowledge ‘the potentially stigmatising and discriminatory effects’.<sup>246</sup>

The entrenchment of risk discourse across policy, practice guidelines and research contributes to many parents with disability resisting discrimination by choosing not to seek health treatment, parenting support or help, or disclose their disabilities due to well-founded fears of rendering themselves and their families vulnerable to increased surveillance and state intervention.<sup>247</sup> Indeed, as Melanie Bournsnel found in her interviews with parents with mental health disability in New South Wales, the fear of child protection intervention in their lives, compounded by the lack of adequate or accessible support, led many to ‘carry on however difficult things become’.<sup>248</sup> Some reduced their social interactions to avoid perceptions of risk, and many identified this as a key barrier to their compliance with treatment.<sup>249</sup> The system’s deficit approach led Bournsnel to conclude that ‘the danger for families living with mental illness is created not by the real risks ... but in the deficit in education and professional development about mental illness’.<sup>250</sup>

As the literature highlights, many parents with disability are

being defined as failing to adequately protect their children, even if a risk to the child is generated by factors largely outside [their] control, such as poverty or a violent partner.<sup>251</sup>

Indeed, a recurrent theme is the intersection of experiences of intimate partner violence and child protection involvement for parents, particularly mothers, with disability.

## The response of child protection systems to parents with disability who experience domestic and family violence

Research conducted internationally and within Australia suggests that many parents who experience intimate partner violence are reluctant to seek help – whether from friends, family, health and family violence services – due to fears that doing so will trigger protection involvement.<sup>252</sup> In their consultations with Victorian women with disability who had experienced

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family violence, Delanie Woodlock, Deborah Western and Philippa Bailey identified this was particularly felt by First Nations participants.<sup>253</sup> Disturbingly, the literature suggests that these fears are warranted: many mothers with disability report that they became involved with child protection systems *as a result* of their seeking assistance in circumstances of intimate partner violence.<sup>254</sup> Furthermore, in many cases, the system response or outcome following child protection involvement is to remove children from their care.<sup>255</sup>

Studies of mothers with intellectual disability and mental health disability suggest that many who report their experiences of abuse have their allegations dismissed or trivialised by the very authorities to whom they have turned for assistance.<sup>256</sup> According to Judith Mosoff and colleagues,

women with mental disabilities are less likely to be believed in criminal courts as victims of male violence, yet those same claims of violence are often the basis for removing their children in the child protection context.<sup>257</sup>

Some studies have found that mothers with intellectual disability who have sought assistance from child protection authorities to leave abusive relationships have been actively discouraged from doing so. This appears to be particularly the case in circumstances where the perpetrator of the violence is also their primary carer. In Laura Pacheco and David McConnell's research conducted with mothers with intellectual disability from culturally and linguistically diverse communities in Canada, several related having been given 'the 'choice' of either staying with their abusive partners or having their child or children taken from them'.<sup>258</sup> Australian studies and the fieldwork for this project report similar experiences of mothers with intellectual disability who have reported that they were offered little support (informational or otherwise) to leave abusive relationships.<sup>259</sup> In their review of specialist and disability services responses to women with disability exposed to family violence in Victoria, Women's Health West also observed that 'disability service workers encountering women with limited communication or cognitive capacities rarely questioned them about their safety'.<sup>260</sup> The literature suggests that while child protection services often dismiss safety concerns raised by mothers in relation to contact with former partners, children are often placed with perpetrators of family violence rather than mothers with disability following child protection intervention.<sup>261</sup>

Many mothers who have had contact with child protection services in situations of intimate partner abuse 'feel punished rather than protected from ... violence'.<sup>262</sup> Notably, in Glaun and Brown's study of cases brought before the Victorian Children's Court Clinic involving mothers with intellectual disability, the main reasons put forward by child protection workers for assessments related to neglect or dual allegations of neglect and abuse. In all but one case, the allegations related to the perceived 'failure on the part of the mother to protect the child from abuse by another'.<sup>263</sup> Indeed, findings of neglect frequently follow disclosure of intimate partner violence, effectively holding parents responsible for the violence perpetrated by their partners. For example, the vast majority of those who participated in Collings and colleagues' study of mothers with intellectual disability's experiences of child protection involvement following domestic violence related having their children removed on such grounds.<sup>264</sup>

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Some authors have argued that the high levels of child removal from mothers with intellectual disability following disclosure of intimate partner violence derives from widespread assumptions across child protection systems that mothers with intellectual disability are ‘incapable of protecting their children from the kinds of violence they themselves have faced’.<sup>265</sup> More recently, Naomi Pfitzner and colleagues, in their Australian study of child protection responses to mothers who experienced domestic and family violence, concluded that present-day preoccupations with ‘risk identification and risk management’ meant that ‘[a]ssisting mothers to improve family functioning [was] secondary and at times invisible’ in child protection casework.<sup>266</sup>

Exposure to family violence and structural failings including poverty and inadequate housing are often attributed to the individual failings of parents or as confirmatory evidence of parents with disability’s incapacities to parent.<sup>267</sup> Indeed, for many parents involved in child protection systems – those with and without disabilities – reliance on public systems, including public health care and other social welfare support, can trigger greater state surveillance of parenting capacity.<sup>268</sup> Parents with disability, who may require greater social support or ongoing medical or health care, are therefore more likely to be exposed to such scrutiny. As Sharyn DeZelar and Elizabeth Lightfoot caution, given the growing ‘literature indicating discriminatory beliefs and practices among social service providers both within and outside the child welfare system, the implications of [such exposure] are of grave concern’.<sup>269</sup> Similar concerns have also been raised in the literature relating to socioeconomically disadvantaged First Nations parents and parents who have recently migrated, particularly refugees.<sup>270</sup>

## Parents with disability rights to be supported and the best interests of the child

The growing pre-occupation with risk management in child protection coupled with legacies of prejudice surrounding people with disability’s rights and capacities to parent, has created a false binary in which the rights of parents with disability to be supported, as articulated in human rights instruments like the *CRPD*, are cast in opposition to ‘the best interests of the child’.<sup>271</sup> Indeed, the literature suggests a systemic disregard of how addressing the rights of parents with disability may also be ‘best’ for their children.<sup>272</sup> This conceptualisation takes a narrow approach to the ‘best interests’ principle, minimising state responsibilities to support parents in their child rearing responsibilities as articulated through human rights instruments such as the *CRC* and *CRPD*. As James Rice, Helga Bjargardóttir and Hanna Sigurjónsdóttir have argued, so long as this perceived contradiction persists ‘the rights articulated with the *CRPD* become moot as are any procedural guidelines for working with parents’.<sup>273</sup>

## Temporal discrimination and legal permanency

As several scholars have noted, the false dichotomy between children’s best interests and the rights of parents with disability has manifested as a form of ‘temporal discrimination’.<sup>274</sup> As Enne Guerrero notes, one of the key forms of advocacy that lawyers can undertake on behalf

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of parents with disability, particularly parents with mental health disability and or intellectual disability, is making requests for extensions of time as a form of reasonable accommodation.<sup>275</sup> Indeed, as the Working Together with Parents Network has recently observed,

in the context of child protection proceedings, failure to build in, from the outset, the extra time that a parent with a learning disability needs in order to learn and understand, puts that parent at a significant disadvantage compared to parents without a learning disability.<sup>276</sup>

This can be in relation to parenting plans and access to services, parenting assessments, child protection proceedings before the courts or having the opportunity to address protective concerns if children are placed in OOHC.<sup>277</sup> The literature suggests, however, that building in extra time as a reasonable accommodation to parents with disability is widely perceived across child protection systems as conflicting with the best interests of their children. As David McConnell and Hanna Sigurjónsdóttir have identified,

the prevailing wisdom embedded in policy and child protection practice, is that any delay in care cases is bad for the child. The question therefore becomes whether the child's home situation can be improved in 'the child's timeframe'.<sup>278</sup>

In Laura Kollinsky, Laura Simonds and Julie Nixon's interviews with UK magistrates, for example, all discussed what they perceived as a tension between time delays in proceedings associated with addressing the support needs of parents with disability and the best interests of the child.<sup>279</sup> This was particularly raised in relation to decisions on family reunification after children had been placed in OOHC: they described weighing the time it would take parents to address certain concerns against what they perceived to be the 'child's timescale'.<sup>280</sup> Writing in the US context, Powell and Albert note another ripple effect of such 'wisdom': lawyers were choosing not to ask for reasonable accommodations for the parents with disability they represented 'because child welfare agencies often take a while to provide them, creating a delay which interacts with child welfare timelines'.<sup>281</sup> Such 'wisdom' is severely disadvantaging parents with disability. It fails to account for the ongoing nature of some parents' support needs, the lack of services available, the demand on the services that are available, and the associated waiting periods.<sup>282</sup> It also means that many parents with disability are permanently separated from their children, not due to want of progress but because it is impossible to fulfil child protection requirements in a system which precludes their rights to equal participation and access through providing them with appropriate support.<sup>283</sup>

Time itself is now widely noted as a core dimension of the discrimination parents with disability face within child protection systems worldwide. Several researchers have described the increasing policy embrace of expediting the permanent legal placement of children in OOHC as being particularly punitive towards parents with disability.<sup>284</sup> Indeed, over the last decade Australian child protection regimes have implemented such policies, imposing strict time limits on how long parents have to address protection concerns before legal orders are made to either restore their children or remove them permanently.<sup>285</sup> Typically in Australia, parents with children younger than two years of age now have just one year to demonstrate that their children can be

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safely returned; parents of children older than two years of age are usually afforded two years to do so.<sup>286</sup> When introduced, these mandated time limits were argued by proponents to be in the best interests of children: they would minimise the time children were on temporary OOHC orders by requiring that permanent care orders were made as soon as practicable.<sup>287</sup> The operative assumption was that with timely supports, *all* families should be able to address child protection concerns. If they could not, it was assumed that the children's best interests would be served by being placed with alternative carers, permanently, while, where possible, maintaining connections with their birth families.<sup>288</sup> While such timeframes are often justified by invoking 'the best interests of children', other reasons include the high cost of OOHC and the increasing numbers of children in OOHC.<sup>289</sup>

Legal permanency through adoption or permanent guardianship orders is generally accompanied by the removal of ongoing casework support – thus reducing associated costs – despite its importance as a safeguard for children removed from their families. The recent Royal Commission into Institutional Responses to Child Sexual Abuse emphasised the ongoing vulnerability of children in OOHC.<sup>290</sup> The Royal Commission also noted the importance of specialised services and supports throughout and beyond out-of-home placements as well as ongoing oversight to prevent, identify and intervene in circumstances of abuse, including sexual exploitation, in care.<sup>291</sup> Not only do permanency laws remove prior supports and protections for children in OOHC, they reinforce the false binary between children and parents' best interests discussed above. This binary is magnified for parents with disability because of the normalisation of ableist discrimination. The lack of oversight with permanent placement adds to the grief and loss experienced by parents who have warranted concerns about the safety of their children in OOHC.

In some jurisdictions, the introduction of the two-year limit for legal decisions on the permanent care of children has been accompanied by a reduction in judicial discretion to extend the timeframe when judicial officers considered it to be in the best interests of the children and their families.<sup>292</sup> Instead, once permanent placement outside the home is decided, judicial involvement or supervision of children's placement tends to cease – often with deleterious outcomes for children and their parents.<sup>293</sup> In Victoria, the imposition of such timeframes was accompanied by a removal of the requirement that child protection services demonstrate they have taken all reasonable steps to enable children to remain with or be reunified with their parents.<sup>294</sup> That said, as the Victorian Public Advocate noted, even prior to the permanency reforms the Department's failure to do so was rarely raised or contested in court hearings.<sup>295</sup>

Remarkably, such amendments focused on securing permanency according to law, were passed despite widespread concerns, and published research examining like regimes in overseas jurisdictions demonstrating, that they significantly disadvantaged and discriminated against parents with disability and other parents who might need greater intervention or support. This includes, for example, parents leaving circumstances of family violence, parents experiencing housing instability, or seeking treatment for substance issues, or all the above.<sup>296</sup>



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First Nations parents are particularly adversely impacted because they disproportionately face intervention from child protection authorities, including the removal of their children to OOHC, with harms compounded by limited understanding of First Nations family and kinship structures.<sup>297</sup> They frequently experience a range of complex harms associated with entrenched racism and the impacts of ongoing processes of colonisation.<sup>298</sup> These include intergenerational trauma associated with the history of forced removals under prior overtly discriminatory legislation, as well as ongoing social and economic marginalisation.<sup>299</sup> First Nations families also face systemic racism in current family support systems, including under-investment in culturally safe and appropriate services and supports in particular those provided by First Nations controlled organisations.<sup>300</sup> This is magnified for First Nations parents with disability living in regional or remote areas.

There is anecdotal evidence that the timeframes are resulting in Children's Court findings that family reunification is not possible even while children are placed for extended periods in motels or other 'in limbo' placements while waiting for a 'permanent placement'. Data with respect to permanent OOHC orders while children remain in such unstable and unsustainable placements is either not collected or not publicly available. First Nations parents with disability are likely over-represented in this group. Further, as stated above, once children are regarded in law as being permanently placed outside the home, support for ongoing contact with their family is no longer available or monitored. This means that First Nations children permanently placed with non-Aboriginal carers may be effectively severed from culture, family and community.

Victorian Legal Aid's recent evaluation of the introduction of so-called 'permanency measures' found that parents with disclosed disability were at increased risk of having their children permanently removed from their care:

19 per cent of children who had a parent with a disclosed disability were removed from their parents and are not on a reunification pathway compared with 11 per cent of children whose parents did not have a disclosed disability.<sup>301</sup>

The inflated numbers of parents with disability facing permanent removal of, and subsequent legal disconnection from, their children were identified as reflecting service shortages, court delays, as well as the 'reality that for some parents two years may not be enough time to address protective concerns' despite 'the good likelihood that it would be safe for a child to return to their parent's care'.<sup>302</sup>

Notably the wide policy preference for expedited permanency has not been matched by resources directed at providing families with preventative or other service supports to ensure they can address child protection concerns, let alone thrive. As Karen Broadhurst and Clair Mason put it, 'support for child *permanence at home* has received far less attention than *permanence out of home*'.<sup>303</sup> Furthermore as Sara Stefánsdóttir notes, the push towards 'closing the case' has resulted in 'support aimed at "fixing and patching". Complicated matters that would require long-term support, such as social isolation, [are] not often addressed.'<sup>304</sup>

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While the policy embrace of securing permanent placement of children has been justified as being in the best interests of children – shielding them from risks associated with potential parental maltreatment and the instability of temporary OOHC – it has failed to account for the harm perpetrated through separating children from their families.<sup>305</sup> Several studies have shown that the trauma of removal and placement in OOHC can manifest in developmental, educational, social and health disadvantage.<sup>306</sup> For many First Nations children, it severs their relationship with family, community, culture and Country – elements that are directly related to lifelong social and emotional wellbeing.<sup>307</sup> Its legacy is frequently intergenerational.<sup>308</sup> Many parents who are involved in child protection systems were themselves placed in OOHC as children, ‘challenging the notion that children who are apprehended will necessarily fare better once removed from their parent’.<sup>309</sup> Indeed, this is perversely recognised in child protection systems which subsequently treat parents’ childhood histories of involvement in child protection, particularly their placement in OOHC, as relevant to determinations of risk.<sup>310</sup> There is also considerable evidence of a nexus between child removal and subsequent involvement in criminal justice systems in Australia, otherwise known as ‘care criminalisation’.<sup>311</sup> While data remains unreliable and estimates vary across jurisdictions and studies, recent figures have suggested that between one-quarter,<sup>312</sup> one third,<sup>313</sup> or even up to half<sup>314</sup> of young people involved in the juvenile justice were either in OOHC or had been involved in the child protection system.

As the Victorian Public Advocate has written, ‘the State has very rarely been able to demonstrate that children [are] better off in care than if they had remained with their family with supports provided to them’.<sup>315</sup> And yet, as they note, the trauma experienced by children following removal from their families and throughout their (frequently multiple) placements with carers will often be assumed to relate and be attributed to traumatic experiences with their families prior to their removal from home.<sup>316</sup> Otherwise, children’s distress due to their removal and trajectories in OOHC ‘is frequently minimised or used as a justification to move more rapidly to permanent care’.<sup>317</sup> It is rarely considered in decisions relating to their removal from their families. The trauma and distress experienced by parents due to their involvement in the child protection system too often remains unacknowledged and unaddressed.<sup>318</sup>

Children placed under new permanent legal orders such as guardianship orders in New South Wales are not considered by the Department to be in OOHC, despite remaining in placements outside their home which were previously counted as foster or kin care.<sup>319</sup> While there is a broad consensus with respect to the importance of stability for children OOHC this should include relational, physical and cultural aspects of permanency, not just legal permanency, which has been the focus of the above-mentioned reforms.<sup>320</sup> Consistent with a rights-based approach, the importance of ensuring stability for children should be addressed through early intervention and support.<sup>321</sup> Forced removals, in short and mandated timeframes, often permanently sever children from their families, remove key supports and reduce system transparency.<sup>322</sup> This raises significant human rights concerns for all parents and children affected, but particularly parents with disability, and First Nations and culturally and linguistically diverse parents who face the compounding discriminatory impact of these approaches.

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## Chapter 4: Access to support services or programs

When parents become involved with child protective services, often a care or case plan is developed by their caseworkers which sets benchmarks that parents must achieve to either avoid separation from or be reunified with their children. Typically, such benchmarks require parents to attend certain services – including, for example, parenting classes, rehabilitation or health care.<sup>323</sup> Research conducted both in Australia and internationally, however, highlights the scarcity of inclusive, accessible or specialised support services available to parents with disability.<sup>324</sup> As Women with Disabilities Australia observes, policy-makers and service providers have historically displayed a ‘limited understanding of accessibility’.<sup>325</sup> Subsequently non-specialist services often are criticised for failing to make information available in an accessible format or ensuring that parents with disability can ‘understand and meaningfully participate in the services and programs’ offered.<sup>326</sup> Indeed, a recurrent finding is that parents who seek to access support services, either on their own initiative or following involvement with child protection services, find themselves unable to do so because such services are not available or accessible, or, if they are, have extensive waiting lists.<sup>327</sup>

This is compounded for First Nations and culturally and linguistically diverse parents with disability who seek culturally safe, inclusive and responsive parenting and disability support.<sup>328</sup> As the Aboriginal Disability Network NSW (now First Peoples Disability Network Australia) observed in 2007, ‘there [are] few Indigenous specific disability services, or non-Indigenous disability services with Aboriginal staff’.<sup>329</sup> More recently, the First Peoples Disability Network (Australia) characterised the historical and contemporary dearth of culturally safe services for First Nations people with disability as reflecting the “no man’s land” between disability policy and Indigenous policy frameworks’.<sup>330</sup> In 2009, the National Disability Strategy Consultation Report similarly noted that,

few disability services possess the skills or resources to meet the specific needs of people with disabilities from different backgrounds ... [while] programs and services targeted at different cultural groups do not always understand the issues facing people with disabilities and their families.<sup>331</sup>

As Pooja Sawrikar also notes, too often the needs of culturally and linguistically diverse parents are believed to be adequately met through the provision of translator services – that is, without comprehending the relevance of culture, ethnicity or religion alongside language in service design and delivery and the provision of culturally safe support.<sup>332</sup> There is also a tendency within research literature, policy and child protection practice to conflate and confuse support for parents who have recently migrated with support that addresses and responds to cultural identity and subsequent specific community needs, customs and belief systems.<sup>333</sup>

The paucity of services available to parents with disability generally appears to be exacerbated outside metropolitan centres, with studies reporting few specialised disability services or disability and culturally inclusive services available to parents in regional and remote communities.<sup>334</sup> In such circumstances access to support is often contingent on people travelling

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vast distances, with significant associated financial, familial and cultural costs, particularly for First Nations parents living in remote communities across Australia.<sup>335</sup> According to Victorian Legal Aid, the situation has been exacerbated for parents during the COVID-19 pandemic. Many have experienced ‘reduced or temporary cessation of services’ including rehabilitation programs, parenting support programs and mandatory drug and alcohol testing.<sup>336</sup> Yet, as Theresa Glennon has argued, such ‘service quality issues ... generally evade scrutiny by courts, even as the “quality” of parenting is placed under the microscope’.<sup>337</sup> The literature suggests that the systemic failure to provide culturally and disability safe, appropriate or accessible support to parents with disability is routinely shrugged off in child protection determinations. Instead, as the Intellectual Disability Rights Service has noted, a parent’s lack of access to support is instead framed as an individual issue: their ‘inability to learn new skills’ or their ‘inability’ or ‘unwillingness’ to act in the best interests of their children.<sup>338</sup>

In Australia the significant disadvantage and systemic discrimination faced by parents with disability in accessing culturally and disability safe services has been noted for decades. The New South Wales Legislative Committee, for example, identified the deficit in service support available to parents with disability in 2002. They emphasised the need for more inclusive and accessible generic parenting programs, intensive and specialist models, while also noting the ‘virtual invisibility’ of parenting issues in existing disability services.<sup>339</sup> More recent parliamentary inquiries and civil society reviews have reached similar conclusions: disability support services do not provide or prioritise parenting support, while many parenting support services lack the capacity or specialist knowledge to either identify or address the specific and diverse needs and realities of parents with disability.<sup>340</sup> In its consultation with parents with disability in Victoria, the Parents with Disability Community Network heard that several parents who sought assistance from disability services were informed that disability services had ‘no obligation to assist a person with a disability to fulfil the parenting role if the child does not also have a disability’.<sup>341</sup> This again exemplifies the entrenched (false) dichotomy between the best interests of children and the rights of parents to be supported, discussed in Chapter 3. More recently, the ACT Government’s inquiry on disability justice heard that the ‘NDIS does not fund parents with disability to assist them in their parenting role’.<sup>342</sup> Indeed, from the literature we have reviewed it is unclear whether NDIS support is being offered to parents with disability specifically in relation to their role as parents across the states and territories. Instead, the emphasis appears to once more be on providing NDIS support to children involved in child protection systems, rather than to parents.

Research conducted with parents with mental health disability has also suggested that many mental health services do not regularly recognise or respond to the specific needs or responsibilities of parents.<sup>343</sup> Mental health clinicians have also indicated they need more training in relation to communicating with their patients about parenting and child protection issues.<sup>344</sup> On the other hand, studies have consistently demonstrated that when parents with disability attempt to utilise non-disability specialised parent support services, such services often lack the resources, knowledge or expertise to provide parents with information or practical support in accessible formats or tailor the support to address their individual and family needs.<sup>345</sup> In some circumstances, this lack of knowledge can pose significant and immediate

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safety risks to parents and children.<sup>346</sup> Parenting support services are also typically designed to provide short-term or crisis, interventions rather than ongoing support, regardless of individual need.<sup>347</sup> This can severely disadvantage parents with mental health disability, learning disability and other long-term disability, whose needs can fluctuate over time.<sup>348</sup> As Coralie Mercerat and Thomas Saïas assert,

Disability and parenthood must no longer be considered in ‘silos’, as two completely distinct experiences, but rather together, so that service providers can better meet the needs identified by parents with disabilities.<sup>349</sup>

## Departmental referral to support services

That said, according to research conducted in Australia and internationally, it is by no means clear whether child protection services routinely assess or recognise the individual support needs of parents with disability or attempt to match parents to existing services. In some circumstances, intensive preservation services require a referral from child protection authorities, so the failure to refer parents with disability precludes access. In their case file review of parents with disability involved in the Minnesota child protection system, Elizabeth Lightfoot, Traci LaLiberte and Minhae Cho found most parents were, firstly, not identified as being a parent with disability by child protection workers. Secondly, the majority of caseworkers did not record addressing the particular needs of parents arising from their disability, attempt to make reasonable accommodations to respond to their needs or refer parents to a disability inclusive service provider.<sup>350</sup> Likewise, Laura Pacheco and colleagues found that parents with cognitive disability were, relative to need, ‘two to four times more likely to not be referred to matched services’.<sup>351</sup> Disturbingly, these parents were also four times less likely to be referred to in-home or reunification services following child removal.<sup>352</sup> In the absence of qualitative data to indicate why this was occurring, Pacheco and colleagues suggest that the differential and discriminatory treatment of parents with disability may reflect the absence or lack of availability of appropriate and equitable services.<sup>353</sup>

Australian studies have also questioned the extent to which parents with disability are being referred to support services. While these studies are more than two decades old the fieldwork presented in Part II concurs with their findings. In their Australian study of child protection cases before two Sydney Children’s Courts involving parents with disability, David McConnell and colleagues found that often child protection workers sought to remove children from their parents at first instance. Support services or alternatives to removal, if they were being offered to parents, were likely only *considered* after a decision had been made to remove their children.<sup>354</sup> Indeed, in their interviews with magistrates, lawyers and child protection workers, all indicated that adequate support services for parents with disability did not exist. They generally agreed that if such services were available, in many cases the removal of children from their parents would be averted.<sup>355</sup> Notably, participating magistrates expressed their frustrations that they were hamstrung in supporting family preservation by the New South Wales Government’s failure to fund appropriate services for parents with disability. They also cited the Department’s

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failure to adequately distribute appropriate resources to families and the inexperience of many child protection workers as impeding parents with disability's access to support services.<sup>356</sup> Indeed, as an indictment of the level of knowledge of many child protection workers, and as an indication of the extent to which parents with disability were not referred to the limited support available, many magistrates reported regularly having to inform child protection workers of existing community services – that is, after the Department had pursued child protection proceedings against parents within the court system.<sup>357</sup> Phillip Swain and Nadine Cameron's examination of parents with disability involved in proceedings before a Victorian Children's Court likewise found that a considerable number of parents appeared to not have been referred to relevant support services. In one-third of case files documenting parents with disability, there was no indication that parents had either been referred to services or that this had been recommended.<sup>358</sup> While the authors suggest that this might have reflected the Court's preference to leave decisions about interventions with child protective services, the research findings outlined above suggest that this 'preference', which points to a lack of judicial oversight, may, if it did and continues to exist, indicate another level of systemic neglect of the rights of parents with disability to access and be provided with support as they navigate the child protection system.<sup>359</sup>

## Nature of services provided to families following child protection involvement

A further problem highlighted in the literature is the disconnect between services available to parents *throughout* their involvement in child protection systems. Concerns have been raised, for example, in relation to the qualitative nature of, or the paradigm shift in, the support offered to parents *following* child protection involvement.<sup>360</sup> Troublingly, as the Office of the Public Advocate in Victoria has written, often at the point parents become involved in the child protection system, many support services, if indeed they do exist, cease to be available to them.<sup>361</sup> Once an allegation or report is made, the focus of child protection authorities tends to be 'investigation and assessment rather than support, even when the goal of a protective court order is the reunification of the family'.<sup>362</sup> Consequently, when parents are referred to services by child protection authorities, the nature of the services provided becomes forensic rather than therapeutic or directed at addressing the 'pressing social needs that are the antecedents to child protection contact'.<sup>363</sup> Tellingly, in its consultations with parents the Parents with Disability Community Network heard of instances where parents who had accessed support groups were advised that 'all of the group facilitator's notes would be available to Child Protection staff'.<sup>364</sup> As the Victorian Public Advocate concluded, 'it appears that the greater proportion of resources that are available goes into investigation rather than into providing the family with the supports that may enable' them to stay together.<sup>365</sup> In such circumstances, such investigations are inherently flawed: they produce little indication of parenting capacity but, rather, reflect the absence of services available to support parents with disability.

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Indeed, as Jenny Morris and Michele Wade observe, for many parents with disability in contact with child protection services, many of the difficulties they face have nothing to do with their disabilities per se. They are rather,

correlated with and exacerbate [their] conditions. They may have pressing needs for information, advice and advocacy in respect of housing, benefits and debt. Some will need support relating to immigration status, their children's schooling, finding a GP and other health services, and so on.<sup>366</sup>

However, rather than provide services that address these needs, the literature suggests that more often than not, the systemic response is to intervene by providing 'substitute care' which separates parents from their children.<sup>367</sup> In their study conducted in partnership with parents with diverse disabilities in the UK, for example, Emily Munro and Maryam Zonouzi found that many parents were routinely denied their requests to access services which they believed would practically support them to carry out their responsibilities as parents. Instead, their requests were more frequently interpreted through an investigative lens as admissions of their 'failure to manage' as parents.<sup>368</sup> Parents with disability in Australia have reported similar experiences. Indeed, it appears little has changed in practice since the New South Wales Standing Committee on Social Issues observed in 2002 'that in the current child protection system the only long term and intensive intervention for families with high needs is out-of-home care'.<sup>369</sup>

## Services available to parents with disability who experience family violence

As we addressed in Chapter 3, a major concern identified in the literature is the extent to which parents with disability – mothers in particular – become involved with child protection services following their disclosure or other's reports of intimate partner or family violence. Australian research conducted on the effectiveness of early intervention and support available for mothers with disability who experience intimate partner violence demonstrates that many of those working within such services 'lack confidence, knowledge and awareness about disability, particularly intellectual disability'.<sup>370</sup> Often access to the few specific service supports available to parents with disability who experience intimate family violence depends on self-identification or voluntary disclosure.<sup>371</sup> This is particularly problematic given what is known about high levels of reluctance to disclose both experiences of intimate family violence and disability due to well-founded fears of stigmatisation, prejudice and child protection repercussions.<sup>372</sup> Concerns have also been raised about the extent to which such services are perceived by culturally and linguistically diverse parents as addressing their needs and are engaging in culturally safe or sensitive practices.<sup>373</sup>

As Judith Mosoff and colleagues note, mothers with mental health and intellectual disability are 'more likely to be financially dependent on their abusers and leaving a violent partner may involve losing financial security and housing'.<sup>374</sup> Such relationships of dependency and acute vulnerability associated with leaving them is compounded in situations where a parent's visa status is bound to

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their relationship, and/or their visa conditions preclude their individual access to welfare support, public health, social and housing services.<sup>375</sup> Australian studies highlight the lack of disability inclusive emergency, short- or longer-term housing support for parents with disability who seek to or do leave violent relationships.<sup>376</sup> Indeed, in the assessment of People with Disability Australia, crisis and support accommodation across Australia 'has minimal to no capacity to support people with disabilities who experience violence'.<sup>377</sup> Many services are physically inaccessible.<sup>378</sup> Their staff frequently lack training in disability awareness, knowledge and understanding and are consequently ill-prepared to safely support parents with disability, particularly those with complex or more intensive support needs.<sup>379</sup> In Jude McCulloch and colleagues' interviews with mothers with disability who had survived intimate partner abuse in Australia, several related that their children were removed *after they left* their relationships due to their being homeless or otherwise being deemed unable to independently take care of their children.<sup>380</sup>

As Sally Robinson and colleagues recently observed,

[while] there is broad recognition that women with disability face increased risk of domestic and family violence and barriers to service access ... recent research confirms the urgent need for policy and practice to address this.<sup>381</sup>

Indeed, as they note, even in jurisdictions with explicit policy goals of providing integrated support to parents with disability who experience family and domestic violence, few services achieve this.<sup>382</sup> In many ways the service gaps faced by parents with disability who have experienced domestic violence reflect the general service gaps for women leaving intimate partner violence and parents with disability seeking support to care for their children. As Robinson and colleagues note in their evaluation of services available in New South Wales, for example,

[disability services] often have very limited capacity to respond to risks of DFV, while services focused on violence prevention have little background or resourcing for identifying and addressing disability support needs.<sup>383</sup>

In the Victorian context, Woodlock and colleagues have also noted that strict criteria for accessing the support services that are available mean that those 'who may not fit neatly into the service criteria' regularly fall between the gaps.<sup>384</sup> While these service gaps remain, parents with disability who experience family or domestic violence and associated financial, housing and health vulnerabilities face increased risks of child protection intervention.<sup>385</sup>

## Withdrawal of support following removal of children

It also appears that when children are removed from parents and placed in OOHC, many parents are precluded from accessing family support services, particularly in-home support.<sup>386</sup> At the same time, other socioeconomic vulnerabilities that may have contributed to their involvement in child protection systems can become further entrenched, if not worsen.<sup>387</sup>



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For example, following the removal of children, parents will often lose significant social welfare support.<sup>388</sup> Their right to remain in social housing may also be lost.<sup>389</sup> As Naomi Pfitzner and colleagues explain, in many Australian jurisdictions, ‘public housing entitlements are subject to the number of children in a parent’s care while suitable housing is a prerequisite for children to returned to parental care’.<sup>390</sup>

Exhaustive child protection requirements can also mean that remaining in stable, paid work, if this indeed was once possible, can become nearly impossible.<sup>391</sup> All these factors significantly jeopardise parents’ abilities to satisfy child protection requirements to be reunified with their children. The literature also indicates that if family reunification is deemed impossible, support for parents to access services, including family, health or rehabilitation services, cease.<sup>392</sup> Karen Broadhurst and Clair Mason and others have argued that the extent to which parents become involved in child protection following the birth of subsequent children is in many ways attributable to the withdrawal of service support to parents following the permanent removal of their children.<sup>393</sup> Indeed, they argue that the high incidence of serial child removals ‘provides an urgent mandate to think differently about a parent’s life chances beyond “case disposal”’.<sup>394</sup>

The removal of children from their families is universally traumatic and ‘life altering’.<sup>395</sup> Yet there is a dearth of mental health support made available to parents throughout their involvement in child protection systems, and particularly when their children are removed. As Rachel Mayes and Gwynnyth Llewellyn have argued, ‘the damaging effects of child removal on parental mental health, if not addressed, may reduce the likelihood of child restoration or even parent access to their child’.<sup>396</sup> Yet, as Lisa Morriss has written, families are often ‘left to deal with the trauma and loss of a child on their own’, while also facing ostracisation by friends and family due to the stigmatisation of their child protection involvement.<sup>397</sup> Indeed, in their qualitative exploration of the experiences of mothers with mental health disability whose children had been removed by child protection services, Anne Honey, Melissa Micelli and Rachel Mayes found that most mothers had little familial, social or professional support at the time their children were removed. Some discussed feeling too distressed and ashamed to seek help; others described it as just not being available. Several felt that child removal ‘had compromised their sources of support, either through distrust, especially of professionals or through social rejection’.<sup>398</sup> The literature reiterates the need for greater mental health support for parents throughout their child protection involvement, and particularly at the time of and following child removal.

## Service integration

Notably, several authors have called for greater integration between disability/health and child protection services as a means of supporting parents with disability and preventing them from falling through the systemic gaps. For example, Laura Pacheco and colleagues argue there is ‘an urgent need to build intersectoral service pathways’ and inclusive supports and services for parents with cognitive disability to equitably address the broad range of support needs of many involved in child protection systems. Such needs would include services that addressed socioeconomic disadvantages, healthcare and parenting support.<sup>399</sup> More recently, in Australia,

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Naomi Pfitzner and colleagues have gestured towards ‘an integrated ‘one stop shop’ support service’, which they suggest ‘would be more likely to promote better outcomes for mothers and families involved with the child protection system’, particularly in the context of domestic and family violence.<sup>400</sup> As they argue,

Integrated service models have repeatedly been promoted as best practice in the context of [domestic and family violence] and trauma recovery. These models reduce the risk of retraumatisation associated with ... [parents] having to retell their stories multiple times in different service settings. <sup>401</sup>

There have been several Australian studies that have examined the effectiveness of, and potential barriers to, such integration with respect to parents with disability generally, and particularly with respect to parents with mental health disability. All have highlighted problems in existing interagency cooperation between child protection and health services. These have largely been attributed to poor communication practices, in particular breakdowns in information sharing, staff turnover, lack of transparency and perceived conflicts in the ideologies, paradigms or agendas that guide different professional approaches to parents.<sup>402</sup> Studies conducted with child protection workers have regularly found that many believe mental health clinicians fail to prioritise or give due consideration to the wellbeing of their client’s children.<sup>403</sup> On the other hand, studies conducted with clinicians, particularly mental health workers, have often found that many believe child protection services lack insight when it comes to parents’ mental health, fail to seek advice from clinicians to improve their understanding and consequently discriminate against parents with mental health disability.<sup>404</sup>

One such study, conducted by Dominiek Coates, examined interagency collaboration between mental health and drug and alcohol workers and child protection services involved in the New South Wales Government’s ‘Keep Them Safe–Whole Family Team’ pilot programs.<sup>405</sup> Most clinicians described their attempts to distance themselves from child protection in their efforts to develop rapport and trust with parents. They did, however, recognise that this could lead to therapeutic relationships being broken in situations of mandatory reporting, further stigmatise child protection workers, and hinder effective collaboration with child protection workers. Clinicians also reported that child protection services often failed to clearly communicate what the key child protection concerns were and how families could address them. Many argued that this placed families ‘at risk of receiving conflicting information from the different agencies involved, which can be very distressing and confusing for families’.<sup>406</sup> Notably, this was particularly raised in relation to instances where child protection services removed children from families without notification and, in the view of clinicians, without appreciation for the complex needs of and outcomes for families.<sup>407</sup>

Given the substantial concerns that exist among parents with disability regarding the fine line between seeking therapeutic support and being prejudged or policed as a potential risk to their children’s wellbeing (addressed in Chapter 3), significant questions remain about the appropriateness of health and child protection ‘inter-agency collaboration’. Indeed, the literature examining the effectiveness of such pilots to date, in Australia and elsewhere, highlights the

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tension between contemporary policies and practices of child protection agencies in relation to parents with disability and the therapeutic relationship between clinicians and patients.<sup>408</sup> It is one thing to ensure that child protection agencies encourage parents to access appropriate health services throughout their involvement with child protection systems and that they provide the necessary referrals. Equally important is that health services appraise child protection agencies of any serious concerns they have about children's welfare, as is compulsory through mandatory reporting laws. It is entirely different to propose that health services and child protection services 'share responsibility' and information concerning parental mental health following child welfare intervention. Definitionally, this would mean a blurring of the boundaries of governance and the right to privacy in healthcare, particularly if such partnerships were initiated, and if they took on a forensic, rather than preventative or remedial paradigm. Indeed, a major criticism of such interagency collaboration to date has related to *clinicians* desiring clear professional boundaries on this point.<sup>409</sup>

Notably, international studies that have examined more effective interagency collaboration have highlighted that having an advocate – professional or familial – is key to ensuring parent's needs are met by acting as an intermediary between services, and between services and parents.<sup>410</sup> An integral component of the intermediary's role in such cases is to ensure parents are involved in decision-making, to provide continuity in support, as well as to drive service commitments to keep families together.<sup>411</sup> However, as we will address in Chapter 6, 'Better Practice' in Australia the involvement of professional advocates and families is by no means universal. Advocacy services are under-resourced, limited geographically, restricted in the time of their involvement – for example, only providing services to parents prior to matters proceeding to court or, alternatively, only during legal proceedings – and out of reach for most parents with disability who become involved with the child protection system.<sup>412</sup>

As we address in the next chapter, Chapter 5 'The Legal System', the combination of the lack of appropriate services and support at different stages of engagement with child protection services results in parents with disability often being unaware of the legal implications of their involvement or their rights. This can relate to the specific child protection concerns raised by child protection departments and what they need to do to address these, the evidence which has been compiled by departments to make a case against them for court proceedings, or what they need to demonstrate to have their children restored to their care.



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## Chapter 5: The legal system

Many parents, their supporters and their advocates report feeling powerless to contest or influence the outcome of child protection proceedings.<sup>413</sup> Studies of parents suggest many enter and leave the legal process feeling disempowered, misinterpreted, bewildered, humiliated and alienated.<sup>414</sup> This is exacerbated for parents who have recently migrated to Australia, who are less familiar with Australian systems, may have little social or familial connections to support them, and may face additional cultural and language barriers to understanding the legal and court processes.<sup>415</sup> A common complaint is that child protection officers, lawyers and judicial officers spend little time explaining the law and legal processes to parents throughout their involvement with child protection systems.<sup>416</sup> Parents will often find ‘the smallest and most intimate dealings of their lives’ exposed, without having the opportunity to respond or correct the record.<sup>417</sup>

As Tamara Walsh and Heather Douglas note, ‘despite the “protective” nature of the child protection jurisdiction, and the vulnerability of the parties, the legal processes involved are often highly adversarial in nature’.<sup>418</sup> Indeed, some have likened child protection proceedings to ‘asymmetric warfare’.<sup>419</sup> This adversarial dynamic is widely viewed as discouraging child protection workers from working transparently and collaboratively ‘with parents towards the best interests of the child’.<sup>420</sup> Instead, as Sharynn Hamilton and Sarah Maslen have argued, the system ‘encourages’ the accumulation of ‘overwhelmingly negative evidence’ of the perceived risks posed by parents.<sup>421</sup> Indeed, a major criticism of child protection proceedings is the widespread failure of departmental caseworkers to observe, and include evidence of, parent’s strengths in their assessments, reports and court submissions.<sup>422</sup> Instead, it has been observed that parents come up ‘against a well-resourced, legalistic, emotionally detached government department with a vested interest in having its decisions vindicated’.<sup>423</sup>

While model litigant rules require that government solicitors act in the public interest and act fairly, there is no practical means to enforce these standards. The power differential between parents with disability and child protection agencies is enormous, and it appears the latter’s recommendations are overwhelmingly endorsed once cases proceed to the courts. While in Australia Children’s Court statistics are rarely published, submissions to state parliamentary inquiries suggest that departmental child protection applications, particularly those recommending child removal, succeed in over 90 per cent of cases.<sup>424</sup> First Nations parents, in particular, carry a history of discriminatory experience and report distrust of the child protection system from the point of notification to court proceedings.<sup>425</sup> A recent study of First Nations experiences of participation in child protection decision-making in New South Wales found that parents felt so alienated they did not believe a fair outcome was possible.<sup>426</sup>

### Access to legal representation

Notably, some scholars have argued that legal representation remains the only way in which parents may be able to meaningfully participate in child protection proceedings in Australia.<sup>427</sup> Yet Australian research suggests that many parents, with and without disability, receive limited or no legal advice throughout their involvement in child protection proceedings.<sup>428</sup> Many appear

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in court without legal representation.<sup>429</sup> Successive studies undertaken internationally and within Australia suggest that child protection authorities do not routinely advise parents of their rights to access legal advice or assist them in locating legal services.<sup>430</sup>

Alongside this, at the point of child protection intervention parents often have little understanding of their rights, child protection legislation and procedures, or who to approach for advice about getting legal representation.<sup>431</sup> This is particularly the case for parents whose children are removed within days of their birth and ‘have extremely limited time to organise legal representation before the [Emergency] Court hearing’.<sup>432</sup> Legal representation is critical to the participation of parents with disability not just in court but from the earliest point of child protection involvement. Without legal representation, parents may subsequently comply with ‘child protection requests for information or access’, without realising such compliance may be used in subsequent evidence against them.<sup>433</sup> They may sign agreements indicating their acknowledgement of unsubstantiated allegations of maltreatment, or consent to the removal of their children from their care or to certain interventions, without feeling they have a choice or being informed of the nature of what they are signing or repercussions of doing so.<sup>434</sup> As the CEO of an Australian disability advocacy service explained to Sharynn Hamilton and Sarah Maslen,

[parents] just don’t understand at all what’s going to happen, and they were never given any information of the process and what was going to happen. They sign things without knowing what they are signing, they agree to things without understanding what they are agreeing to.<sup>435</sup>

The lack of specialised, affordable and accessible legal representation has repeatedly been raised as a significant barrier to equal and informed participation by parents with disability in child protection proceedings in Australia and internationally.<sup>436</sup> Indeed, studies of parents involved in Australian child protection proceedings indicate that the vast majority cannot afford legal advice.<sup>437</sup> This means that for many the only avenue to obtain legal advice is through publicly funded legal aid. At the same time, however, the literature demonstrates that there is scarce legal aid funding for child protection matters generally, and even less allocated to the legal representation of parents (with or without disability).<sup>438</sup> As one lawyer who participated in a recent study on access to justice for parents in Tasmanian child protection proceedings observed, ‘only about half of the parents get Legal Aid ... the rest are obliged to represent themselves’.<sup>439</sup>

While deficiencies in legal aid funding appear to be jeopardising the rights of all parents to legal representation and advice, it has been suggested that parents with disability, particularly parents with intellectual disability or mental health disability, may be less likely to be viewed as having a ‘reasonable prospect of success’ by grants officers, and therefore be refused or be less likely to qualify for legal aid.<sup>440</sup> As some lawyers have argued, the high proportion of cases that are subsequently not litigated despite cause (due to lack of funding or lack of advice), means that cases are being ‘prejudg[ed] ... by legal aid grants officers, rather than the judiciary’.<sup>441</sup> It also has been observed that such merits review occurs throughout parents’ involvement in child protection proceedings, with the effect that legal aid funding initially

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received may be subsequently withdrawn.<sup>442</sup> According to the ACT Disability Aged & Carer Service, when this occurs parents with disability are left 'legally unrepresented in court, unless pro bono legal support is provided from another source'.<sup>443</sup> In their and others' experience, however, pro bono legal representation is rarely available.<sup>444</sup> Research conducted in the USA indicates that lawyers may be reluctant to represent parents with mental health disability in particular 'because of the complexity of these cases and their dearth of understanding parental psychiatric disability'.<sup>445</sup> As the literature suggests that most parents with disability involved in child protection services will be unable to afford private legal representation, the inaccessibility of legal aid means that many parents are deprived of their rights to legal advice in the lead-up to, during and after court proceedings.<sup>446</sup>

## Quality and consistency of legal representation

Alongside the general shortage of lawyers willing and able to represent parents in child protection proceedings across the board, those who do are frequently resource poor. As Walsh and Douglas note, even in matters 'where legal aid grants are available, detailed fee structures apply, and lawyers will only be funded for a number of hours'.<sup>447</sup> Heavy caseloads, combined with deficiencies in legal aid funding, can translate to them having little time with their clients beyond the court room.<sup>448</sup> As scholars and advocates have noted, this can severely disadvantage parents with intellectual and mental health disability, who may require more time with lawyers to understand court processes, the legal strategy undertaken and the repercussions of different requirements and outcomes.<sup>449</sup> Many require assistance in completing administrative tasks associated with their cases.<sup>450</sup> Others may require help in communicating with child protection workers or others involved in their proceedings.<sup>451</sup> Such time constraints can also make it

very difficult [for lawyers] to obtain reliable instructions and to ensure evidence is scrutinised, particularly as parents typically [are] unable to independently review evidentiary material due to their poor literacy skills.<sup>452</sup>

As Susan Collings and colleagues have noted, for parents with intellectual disability in particular, such time constraints, coupled with the likelihood that such lawyers will lack 'specific disability knowledge and communication skills to take instruction from, or explain processes in ways that parents with intellectual disabilities can understand', means that they can be effectively barred from participation in care proceedings.<sup>453</sup>

Even when legally represented, parents with disability report difficulty instructing their lawyers and in understanding the significance of the proceedings they are involved in or the information that is being conveyed.<sup>454</sup> Many parents leave the legal system with little understanding of the requirements or content of court orders, feeling that they were not heard or supported, unable to have input into decisions relating to their children's best interests and powerless to influence the outcome of child protection proceedings.<sup>455</sup> In Robyn Powell and colleagues' interviews with parents with mental health disability in the USA, for example, the majority felt the legal

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profession lacked understanding of their disabilities, resulting in biased speculation about how their diagnoses impacted their parenting abilities.<sup>456</sup> The lack of knowledge also meant that support needs arising from disability were not accommodated either in their dealings with lawyers or within the wider child protection system.<sup>457</sup> Additionally, many felt that the absence of disability training or awareness further compromised their mental health.<sup>458</sup>

Similarly, studies involving lawyers representing parents with disability in child protection systems demonstrate that many recognise the need for professional education and training to effectively recognise and support the needs of parents with disability.<sup>459</sup> For example, Sasha Albert and Robyn Powell's qualitative research with lawyers in the USA found that the vast majority believed their lack of training and expertise on disability rights limited their capacity or ability to appropriately represent their clients.<sup>460</sup> McConnell, Llewellyn and Ferronato likewise found in their interviews with lawyers representing parents with intellectual disability in Australia that most believed their legal training was inadequate to prepare them for the task.<sup>461</sup>

## Legal proceedings before the Children's Court

As outlined in Chapter 2 '(Un)Known Involvement of Parents with Disability in Child Protection Systems', Australian studies of legal proceedings which foregrounded the experiences of parents with disability were published in the early 2000s and focused on proceedings before the Children's Courts in Sydney and Melbourne. As the *Family is Culture Review* noted, to ensure the privacy of children and families is respected, most Children's Court proceedings across Australia are closed to the public.<sup>462</sup> However, when coupled with the absence of contemporary research or broader publication of court outcomes, this means there is a general lack of scrutiny of the Court's operations and policies in practice, particularly when it comes to the experiences of, and outcomes for, parents with disability. As David McConnell and Hanna Sigurjónsdóttir have written,

We do not know what the parent's views are on the allegations that are made against them. This is because the parent's perspective is rarely heard or documented in child protection or court records.<sup>463</sup>

That said, from what has been published internationally and within Australia, there is consensus that judicial decision-makers, like lawyers, need greater disability awareness training to ensure that parents with disability are treated with integrity and dignity and are fundamentally supported 'as full persons before the law'.<sup>464</sup> As several have argued, ability-bigotry 'does not stop at the court room door'.<sup>465</sup> More generalised research on families' experiences within the Children's Court also highlights a need for greater cultural awareness and safety training to improve engagement with First Nations families, as well as culturally and linguistically diverse families.<sup>466</sup> Furthermore, as Elizabeth Fernandez and colleagues have noted, parents who have recently migrated, particularly as refugees, may 'need specific support services addressing language and cultural barriers to understanding Court processes, legislation and department policies'.<sup>467</sup>



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Language and cultural barriers also significantly disadvantage First Nations parents, with the literature highlighting the need to increase funding to ensure First Nations support workers and advocates are present and employed within the Children’s Court.<sup>468</sup>

As the Law Council of Australia has noted, while the alien and adversarial nature of legal proceedings before the courts can be overwhelming to anyone, without certain supports being integrated or offered to reasonably accommodate the specific needs of people with disability, many – particularly parents with intellectual and mental health disability – leave the system with compounded experiences of anxiety, stress and trauma.<sup>469</sup> As we will discuss further in Chapter 6, ‘Better Practice’, the literature highlights that having a disability support worker and/or advocate present throughout legal proceedings significantly improves parents’ engagement with and understanding of the legal system, as well as reduces the risk that they could be effectively disadvantaged in their interactions with legal institutions.<sup>470</sup> Across studies that have sought parents with disability’s perspectives of involvement in child protection proceedings, most highlight their disillusionment with legal proceedings and legal decision-makers who fail to either inform them of the process or significance of decisions or promote their rights to respond to child protection concerns, including by submitting evidence of parenting abilities. Such legal decision-makers include their lawyers, child protection agencies and the court itself.

## Parents’ participation in legal proceedings

Across studies that have elicited lawyer’s perspectives and experiences of representing parents with disability, lawyers have often shared their view that child protection workers lack the skills, knowledge or training to adequately recognise the strengths, needs and parenting capacities of people with disability.<sup>471</sup> Furthermore, many lawyers describe feeling powerless to challenge caseworkers’ assessments.<sup>472</sup> For example, in Rachel Cox, Biza Kroese and Roger Evans’ interviews with solicitors in the UK who represented parents with intellectual disability, many shared their perception that child protection workers were often prejudiced against their clients, assuming they lacked parenting capacity by virtue of their diagnoses. They argued that child protection officers would regularly ignore information or evidence that challenged their assumptions, including by excluding parents from participating in proceedings and conferences.<sup>473</sup> This is consistent with other research that has suggested that child protection caseworkers are often disinclined to change their minds, even in light of counterevidence, once they have negatively assessed a family.<sup>474</sup>

Alongside this, however, research conducted in Australia indicates that legal representatives may not routinely challenge submissions by child protection agencies when matters proceed to court. Within child protection jurisdictions, court decisions are made largely ‘on the papers’ – in other words, on the basis of submitted affidavits which provide ‘evidence’ of child protection concerns. One concern raised by scholars in relation to non-represented parents is that they may not know or recognise the importance of submitting their own affidavits to produce evidence of their parenting strengths or capacities, highlight mistakes or respond to

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allegations raised in the child protection authority's submissions. This places them at significant disadvantage. If they fail to submit affidavits, magistrates will often make determinations in relation to their capacities and the best interests of their children on the basis of submissions of child protection agencies alone.<sup>475</sup> In such cases, parents' voices are likely not to be heard. McConnell, Llewellyn and Ferronato's study of court proceedings involving parents with disability in two Children's Courts in Sydney suggests, however, that even with legal representation affidavits may not be filed. Indeed, lawyers only filed affidavits in one-quarter of cases observed involving parents with intellectual disability.<sup>476</sup> When they did so, the affidavits were myopically geared towards demonstrating parents' compliance with the Department's child protection requirements.<sup>477</sup> As the authors concluded,

what parents would like to say about the problem and the statutory authority's intervention is deemed at best irrelevant to care proceedings and at worst detrimental to their case.<sup>478</sup>

A recent study of First Nations family and community participation in child protection decision-making in New South Wales found that the combination of limited legal support and the presentation of evidence through affidavits means that many parents voices are excluded in child protection cases. The study reported that parents' affidavits largely responded to allegations rather than presenting their strengths. It also found that extended family members and First Nations children's organisations are usually not engaged and therefore do not provide affidavits to provide critical context on the capacity of parents and care networks more broadly and, relatedly, the best interests of children. This limits decision-making with respect to how First Nations children can be looked after safely in family and community.<sup>479</sup>

## Consent orders

Another concern raised in the literature with regard to the disempowerment of parents with disability in legal proceedings, and the degree to which legal representation can ameliorate it, relates to the widespread use of consent orders. As several have noted, a high proportion of parents involved in child protection proceedings sign consent orders in which they agree to child protection concerns and proposed child protection interventions, including the removal of their children from their care.<sup>480</sup> A major concern is that many do so without understanding the nature of the documents they are signing, or their right to refrain from doing so.<sup>481</sup> Putting aside the strained operation of 'consent' given the significant power differentials for families faced with the threat of the removal of their children, as the Intellectual Disability Rights Service has argued, such 'consent' 'seems to be a bit of a nullity unless a person is able to understand what they are consenting to and what the consequences of those agreements are'.<sup>482</sup>

A related concern is that the high rate of consent orders may be more indicative of the lack of legal advice and representation available to parents, particularly considering the deficiencies in legal aid funding described above.<sup>483</sup> However, as Walsh and Douglas note, once consent orders are 'signed, it is very difficult to have [them revoked] or to negotiate more generous contact arrangements'.<sup>484</sup> Such orders can become records of both parents' acknowledgement

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or admission of child protection concerns raised by child protection agencies, regardless of the presence of corroborating evidence, and their 'informed' agreement to interventions. Furthermore, as the Victorian Public Advocate observes, they are also typically not subject to appeal and thus to judicial review.<sup>485</sup> Indeed, a recent study conducted in Tasmania found that there were just 13 successful applications to revoke consent orders in that state in 2018, with indications that the number has decreased since.<sup>486</sup>

It is unknown how many parents *with disability* involved in child protection proceedings sign such orders. Nor does there appear to be any data in relation to the proportion of First Nations parents or parents from culturally and linguistically diverse communities, with or without disabilities, who do so. As Peter Choate and colleagues have written, such data, if it does exist, is frequently not in the public domain.<sup>487</sup> Scholars and disability advocates suggest, however, that the number of parents with disability who sign consent orders is high.<sup>488</sup> Indeed, in their study of child protection proceedings in two Sydney Children's Courts, McConnell et al. found that 94.1 per cent of cases involving parents with disability were finalised by consent without proceeding to a hearing.<sup>489</sup> Determinations by child protection agencies that children should be removed from their parent's care were likewise rarely contested.<sup>490</sup> Indeed, there seems to be a general consensus across the literature that parents who sign consent orders are in the main uninformed of the consequences or their rights to challenge proposed protection interventions, with studies suggesting little efforts are made by child protection workers to ensure parents' informed consent.<sup>491</sup>

Furthermore, research conducted with parents with disability, suggests that many feel they have 'little choice but to consent' when asked to sign such agreements. For example, in Sheila Gould and Karen Dodd's interviews with mothers with learning disabilities whose children were removed from their care, very few were aware that they did not have to sign consent agreements.<sup>492</sup> Writing in the context of parents with diagnosed or suspected fetal alcohol spectrum disorders (FASD) involved in Canadian child protection proceedings, Peter Choate and colleagues also questioned the extent to which 'parents consent to permanent orders believing that, due to the FASD, they have little hope of a better outcome'.<sup>493</sup>

In Walsh and Douglas's interviews with lawyers in Australia, many suspected that consent orders were utilised by child protection agencies as an 'easy alternative to court proceedings, particularly where the Department lacked a strong case'.<sup>494</sup> Some raised concerns that the high numbers of consent orders generally reflected a widespread practice of exploiting parent's lack of knowledge of the legal system and, relatedly, their lack of legal representation. Others provided anecdotes of signatures being obtained under duress.<sup>495</sup> Indeed, some research has indicated that the threat or decision to commence proceedings against parents with disability can be used strategically by child protection workers to coerce 'uncooperative parents' into compliance with contested parenting or treatment plans.<sup>496</sup>

Across the literature relating to the experiences of parents with disability however, several have suggested that even in circumstances where parents have legal representation, solicitors will advise parents to consent to such orders. Many lawyers who participated in interviews with

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McConnell, Llewellyn and Ferronato believed that once proceedings entered the court room, contesting applications by child protection agencies at first instance was ‘futile’.<sup>497</sup> Instead, they widely believed that providing consent would demonstrate compliance and achieve a greater likelihood of regular access visits or reunification.<sup>498</sup> As we also discuss in Chapter 10, lawyers who participated in fieldwork for this project explained how the structure of child protection proceedings embeds the difficulty of challenging child removal at the initial establishment stage of court proceedings. A similar conclusion was reached by the Victorian Public Advocate in its review of parents with disability’s involvement in the Victorian child protection system.

This could partly be addressed, as referred to above, by the provision of legal advice at the point of investigation rather than when legal proceedings are commenced. The Victorian Public Advocate also suggested that lawyers may be advising their clients to consent if they consider ‘that he or she will not be able to stand up to the pressures of the legal processes or the pressures of a contested hearing’.<sup>499</sup> As the Victorian Public Advocate noted, such practices reflect the extent to which current Children’s Courts appear to be breaching the requirements of Article 13 of the *CRPD* relating to equal access to justice through ensuring procedural accommodations which facilitate parents’ effective participation in legal proceedings.<sup>500</sup> Notably, in McConnell, Llewellyn and Ferronato’s study several child protection workers interviewed acknowledged that the high rate of consent suggested a lack of understanding among parents of what this meant. Indeed, many argued that the time of initial application was when parents and their legal representatives should contest child protection concerns.<sup>501</sup> Given the above concerns relating to the high degree of consent agreements involving parents generally, and particularly parents with disability, the Victorian Public Advocate has recommended Children’s Courts develop practice guidelines that direct ‘magistrates ... take an active role in speaking with the parents, explaining the implications of a consent order and ensuring that the parent understands what they are agreeing to’.<sup>502</sup>

## Reliance on ‘expert’ evidence

As Teresa Hinton observes, child protection services will often submit ‘expert’ opinion, typically in the form of a report, as evidence to buttress their child protection concerns with respect to parents’ abilities to maintain care for, or be reunified with, their children.<sup>503</sup> The ‘expert’s’ terms of reference are usually set by child protection agencies, with little involvement of parents or their advocates.<sup>504</sup> They ‘stipulate what areas are to be explored, what information the expert will have access to, who they are allowed to speak with and the timeframe for reporting’.<sup>505</sup> Studies suggest that in an effort to demonstrate compliance with child protection proceedings, parents – particularly parents with intellectual and mental health disability – will often agree to speak to the department’s nominated experts – typically psychologists, psychiatrists or social workers – without understanding that the purpose of the interviews is to assess risk or parenting capacity.<sup>506</sup> Many believe their discussions will be confidential and therapeutic, and report feeling betrayed or ‘duped’ when they subsequently find what they have said detailed in assessor reports to substantiate child protection concerns in court.<sup>507</sup>

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The literature also indicates that for the most part, such expert assessments tend to be based on single or 'one-off' interviews with parents, with concerns also being raised about the extent to which such 'experts' are beholden to the information they have been given by child protection agencies.<sup>508</sup> Indeed, research indicates that such experts rarely receive the whole case file, and therefore a major criticism that is levelled across the literature is that they are deprived of much-needed context to form *independent* and informed opinions with respect to child protection concerns raised by child protection agencies.<sup>509</sup> Once such reports are made, they are rarely updated to reflect parents' progress in addressing such concerns.<sup>510</sup> Furthermore, as Elizabeth Fernandez and colleagues have documented, 'the perspectives of support workers who spend the most time with families are not represented in departmental reports to the Children's Court'.<sup>511</sup>

The role of expert opinion in child protection legal proceedings has thus been described as akin to that of 'gods': unchallengeable and, for the large part, decisive of the fate of families.<sup>512</sup> In their study of child protection proceedings in two Children's Courts in Sydney, McConnell, Llewellyn and Ferronato identified a significant relationship between expert opinions and court outcomes in cases featuring parents with disability. Indeed, expert opinion appeared to be decisive in determinations of whether children of parents with disability were removed from their families: in 90 per cent of cases where expert opinion favoured removal of the child and their placement in OOHC, this was the outcome.<sup>513</sup> Notably, this occurred in all cases the authors reviewed involving parents with intellectual disability.<sup>514</sup>

McConnell, Llewellyn and Ferronato also found that the input of mental health experts heavily influenced decisions by child protection agencies to pursue proceedings in court in the first place: 'Assessment reports provided workers with the confidence to initiate court proceedings when the evidence was otherwise unconvincing'.<sup>515</sup> When mental health professionals or other 'experts' advocated on behalf of families, this was noted as positively influencing child protection workers to 'persevere' with family preservation.<sup>516</sup> In their case file review, expert reports were filed by the departmental child protection authority in 88 per cent of cases involving parents with intellectual disability. Notably, parents with disability in the cohort were significantly less likely to obtain or submit independent expert assessments. While McConnell, Llewellyn and Ferronato attribute this to financial barriers,<sup>517</sup> studies conducted in the UK suggest other factors may contribute to difficulties in securing independent expert testimony in child protection proceedings, including the refusal by some judicial officers to permit independent expert reports to be tendered.<sup>518</sup> In these studies, the lack of independent specialist evidence was identified as significantly disadvantaging parents with disability, particularly parents with intellectual disability.<sup>519</sup> Indeed, these studies, and others, suggest that far too often appointed 'experts' in fact lack expertise, qualifications and up-to-date knowledge concerning parents with disability, resulting in conclusions that may not align with current evidence, particularly with respect to parents with intellectual disability and parents with FASD.<sup>520</sup>

International research that has compared parenting capacity assessments made by independent specialised intellectual disability services and child protection services has highlighted stark differences in their approaches and conclusions. For example, in their comparative review of

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parenting capacity assessment reports of mothers with intellectual disability by ‘experts’ appointed by child protection agencies and independent specialist services, Aunos and Pacheco found that the former tended to conclude parents lacked capacity permanently. In reaching their conclusions, diagnoses of intellectual disability were frequently deemed a primary ‘risk factor’.<sup>521</sup> As McConnell and Llewellyn and Ferronato have explained elsewhere, this means that the diagnosis of intellectual disability became ‘the explanatory framework’ for their determinations of current or future risk of child maltreatment.<sup>522</sup> In Aunos and Pacheco’s review of assessments conducted through independent and specialised intellectual disability services, however, they universally determined that parenting capacity existed with appropriate support. Their assessments, unlike those of their child protection agency counterparts, adopted strength-based approaches, examined specific or measurable parenting behaviours, and determined relevant interventions that optimised the rights and capacities of the parents they assessed.<sup>523</sup>

It appears that for many parents with disability, the reliance on ‘expert’ opinion contributes to the pervasiveness of diagnostic overshadowing within child protection proceedings whereby the identification of their disability can eclipse the distinction between, and thereby conflate, an individual’s disability and their parenting capacity.<sup>524</sup> As Hanna Sigurjónsdóttir and James Rice note, when this occurs, the ‘diagnoses form the predominant feature of individuals and in the process the individual becomes lost’.<sup>525</sup> Subsequently, evaluations of the individual strengths of the parent in question, analysis of the evidence of the department’s child protection concerns, or indeed whether they could safely parent with proper support, are overshadowed by the diagnosis and associated policy and practice assumptions of ‘risk’.<sup>526</sup>

This has particularly been highlighted in studies examining the use of IQ measurements in expert reports relating to parents with intellectual disability, which have found such measurements are used ‘as a proxy measure of parenting capacity’.<sup>527</sup> However, there is consistent evidence that a person’s performance on IQ measures is not determinative of, and indeed is an inaccurate measure of, their parenting ability.<sup>528</sup> Such tools are deeply controversial generally as measures of intellectual dis/ability given historical and political associations with eugenics and white supremacist movements, as well as considerable debate over their scientific validity.<sup>529</sup> Notably, IQ measurements continue to be criticised today as culturally and linguistically biased – essentially, Eurocentric – and therefore more likely to lead to pathologising and misdiagnosing First Nations parents and parents from culturally and linguistically diverse communities.<sup>530</sup> In their review of published US appellate child protection proceedings involving parents with intellectual disability, Ella Callow, Munazza Tahir and Maurice Feldman found that reference to a parent’s IQ score was made in 86 per cent of cases. Furthermore, their analysis of judgments revealed that ‘judges accepted the assertion that parents with intellectual and developmental disability would not be able to successfully parent due at least in part to their cognitive limitations’.<sup>531</sup> As they note, the continued reliance on

IQ-based parenting evaluations to justify termination of parental rights ... is particularly troubling as it is occurring at a time when reliance on IQ has been found inappropriate in other legal proceedings concerning significant civil rights.<sup>532</sup>

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Callow, Tahir and Feldman and others have urged investigation of the extent to which *evidence-based* practices are employed within the child protection context in determinations of the parenting capacity of people with intellectual and developmental disability.<sup>533</sup>

Concerns have also been raised about the degree to which parents are able to question the recommendations or findings of such expert reports, which, as stated above, are often based on the insights of professionals with whom they have had little engagement. As Rachel Patterson has argued,

often parents have been disenfranchised and gaslit for so long that they are either reticent to question a professional's opinion or do not believe anyone will believe their experiences of discrimination.<sup>534</sup>

In a related way, parents can be deprived of their rights to participate in decisions regarding their healthcare.<sup>535</sup> Studies have demonstrated that parents' compliance with recommendations of health professionals play a major role in departmental and court decision-making.<sup>536</sup> Several have observed that parents' who challenge diagnoses or the recommendations of health professionals are deemed 'uncooperative', 'lacking insight', 'unlikely to change' and representing a risk to the wellbeing of their children.<sup>537</sup> In their qualitative study conducted with parents with mental health disability and social workers involved in the child protection system in Aotearoa New Zealand, Lorraine Scott and colleagues found that social workers tended to perceive treatment as being 'expert-driven', with the expectation that parents would fully engage and comply with the professional advice they received. In circumstances where parents resisted, their actions became framed as risks to their children.<sup>538</sup> Similar findings have been made in relation to how some magistrates have interpreted parents who challenge their diagnoses or fail to comply with treatment recommendations.<sup>539</sup>

This judicial deference to expert medical opinion has been substantially criticised. Scholars, including Judith Mosoff and colleagues and Jeanne Kaiser, have questioned the appropriateness of psychiatrists and psychologists effectively becoming the 'arbiters of questions' regarding 'good parenting' and risk.<sup>540</sup> Indeed, according to Jeanne Kaiser, mental health experts 'tend to over-predict child abuse and neglect, perhaps out of a fear of failing to adequately protect the child'.<sup>541</sup> These scholars have further argued that the degree to which such expert evidence fails to attract judicial scrutiny in child protection legal proceedings, even when it clearly relies on outdated assumptions and now empirically repudiated measures, is strikingly at odds with accepted practice in other jurisdictions.<sup>542</sup> Notably, a recently published study by Susan Collings and colleagues of assessments of parents with intellectual disability in New South Wales child protection proceedings found that within that state,

There is no current guidance for judicial officers or assessors on when, how, and what role cognitive testing plays in assessment of parenting capacity or on how to screen for intellectual disability prior to a care application.<sup>543</sup>

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It also noted that there is no oversight of assessments conducted by private assessors contracted by the NSW Child Protection Department or any requirement that the assessment is conducted by a clinician with relevant expertise or experience in working effectively with people with disability. Furthermore, as Collings and colleagues note, there is no requirement for a standardised approach in undertaking parenting assessments, whether conducted privately or by the Children’s Court Clinic.<sup>544</sup>

In the next chapter, ‘Better Practice’, we discuss recommendations for reforms to the child protection legal system to address the extent of its failings to provide parents with disability their rights to informed participation in proceedings and subsequently equal access to justice. Some of these are statutory reforms. Others include the mandatory roll-out of training for all professionals involved in child protection proceedings, and the introduction in policy and practice guidelines of a requirement that expert assessors are only appointed in circumstances where they can demonstrate they have the requisite knowledge, skill, experience and expertise in working effectively with parents with disability.



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## Chapter 6: Better practice

As several scholars and advocates have argued, a fundamental paradigm shift in legislation, policy and practice is needed to address the widespread discrimination faced by parents with disability across child protection systems.<sup>545</sup> The primary framework through which parents with disability are engaged needs to be transformed from one that is ableist, and therefore deficit-oriented – presuming risk – to one that is strengths-based and disability-informed. This should help the system work in partnership with parents to identify how individual difficulties can be addressed by optimising and improving the short- and longer-term supports available to parents and their families at a community and social level.<sup>546</sup> In other words, child protection systems need to refocus from the individualist, medical model of disability and adopt a rights- and strengths-based framework that ‘places equal emphasis on process and outcomes’.<sup>547</sup>

This requires acknowledging and redressing the intergenerational harms associated with the individualistic medical model that has informed child protection systems and services. It includes reforming discriminatory and disabling laws, policies, cultures and practices that have repeatedly been shown to thwart the rights of parents with disability to maintain legal care of their children. Additionally, as Naomi Pfitzner and colleagues explain, ‘strengths-based approaches should address intersecting support needs, providing culturally sensitive and safe service responses’.<sup>548</sup> As several parents with disability emphasised to Laura Franklin and colleagues, this means that ‘professional support [is] provided in a sensitive and empowering way, motivated by an underlying belief in parents’ capabilities’.<sup>549</sup> Furthermore, it means that professionals adopt a disability-informed approach in their interactions with all parents. To quote Susan Collings and colleagues, this necessitates professionals to ‘respond as if any parent they engage with may have a disability, and then set out to understand the parent’s preferred mode of communication and adapt their practice based on this’.<sup>550</sup>

A fundamental shift in thinking is necessary, particularly in relation to the individualist turn in government policy over the past three decades, which has led to the systemic stigmatisation of parents who may require state support.<sup>551</sup> Furthermore, as Enne Mae Guerrero has argued, if policymakers and legislators *intend* to address the systemic discrimination faced by parents with disability, ‘those who seek change must intentionally question how poverty and race ... contribute to the discrimination these parents already face’.<sup>552</sup>

As we will address below, the literature highlights four ways policy-makers and legislators can begin to address the intergenerational harms caused through systemic failures to address discrimination faced by parents with disability within child protection systems. These include: (1) statutory and policy reform; (2) inclusive and specialist service design and delivery; (3) the development and funding of culturally competent and specialised advocacy and peer support services that are available to parents before, throughout and following their formal involvement with child protection services; and (4) ongoing professional training and community education and outreach on the experiences, needs and rights of parents with disability involved in child protection systems.

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## Statutory and policy reform

One key means of addressing the systemic, and in many ways overt, discrimination faced by parents with disability throughout their engagement with child protection systems is through statutory, policy and funding reforms. Such reforms should align with and reflect Australia's obligations as signatory to several international human rights instruments, including, but not limited to, *the Convention on the Rights of Persons with Disabilities* (the 'CRPD'), the *Convention on the Rights of the Child* (the 'CRC') and the *United Nations Declaration on the Rights of Indigenous Peoples* (the 'UNDRIP').<sup>553</sup> As scholars and advocates have argued, a first step is to amend contemporary legislation and policies to explicitly remove any equation between disability, parenting incapacity and risk.<sup>554</sup> We would also argue that, given the seemingly entrenched perception of a tension between the best interests of children and the best interests and rights of their parents, a relational approach should be adopted. This would require a significant rethink of funding, policy and practice. The focus on children as saveable and parents as undeserving and blameworthy is an entrenched by-product of the emphasis on individual rather than systemic drivers of child protection issues. Child protection legislation and policy should be amended to include a stated presumption that the best interests of children are served by providing inclusive – and thereby disability and culturally responsive – supports to parents. As others have argued, legislation and policy should also include an inclusive definition of disability that also acknowledges that many people live with multiple disabilities.<sup>555</sup> This would thereby work towards ensuring that anti-discrimination provisions recognise and can be accessed as a protective and remedial measure by all parents with disability.<sup>556</sup>

Furthermore, and relatedly, expedited legal 'permanency' measures, which fail to account for the increased time parents with disability may need to address child protection concerns – particularly while services to assist them in doing so are scarce or non-existent – should be amended. While there is broad consensus that 'stability' is good for children, the meaning of stability and its relationship to legal permanency is highly contested.<sup>557</sup> The short mandatory timeframes within which restoration or permanent placement in OOH needs to take place have, as discussed in Chapter 3, particularly discriminatory impacts on parents with disability. These should be reversed with a fresh focus not just on legal permanency but on support for parents to safely look after their children alongside their family and community. An important aspect of this for First Nations families is implementing the five components of the Aboriginal and Torres Strait Islander Child Placement Principle.

Alongside this, procedural protections should also be enacted to ensure parents receive appropriate supports and are appropriately assessed by qualified professionals with expertise and experience in working effectively with disability.<sup>558</sup> This includes recognising the need for all professionals to tailor their approach so as to respond to parents' individual, diverse and intersectional needs.<sup>559</sup> It also includes providing support that is not restricted to 'childrearing' per se, but responds to other identified and practical needs and challenges.<sup>560</sup> Such protections should also ensure that individual parent's strengths and perspectives are acknowledged and responded to throughout their interactions with child protective services.<sup>561</sup>

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Some authors have advocated explicit legislative and policy statements which repudiate the longstanding treatment of parents' IQ measures as proxy indicators of parenting capacity.<sup>562</sup> Procedural protections might also include a mandatory provision either in legislation or regulations that child protection workers turn their minds to, and record, parents who identify as living with disabilities – something which, as we addressed in Chapter 2, is systematically neglected across child protection systems internationally and across Australia. The purpose of identifying parents with disability must be to provide appropriate support and to collect data which enables planning and funding of services in accordance with needs.<sup>563</sup> Explicit protections should be in place to prevent this data from being used for surveillance purposes. By doing so, child protection legislation and policy at the very least would begin to align with Australian human rights obligations under the *CRPD* and *CRC* respectively.

While this literature review has not identified any jurisdiction across the western world that has addressed all the elements of statutory and policy reform identified above, there are examples of reforms – particularly in the US states of Idaho and Kansas and in the US federal domain through the *Indian Child Welfare Act* – that address several elements and could be adapted to inform models of legislative and policy reform across the Australian child protection landscape. Notably, the *Indian Child Welfare Act*, which mandates that child protection services make 'active' as opposed to 'reasonable efforts' to preserve and or reunify their families, has already informed proposed reforms to Australian child protection legislation to address the systemic discrimination faced by First Nations parents and relatedly, the over-representation of First Nations children in OOHC.<sup>564</sup>

Beyond active efforts, important structural changes are necessary to address issues of cultural appropriateness, accountability and trust with respect to child protection services for First Nations families and communities. Reviews from the *National Inquiry into the Forced and Unjustified Removal of Aboriginal and Torres Strait Islander Children from their Families* (otherwise known, and subsequently referred to, as the '*Bringing Them Home Report*') to the recent New South Wales *Family is Culture Review* have found that Australian child protection systems fail First Nations parents.<sup>565</sup> They have consistently recommended reforms based on human rights principles. These include rights to self-determination in service delivery and design, effective accountability systems and adequate funding and the resourcing of services to address the legacies of racist laws and policies which have resulted in intergenerational harms.<sup>566</sup> While these reviews have not necessarily focused on parents with disability, as this literature review and fieldwork reported in subsequent chapters found, First Nations peoples do not tend to view parents with disability separately from other parents. Rather their disability is a part of who they are. The recommendations from the abovementioned reviews are equally relevant to addressing failures in relation to First Nations parents with disability.

## The Idaho and Kansas reforms

Enne Guerrero has noted that Idaho was the first state in the United States to pass protective legislation specifically seeking to address the systemic discrimination faced by parents with disability throughout their interactions with the child welfare system. The reforms were passed

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in 2003 in response to long advocacy efforts by disability rights groups under the leadership of the Idaho State Independent Living Council's Committee on Fathers and Mothers Independently Living with their Youth (FAMILY). The reforms are still referred to in the literature as exemplary remedial measures.<sup>567</sup> They are multipronged. They include removing living with disability as a relevant ground in considering the termination of parents' rights.<sup>568</sup> They explicitly declare that discrimination on the basis of identified disability/ies is not intended or permitted.<sup>569</sup> They mandate that child protective agencies develop written protocols for investigating allegations of child protection concerns involving parents with disability.<sup>570</sup> They clarify that those conducting parenting assessments turn their minds to the importance of using adaptive and supportive services when they do so, while also requiring that the assessor have or be supported by someone with relevant expertise in such services.<sup>571</sup> They stipulate that reasonable efforts to prevent families from being separated or alternatively to promote family reunification after child removal, also include consideration of adapted equipment and support services.<sup>572</sup> They require courts to provide a written statement in circumstances where they believe a parent's disability was relevant to their decision-making.<sup>573</sup> Finally, they establish the right of parents to introduce evidence in court of which support services *they* believe would assist them, and furthermore how existing support services should be modified to assist them, in addressing child protection concerns.<sup>574</sup> This approach resonates with more recent calls within the literature for child protection workers to adopt disability-informed, person-centred planning models where possible, recognising and empowering parents as participants and key decision-makers in determinations of what services are most appropriate for them and their families.<sup>575</sup>

As Ella Callow and colleagues have noted, the Idaho reforms informed the passage of protective legislation in Kansas in 2006. While the Kansas reforms 'were more limited in scope', they inserted the requirement that if decision-makers found a parent's disability relevant to child protection concerns, they must specifically address and make explicit the 'causal relationship between the disability and harm to the child'.<sup>576</sup> According to Callow and colleagues, this has the effect of requiring 'that proper services and adapted evaluations and assessments are performed'.<sup>577</sup> Legislative mandates that direct that decision-makers, including child protection agencies and the courts, must address a postulated nexus between disability and parenting have also been recommended by Robyn Powell and Jack Rubinstein in their recently published *Toolkit for Legislators* to protect the rights of parents with disability and their children.<sup>578</sup> They also suggest that legislation include instructions for the courts to address why potential risks cannot be resolved through providing parents with appropriate supports and services.<sup>579</sup>

We note here that the only legislative provision in Australia that directly prohibits conclusions 'that the basic needs of a child or young person are likely not to be met only because of a parents or primary care giver's disability' is found in the New South Wales *Care and Protection Act*.<sup>580</sup> Framed in the negative, this provision is much more limited in scope than the Kansas and Idaho models detailed above.

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## The Indian Child Welfare Act

Some US advocates and scholars have argued that provisions of the *Indian Child Welfare Act 1978* (ICWA) should inform further protective reforms addressing parents with disability.<sup>581</sup> This was also recommended by the New South Wales *Family is Culture Review* in relation to all First Nations families involved in the New South Wales child protection system.<sup>582</sup> The ICWA was developed and passed in recognition of the systemic and intergenerational harms that are perpetrated against American Indian and Alaskan Native families and communities through past and continuing US child protection systems and practices.<sup>583</sup> The ICWA is premised on American Indian and Alaskan Native communities sharing child welfare jurisdiction with the US states. American Indian and Alaskan Native children in the US, like First Nations children in Australia, are over-represented in child protection proceedings and in OOHC.<sup>584</sup>

The ICWA sought to prevent wherever possible the removal of American Indian and Alaskan Native children in two broad ways. The first was through transferring jurisdiction for children who reside on Indian reserves and who are members of Indian tribes to Indian child welfare departments and Tribal Courts. The second was by establishing legal standards and procedures to protect American Indian and Alaskan Native families when state child protection departments intervene in their families.<sup>585</sup> While aspects of shared jurisdiction under the ICWA are historically founded and jurisdiction-specific, the broad intent of assuming greater First Nations authority for child protection has been called for by Australian First Nations children's organisations, including SNAICC, for decades.<sup>586</sup> The *Bringing Them Home Report* made recommendations with respect to self-determination in child protection which provide for a process of state and territory governments negotiating and sharing child protection responsibility with First Nations. These recommendations have enduring applicability and align with supporting First Nations parents with disability's rights.<sup>587</sup> Comparative models for sharing state jurisdictions with First Nations peoples are also available in other jurisdictions, including Canada.<sup>588</sup>

The ICWA substantive and procedural requirements to support American Indian and Alaskan Native families engaged with state child welfare systems are readily transferable to Australian contexts.<sup>589</sup> As Ella Callow has convincingly argued, these provisions could also facilitate greater respect for the rights of all parents with disability who have contact with child protection systems. The ICWA elevates the standard of support provided to families engaged with child protection systems. It also mandates their legal representation in court proceedings, establishes standing for family and tribal representatives in court proceedings as well as providing other protections, discussed below.

Importantly, the ICWA introduced the presumption that the removal of children from their families is against their best interests. The only exception to this is if child protection authorities can demonstrate a risk of imminent harm to the children.<sup>590</sup> In such circumstances a finding in favour of the removal of children from their parents must be supported by a qualified witness, with requisite cultural and community knowledge. Notably, in her review of cases involving American Indian and Alaskan Native parents *with disability*, Ella Callow observed that in different states a parent's diagnosis as living with a disability was sometimes used to displace

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the requirement of cultural and community expertise in favour of specialist knowledge in a relevant disability.<sup>591</sup> This either/or approach fails to account for cultural bias in mainstream diagnostic assessments, policy and professional practice.<sup>592</sup> Callow subsequently highlighted the need for a greater intersectional approach in child protection legal proceedings involving First Nations parents with disability – namely, the need for child protection decision-makers to ensure due regard is paid to both cultural and community specialist knowledge *as well as* specialist knowledge of the support needs of parents with different disabilities.<sup>593</sup>

The *ICWA* also incorporates procedural protections that mandate child protection services make ‘active’ as opposed to ‘reasonable’ efforts to prevent the removal of children from First Nations families, or, in circumstances where removal has taken place, to reunify children with their parents. To ensure departmental accountability on this front, it also introduced a requirement that child protective services provide evidence in court of having done so.<sup>594</sup> As the Parents with a Disability Community Network has noted, within Australia there has been limited political, legal or scholarly discussion of what constitutes reasonable efforts towards families throughout their involvement in child protection systems.<sup>595</sup> Studies conducted in the USA have similarly highlighted the lack of clarity around what reasonable efforts require. Furthermore, Jeanne Kaiser has observed that the legislative requirement of ‘reasonable efforts’ has failed to ensure that child protection services refer parents to support that addresses their individual strengths and needs. She notes that, instead, many ‘are often simply going through the motions’.<sup>596</sup> Indeed a major criticism made throughout the literature, is that child protection casework is rarely ‘personalised’ and instead often defaults to a ‘tick the box’ approach.<sup>597</sup>

In his review of US state and court interpretations of ‘active’ as opposed to ‘reasonable’ efforts, Leonard Edwards cited a general consensus that ‘active efforts require more “efforts” by the state than reasonable efforts’.<sup>598</sup> As Edwards notes, a main point of difference is that active efforts are generally believed to encompass ‘affirmative, active, thorough and timely efforts’ to preserve and or reunify families.<sup>599</sup> Ella Callow and colleagues have argued that if similar provision was made in relation to parents with disability, failures to provide appropriate services should be evidence that such active efforts did not occur.<sup>600</sup> Notably, in 2018, Australian Ministers of Community Services agreed to implement active efforts across state and territory jurisdictions ‘to ensure compliance with all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle’, which are discussed above in this report.<sup>601</sup>

Ella Callow and colleagues raise other procedural protections in the *ICWA* that would address barriers to parents with disability accessing legal advice. For example, the Act includes a mandate that parents are provided with legal representation throughout child protection proceedings. It also prescribes that child protection services provide parents with written notification at least 10 days before commencement of legal proceedings against them. The parents have the right to apply for an additional 20 days to prepare.<sup>602</sup> As is evident from all chapters in this literature review, several of these supports and protections provided under the *ICWA* would go some way to address current failings of Australian child protection systems to parents with disability in general. Their adoption is necessary to facilitate greater equality before the law and recognition of the rights of parents under the *CRPD* and *CRC*.

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It should be noted, however, that even in the few jurisdictions which have passed legislation with the intent of providing statutory force to stymie the over-representation of parents with disability and First Nations parents generally within Australian child protection systems, structural and practice discrimination is still prevalent. Reports by researchers and advocacy groups including our research partner SNAICC have called for a resourced transfer of responsibility for child protection to First Nations organisations and communities in order to embed legitimate and effective design and delivery of child welfare services to First Nations families and communities.<sup>603</sup> The ICWA and recent Canadian child welfare legislation provide contemporary comparative examples of legislation which moves towards sharing jurisdiction with First Nations peoples.<sup>604</sup> However, as several scholars argue, statutory reform alone is not a panacea for the embedded systemic and cultural discrimination parents with disability face.<sup>605</sup> Indeed, as Sara Stefánsdóttir and colleagues put it, if such reforms are passed, ‘it is up to policy makers and support staff to see these goals realised in practice’.<sup>606</sup>

## Developing and funding culturally and disability inclusive family support and specialised services for parents with disability

Given the political and social failure to ensure disability-appropriate, culturally responsive and inclusive services are available to parents with disability, the literature highlights an urgent need to develop and fund both specialist disability services that specifically address the intersectional support needs of people with disability who are *parents* and inclusive parenting services that provide culturally and disability safe and accessible support. The fact that this has not occurred to date reflects the degree to which parents with disability have been expected to ‘fit into’ existing services – that is, without policies mandating that services are designed at the outset, or redesigned, to be inclusive and thereby able to reflect, respond to and support the diversity of the communities they purport to serve.<sup>607</sup>

Notably, in a more recent collaborative research project undertaken in the UK with parents with diverse disabilities involved in the child protection system, parents advocated the establishment of a new publicly funded, dedicated, holistic service for families which would ‘[sit] outside current service structures’ and be ‘embedded in the community’.<sup>608</sup> It was felt that this would resolve longstanding issues associated with entrenched attitudes and stigma within existing services which have hindered the realisation of non-discriminatory practice and policy.<sup>609</sup> It was also believed that a holistic family service orientation would overcome the persistent dualism or binary in policy and service support for children and parents, and would therefore be more likely to work towards family preservation and/or reunification.<sup>610</sup> Parents also recommended that the service be largely staffed by people with disability as a means of countering pervasive ableism in the field and enabling parents with disability ‘to hold some of the power in the decision-making process’.<sup>611</sup> Indeed, as Laura Franklin and colleagues, writing in the context of parents with learning disability, assert,

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the subjugation of people with ... disabilities as a social group is maintained by the disempowerment felt by having one's access to rights, resources and opportunities determined by 'powerful others' in the social hierarchy.<sup>612</sup>

The creation and support for services staffed by people and parents with lived experience of disability would go some way to address this.

Given the paucity of specialist disability services available to parents and the restrictive eligibility criteria associated with accessing the services that currently exist, most authors have also argued that all service providers should undergo specialist training on how to safely work with parents with diverse disabilities.<sup>613</sup> This training has been argued as constituting a reasonable accommodation which should be funded by the state.<sup>614</sup> As Rachel Patterson has argued, given the funding for, and political emphasis on, supporting *children* with disability – which, as discussed in Chapter 4, is one of the few entry points for parents to access disability service support – it is a disservice 'to deny them adequate support and resources when they are parents'.<sup>615</sup> Patterson and others have also argued for government funding to be redirected to preventative, social and community-based support services – services and supports guided by ongoing, consultation with families with disability.<sup>616</sup>

Indeed, as Chris Maylea and colleagues have noted, while other sectors or fields such as health and disability services have moved towards incorporating lived experience into service design, delivery, professional training and education, and within the workforce, this has generally not occurred within the field of child protection.<sup>617</sup> As others have noted, even in policy and law reform consultations and inquiries relating to child protection, parents' voices are infrequently sought or heard. Instead, policy and practice guidelines have been informed by 'the perspectives of professionals', be they caseworkers, scholars who have conducted case reviews or other research with those professionally engaged in the field, or legal representatives.<sup>618</sup>

One service model that has been highlighted as being particularly valued by parents is that which enables peer advocacy, support and information sharing. Research conducted in Australia and the UK suggests that many parents with disability desire more forums that enable them to interact with and benefit from other parents with similar experiences both in terms of being a parent with disability and being involved in child protection systems.<sup>619</sup> Furthermore, as Laura Franklin and colleagues observed in their research conducted with parents with learning disability who accessed peer forums,

over three quarters of parents spoke of feeling empowered by being with others with similar experiences ... For those with complex histories of abuse, this often represented their first experiences of feeling cared for and held in mind by people they trust.<sup>620</sup>

Collings and colleagues' research conducted with mothers with intellectual disability whose involvement with child protection systems followed their experiences of domestic violence, also highlights that peer support, in the aftermath of child removal, may be particularly valued by parents.<sup>621</sup> In a policy and practice terrain in which parents are often marginalised and



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disempowered – their insights and experiences unacknowledged – peer advocacy and support forums foreground their voices and enable them to both share and receive advice as parents and people with disability directly.<sup>622</sup> Subsequently, several authors and advocates have emphasised the importance of public investment in peer-led services and the expansion of ‘the availability of this support to help parents at an earlier stage of their parenting journey’.<sup>623</sup> Further discussion of the importance of advocacy services – peer and other specialist disability, First Nations and parenting advocacy services – is included in a subsequent section of this chapter.

Research conducted with First Nations parents with disability suggests that many do not access services and supports, including specialist services designed to respond to the needs of people with disability as well as health or other social programs.<sup>624</sup> One reason for this reluctance is the from high levels of distrust felt by many towards ‘government and non-government organisations based on past and present experiences of discriminatory, controlling and exclusionary policies and practices’.<sup>625</sup> Lived experiences, including the intergenerational trauma of the Stolen Generations, has meant the many parents may choose to not identify disability or access formal supports given this might risk increased surveillance of parents and families, and subsequent exposure to child protective services.<sup>626</sup> As Anne Dew and colleagues have argued, such reluctance

is indicative of both a historical distrust of formal services and a lack of understanding on the part of those services of Aboriginal people’s specific requirements for culturally appropriate and safe practices.<sup>627</sup>

As the Aboriginal Disability Network NSW (now First Peoples Disability Network Australia) once argued, however, the significant underutilisation of services by First Nations people also reflects successive policy and structural failures to ensure effective information provision and targeting, as well as failures to ensure services are geographically accessible and culturally safe.<sup>628</sup>

Gilroy and colleagues have written that

the current gap between the prevalence of disability and low participation of Indigenous community members in disability services raises concerns about the effectiveness of dominant approaches to understanding and addressing this gap.<sup>629</sup>

Current approaches to disability policy, practice and scholarship can and have been criticised as failing to account for

how the experience of colonisation influences the way that disability is conceptualised, understood and experienced in Indigenous communities and that this varies with the diverse array of Indigenous nations and cultural groups.<sup>630</sup>

This omission has relatedly meant that there has been scant attention to compounded experiences of racial discrimination, poverty, poor housing and intergenerational trauma experienced by First Nations individuals with disability, their families and extended communities.

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Considering this, Gilroy and colleagues argue for the development of a new conceptual framework to guide future research and policy work in relation to First Nations people with disability. This framework is one that accounts for complex and multifaceted experiences of disability and actively engages, rather than objectifies, First Nations people with disability as participants and producers in knowledge and service design.<sup>631</sup> Integral to this is an understanding that each community and individual has particular ‘experiences of colonisation, disadvantage’ and culture.<sup>632</sup>

Principles of First Nations self-determination and participation are embedded in UN human rights instruments and the jurisprudence of human rights committees. First Nations peoples’ rights across treaties, including the *CRPD*, *UNDRIP*, *CRC* and *ICCPR*, are indivisible. Effective support for First Nations parents with disability who have contact with child protection systems is integral to realising these principles. This includes effective funding and support for First Nations children’s organisations.

Research conducted with culturally and linguistically diverse people with disability has similarly identified that they are significantly less likely to access and receive assistance from existing disability services. Indeed, Settlement Services International suggest that they are half as likely to do so as the general population.<sup>633</sup> One potential reason for this is a failure of existing services and systems to ensure culturally and linguistically diverse people with disability, including recent migrants, are aware of the services that exist and what they can access.<sup>634</sup> Another is fear of social stigmatisation associated with having diagnosed disabilities, particularly within smaller communities.<sup>635</sup> Advocates have argued in favour of greater recruitment of culturally diverse and multilingual staff across disability and child protection services, an increase in culturally responsive practice and the development of clearer guidelines, resources and standards. They have also advocated for greater resourcing of interpreter services, as well as funding for training on best practice when translators work with parents and services involved in child protection matters.

As US scholars Lisa Johnson, Elspeth Slayter and Allyson Livingstone have argued,

[a]s there is no singular way to be a person of colour or to be a person with a disability, service systems must be envisioned and built with inclusive equity in mind. Intersectionality is an essential conceptual tool as it offers insight into the interactions between various social identities and society, while also offering an opportunity to assess, modify and build services that will reduce or eradicate intersectional inequities.<sup>636</sup>

## Mental health and social support

As addressed in Chapter 4, the literature highlights a fundamental lack of mental health support directed specifically at the trauma occasioned to parents through child protection involvement. While the literature suggests that such services should be routinely made available to parents from the point of initial involvement, it also highlights that mental health support, particularly grief counselling, should be provided to parents at the time of, and following, decisions to remove

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children from their care.<sup>637</sup> As we will discuss in a later section, it also suggests a deficit in caseworker knowledge, practice and training with respect to the importance of trauma-informed approaches when working with parents involved in the child protection system generally, and specifically with parents with disability, First Nations parents and parents who have experienced domestic and/or family violence.

Given the evidence that parents' socioeconomic marginalisation often worsens following child protection involvement, the literature also indicates a need for targeted social services that address the social and economic consequences for parents regardless of whether they are ultimately able to be reunified with their children. Indeed, as Bryn King and colleagues have noted,

[while] addressing material needs (i.e. income and housing) is not necessarily the purview of child welfare ... families contending with this issue are overrepresented among the child welfare involved population. If poverty determines risk of future maltreatment, policy and funding should be directed toward ameliorating [those] conditions.<sup>638</sup>

Redressing the gross inadequacy of funding for early intervention, prevention and support has been a longstanding call from advocacy groups and academic researchers.<sup>639</sup> It has also been recommended in public inquiries and in public policy initiatives such as the *National Framework for Protecting Australia's Children 2021*, which makes particular reference to support for families with disability.<sup>640</sup> Yet, the stark disparity between expenditure on OOHC compared with early intervention and support persists. Despite commitments from governments to prioritise prevention and early intervention (discussed later in the Policy and Practice chapter), this is not matched by investment. Only 17 per cent of national investment in child protection was dedicated to family support in 2021 (including general and intensive family supports).<sup>641</sup> Early intervention, in particular targeted supports for parents with disability, would have a significant impact on their over-representation in child welfare systems. It is likely that investment in such support would offset expenditure, if not save costs, associated with OOHC and its intersections with juvenile justice, criminal justice and health systems. This aligns with studies, discussed below, that demonstrate early investment in advocacy services for parents results in significant public savings. More fundamentally, this investment would support the human rights and opportunities of some of the most discriminated against and disadvantaged families, including parents with disability.

For many parents, poverty is a major underlying factor in their contact with child protection systems.<sup>642</sup> For this reason, child protection reforms need to be made in tandem with reforms to social payments. Income support payments that are insufficient to cover food, shelter and other necessities result in avoidable forced removals of children.<sup>643</sup> Poverty contributes to parents, usually women, being unable to leave controlling, violent and abusive relationships.<sup>644</sup> Well-documented examples, discussed in previous chapters, include mothers with disability not reporting domestic violence due to fears of child removal and/or not leaving violent relationships because of housing and financial insecurity. A disabling culture increases inequalities in power, unequal access to jobs and, for many parents with disability, difficulty in navigating bureaucratic and conditional systems for accessing income and other social supports.<sup>645</sup> Narrow definitions of

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disability and bureaucratic hurdles in application processes result in some parents with disability not being able to access disability pensions and/ or appropriate support from the National Disability Insurance Scheme.<sup>646</sup>

Some populists have characterised income support as a ‘hammock’ that undermines motivation for the recipients to enter the workforce. However, there is considerable evidence that inadequate and conditional income support creates a poverty trap that entrenches marginalisation and exclusion not only from employment but from all aspects of society.<sup>647</sup> Research demonstrates that inequality – in particular, inequality in the midst of plenty – is an important determinant of poor health separate from material factors related to health outcomes such as lack of access to adequate health care and adequate and healthy food.<sup>648</sup> Inadequate and conditional income support increases parents’ vulnerability to exploitation and control, dependence, hardship and the spectrum of adverse impacts of poverty which are associated with child protection interventions.<sup>649</sup> Further, parents with disability who move from income support are particularly vulnerable to work which is insecure and poorly paid. This does not provide an exit from poverty but, rather, adds another layer of stress to parental care, with less time and inadequate money.

The report of the Commission of Inquiry into Poverty, *Poverty in Australia* (also known as the ‘Henderson Report’) identified three foundational values that should underpin social support.<sup>650</sup> These are that:

1. every person has a right to a basic level of security and wellbeing and all government action should respect the independence, dignity and worth of each individual;
2. every person should have equal opportunity for personal development and participation in the community; and
3. need and the degree of need should be the primary test by which assistance should be determined.<sup>651</sup>

These values are consistent with the rights of parents with disability under the *CRPD*.

A significant factor in child removal and one which again is heightened for parents with disability, and even more heightened for First Nations parents and parents from culturally and linguistically diverse backgrounds with disability, is insecure housing, inadequate housing and homelessness. The *Henderson Report* made a ground-breaking contribution nationally and internationally to understanding ways to address poverty with the linkage of social payments not only to inflation and wages but also to housing affordability, with an equivalence adjustment before and after housing costs.<sup>652</sup>

The social benefits for families who are lifted out of poverty with adequate support payments include reduction in social and health inequalities, reduction in the enormous stress, trauma and burden of child removal and increased capacity to participate in society with increased equality of opportunity. Boyd Hunter and Daniella Venn estimate that Indigenous poverty remains

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roughly twice the level of non-Indigenous poverty, an outcome they suggest is driven in part by welfare conditionality and welfare reforms.<sup>653</sup> The challenges faced by many parents with disability involved in the child protection system would be significantly reduced by unconditional and adequate social support.

## Seamless, continuous, advocacy support services

Over the last two decades, published research reports, academic articles, human rights inquiries and policy briefs have emphasised the crucial role advocates can play in helping parents with (and without) disability to understand, be heard, participate in and navigate child protection proceedings and support services.<sup>654</sup> The potential benefits of advocacy have particularly been demonstrated in relation to parents with intellectual or learning disability.<sup>655</sup> Indeed, as the Joint Commission on Human Rights found in its systemic review of the human rights of adults with learning disabilities in the United Kingdom, for many, ‘access to independent advocacy may be the only realistic means of securing their human rights’.<sup>656</sup>

Despite this, research to date indicates that advocacy programs are not readily available to parents internationally or in Australia.<sup>657</sup> Several authors have highlighted the striking disconnect between research and policy that recognises the importance of advocacy to securing the rights of parents with disability involved in child protection systems, and the reality of support and services that exist.<sup>658</sup> It has also been argued that the failure to ensure such services are universally available to all parents with disability at the point of initial contact, and throughout their dealings, with the child protection system, violates Australia’s obligations as signatory to the *CRPD*.<sup>659</sup> It is no surprise, then, that much of the literature evaluating and demonstrating the benefits of advocacy for parents with disability has called for government funding of these services as a matter of urgency.<sup>660</sup> It has been argued that such funding should be commensurate with the increasing numbers of parents with disability involved in the child protection system.<sup>661</sup>

In the absence of government investment in parent advocacy services to date, as Chris Maylea and colleagues observe, advocacy programs – internationally and in Australia – have been ‘primarily ad hoc, pilot or volunteer services’.<sup>662</sup> They have taken many forms, ‘including parental or peer advocacy, professional advocacy and collaborative legal and non-legal professional models’.<sup>663</sup> Across the literature examining effective advocacy programmes for parents with disability, however, the majority of services reviewed are those conducted by non-legal, non-peer professionals with specialised training in and knowledge of the different support needs of people with disability. One reason for this may be the slow recognition and support, particularly in Australia, of peer-led models – discussed in a previous section of this chapter. With respect to collaborative legal and non-legal models, the emphasis on single ‘professional’ models may reflect that many have been established in recognition that some parents with disability need greater advocacy, support and time than most lawyers can provide. As discussed in Chapter 5, this is due to lack of training or specialisation of many lawyers in disability rights or resource constraints, including time limitations and funding.<sup>664</sup>

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Effective services such as the Intellectual Disability Rights Service ('IDRS') in Australia – which adopts a collaborative legal and non-legal professional model – provide a wraparound service with a skilled and knowledgeable advocate who supports a parent through all stages of the child protection process. This includes navigating housing, domestic violence, the NDIS and other practical supports in addition to engaging specifically with the child protection system. Such services also have expertise on parents' rights, processes and procedures within the child protection system, as well as on what support services are available within that system or at its intersection with others such as adult disability or health services. Indeed, the importance of advocates having both knowledge bases, as opposed to more generalised advocacy experience, has been stressed in the literature as fundamental to ensuring diverse parents with disability's rights to informed participation in child protection processes as well as access to appropriate services are recognised and respected.<sup>665</sup>

Subsequently, a key role assumed by advocates is to act as 'system translators'.<sup>666</sup> A core component of this is clarifying otherwise opaque child protection processes by ensuring essential information is made accessible and communicated to parents in ways that are appropriate to their individual needs.<sup>667</sup> For parents with intellectual disability, this can include simplifying the language used by child protection workers and lawyers, including but not limited to legalese, and building in time before, during and after meetings with child protection workers, lawyers and others to ensure parents' understanding.<sup>668</sup> It can also include having advocates accompany parents to court, explaining what is being discussed and the purposes of proceedings.<sup>669</sup> Interventions such as these can provide much needed transparency: ensuring parents understand how the system works, the different requirements of parents and professionals, why these requirements exist and what the consequences are.<sup>670</sup> Studies suggest that by doing so, advocates can help empower parents by building their skills and confidence to effectively advocate for themselves and participate in their dealings with child protection workers, lawyers, services and others they are in contact with as a result of their involvement in the child protection system.<sup>671</sup> In their consultation with parents with disability in Victoria, for example, the Parents Disability Community Network heard from several parents that it was not until they accessed independent advocacy and were assisted in how to 'ask the right questions' that they received any assistance in locating support services.<sup>672</sup> Indeed, most studies of parents who have been assisted by advocates report that parents describe feeling more confident in expressing their views and being heard following advocacy intervention.<sup>673</sup>

Again, while there are multiple advocacy models in use, it appears from the literature that in most services, advocates provide individualised support to parents by working with them on a 'one-to-one' basis.<sup>674</sup> They are also typically independent of statutory child protection agencies and other parenting support services.<sup>675</sup> This independence is widely viewed as integral to developing relationships of confidence and trust with the parents they support. In a recent review of a pilot advocacy programme conducted by Victoria Legal Aid, for example, the independence of the service was identified as fundamental in 'opening lines of communication' with families who were otherwise reluctant to engage with child protection workers.<sup>676</sup> Advocates interviewed by Charlotte Atkin and Biza Kroese in the UK also argued that independence is key

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to ensuring advocates can freely challenge unjust or discriminatory practice, without political, organisational or institutional interference.<sup>677</sup>

Studies conducted with child protection workers suggest that having an advocate present can translate to greater accountability.<sup>678</sup> Advocates will often liaise with professionals about the individual needs of parents they are engaging with, demonstrating how they can adapt their communication and practice so as to develop more effective relationships, address parents' individual needs and thereby work towards equality of access and service.<sup>679</sup> In other words, advocates facilitate more effective professional–parent engagement as well as supporting professionals to improve their knowledge and practice.<sup>680</sup> Although such studies indicate that child protection practitioners in contact with parent advocates report valuing their intervention, this is not universally the case. For example, writing in 2015, the Victorian Public Advocate reported that the Department did not recognise the rights of parents to have an advocate present in their dealings with them and employed a range of strategies to discourage advocates' involvement.<sup>681</sup> Other anecdotes of child protection workers advising parents against contacting advocates were provided by the Parents with Disability Network in its report of 2010.<sup>682</sup>

In their more recent evaluation of a parent advocacy service piloted by Victorian Legal Aid (known as 'Independent Family Advocacy and Support' or 'IFAS'), Maylea and colleagues noted feedback from child protection workers concerning a tension between the service's role in representing parents' perspectives and their 'assessment of what is in the best interests of the child'.<sup>683</sup> The pilot prioritised providing advocacy to First Nations families, parents with intellectual disability and culturally and linguistically diverse families – population groups whom it identified as being over-represented in the child protection system. It adopted a model of 'representational advocacy', premised on acknowledging parents as experts in their own and their family's needs.<sup>684</sup> Advocates worked to 'amplify' parents' voices without judgement or interference, by supporting them to be informed about, participate and have their views represented in child protection investigations.<sup>685</sup> While a substantial component of their work was to engage with child protection workers and services, when they did so they did not 'share information without consent or take any action without the client's specific direction'.<sup>686</sup> While in the minority, some caseworkers took issue with this model, particularly advocates' refusals to share information without consent or, alternatively, sharing information with parents without obtaining the permission of child protection agents.<sup>687</sup> This was particularly objected to in situations where parents were being investigated as perpetrators of family or intimate partner violence.<sup>688</sup> Studies such as these highlight the importance of clear messaging to services, and parents themselves, about the role and rationale of advocacy and its limits and possibilities with respect to confidentiality.<sup>689</sup>

There is evidence that alongside supporting parents to understand and participate in child protection procedures, the involvement of advocates – particularly from the initial stages of a parent's child protection involvement – can positively influence outcomes. In 2015, for example, the Victorian Public Advocate observed that parents who were supported by special advocates were significantly more likely to retain care of their children or maintain reasonable access

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and be reunified with their children after initial separation.<sup>690</sup> As Annette Bauer and colleagues have noted, it appears that the earlier the advocate's involvement, the better the outcome for parents.<sup>691</sup> One reason for this is that late involvement in cases often means that the advocate's role is directed at helping parents accept outcomes rather than influencing the outcomes themselves.<sup>692</sup> Indeed, Maylea and colleagues found in their evaluation of IFAS – the advocacy service developed through Victorian Legal Aid – that by providing parents with advocates during the initial investigation phase of their involvement, and by facilitating their access to parenting and other support services, including culturally specific services, as well as legal assistance, they were able to divert several cases from proceeding to court.<sup>693</sup> That said, one of the noted limitations of the IFAS service when it was piloted, was that it ceased to provide advocacy services to parents if they subsequently became involved in court proceedings.<sup>694</sup>

Bauer and colleagues' evaluation of community advocacy interventions to support parents with intellectual disability in the UK found that investments in advocacy

offset their costs in the short (or medium) term, achieved positive returns from a public sector perspective and secured additional returns when quality of life and employment opportunities are taken into account.<sup>695</sup>

In their evaluation of the IFAS pilot, Maylea and colleagues calculated that by diverting families from court, the service reduced government expenditure by A\$65,911 per family within 12 months.<sup>696</sup> Indeed, they identified 'a return on [public] investment of A\$2.66 for every dollar invested'.<sup>697</sup> Despite the emergence of literature demonstrating this cost benefit of investment in advocacy, advocacy services with specialist knowledge in both child protection systems and how to assist parents with disability, particularly in Australia, continue to be under-resourced and consequently unable to assist many parents with disability who seek their support.

In its most recent annual report, the Intellectual Disability Rights Service noted that their non-legal advocacy service is performed by one part-time parent advocate who supports parents with intellectual disability in the South West Sydney, Macarthur, Illawarra and Shoalhaven areas. In the year 2020 to 2021, this advocate was able to assist 20 families. Just under half were First Nations parents. As the Intellectual Disability Rights Service noted, however, the numbers of parents they assisted did not reflect the overall referrals made to the advocacy service that year, which it noted 'had increased significantly'.<sup>698</sup> In its submission to the ACT legislative inquiry into child protection in 2019, the ACT Disability and Aged Care Advocacy Service (ADACAS) similarly noted that contemporary funding limitations meant that it, and other advocacy agencies within the ACT, including Advocacy for Inclusion and Carers, were unable to keep up with increasing requests for advocacy assistance.<sup>699</sup> In its words, 'the demand is much higher than any of our services are currently able to meet'.<sup>700</sup>

The literature also highlights a deficit in funding available to ensure access to culturally safe advocacy services for First Nations parents. In the context of the ACT child protection system, in 2019 the Our Booris, Our Way Steering Committee expressed their frustration at the lack of funding and



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the lack of [government] responsiveness for ... specific legal representation and advocacy services, despite stated Ministerial level support. These are specialist skills and are required to ensure that families are able to appropriately understand and participate in the process.<sup>701</sup>

Notably, to ensure cultural safety and to address longstanding concerns about the power imbalance between First Nations parents and child protection services, the *Family is Culture Review* recommended that the New South Wales Government fund a state-wide Aboriginal Child Protection Advocacy Service staffed by First Nations advocates.<sup>702</sup> It recommended that this service be informed by the advocacy work of Grandmas Against Removals New South Wales and draw on the existing advocacy model of the New South Wales Aboriginal Tenant's Service.<sup>703</sup>

## Professional training and community education and outreach

A consistent finding across jurisdictions and over time are the ableist attitudes held by those employed across professions who work with parents with disability. These are often compounded with racial and cultural prejudice when working with First Nations and culturally and linguistically diverse parents. This points to the need for greater education and training on the heterogeneous nature of disabilities, with an emphasis on the importance of a strengths-based and trauma-informed approach which seeks insight into the individual support needs of each parent.<sup>704</sup> Equal emphasis should be placed on cultural safety and support.<sup>705</sup>

A core part of this is the development of resources and practice guides on what constitutes 'good enough' parenting for parents with disability. Indeed, a major theme in the literature is the need to cultivate visible disability norms around parenting, which includes developing resources and practice guides that demonstrate how parents with disability effectively parent.<sup>706</sup> In the US context, this has been a major focus of the research and advocacy initiatives of *Through the Looking Glass*, a non-profit agency that works with families with disability,<sup>707</sup> as well as the National Research Centre for Parents with Disabilities, a research and advocacy project based at Brandeis University.<sup>708</sup> In the UK, the Working Together with Parents Network, conducted through the University of Bristol, has recently updated the Good Practice Guidance for professionals working with families with learning disabilities.<sup>709</sup> Within Australia, the not-for-profit Parenting Research Centre has established the Healthy Start initiative, which provides resources to professionals working with parents with intellectual disability.<sup>710</sup> The Research Centre for Children and Families, which operates through the University of Sydney, has also provided several resources geared towards improving professional practices and assessments with respect to parents with intellectual disability. The most recent of these is a guide, authored by Susan Collings and colleagues, for practitioners and clinicians when conducting risk and parenting capacity assessments of parents with intellectual disability involved in the New South Wales child protection system.<sup>711</sup> Notably, most Australian and UK initiatives to date appear to have focused on improving professional practice when working

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with parents with intellectual disability. Similar resources or initiatives dedicated to addressing ableism and improvising professional practice with respect to parents with other disabilities are scarce.

Authors and advocates have also called for greater training among lawyers, judges and child protection workers on evidence-based parenting assessment methods that follow ethical and professional standards of best practice, including strength-based assessments that acknowledge and are appropriate to the individual parent.<sup>712</sup> This would include training on how inappropriate measures have been used systemically to discriminate against parents with disability by effectively enabling a diagnosed disability to become the primary ground for determinations of parenting capacity and subsequently, child removal.<sup>713</sup> Likewise, risk assessment tools frequently use factors that are prevalent in First Nations communities; these tools superficially appear neutral but in practice are discriminatory. As Laura Kollinsky, Laura Simonds and Julie Nixon have argued, training with respect to the discriminatory impact of such tools might equip members of the judiciary with the knowledge and confidence to become 'more proactive' in relation to evidence presented in caseworker affidavits and by departmentally appointed 'experts'. In other words, it might develop their capacity to scrutinise the relevance and evidentiary value of their recommendations, and subsequently discern and avoid duplicating racist and ableist stigmatisation.<sup>714</sup>

The high turnover of caseworkers involved in child protection systems necessitates regular training on understanding and destigmatising disability.<sup>715</sup> It has also been argued that parents with disability should be allocated with specialist child protection caseworkers who have a depth of understanding of issues relating to their disabilities and are trained in a trauma-centred or informed framework that enables them to work with parents to design a service plan to support them.<sup>716</sup> Notably, research suggests that contemporary social work degrees, while more likely to emphasise critical and human rights paradigms, often do not include mandatory or specific coursework on working with parents with disability.<sup>717</sup>

Across the literature, the importance of trauma-informed practice has been emphasised generally for all parents engaged within child protection systems, and specifically in relation to parents with disability, First Nations parents and parents who experience domestic or family violence.<sup>718</sup> As Naomi Pfitzner and colleagues explain, 'trauma informed practice aims to be sensitive to the needs of clients with trauma histories and to support them to feel safe when they use services'.<sup>719</sup> Karen Menzies and Rebeka Grace recently published research evaluating the impact of a training program they conducted for child protection caseworkers on incorporating a trauma-informed approach when working with First Nations families.<sup>720</sup> As they noted, despite the widespread delivery of 'cultural awareness' and cultural competency' training for Australian caseworkers – which ostensibly emphasises the prevalence of intergenerational trauma within First Nation communities – most participants stated that 'they had [previously] received no prior training on trauma within Aboriginal families'.<sup>721</sup> Notably, statutory caseworkers were more likely to state this, despite many reporting high levels of education and having received greater in-house cultural awareness training.<sup>722</sup> As Menzies and Grace concluded,

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The limited understanding and lack of trauma informed practice in child protection with Aboriginal families is a skills and knowledge deficit that can and should be addressed in both entry level training, post-qualifying training, and ongoing professional development. Trauma theory and trauma-informed principles can guide the integrity of child protection work more generally, but it is fundamental knowledge for working with Aboriginal families.<sup>723</sup>

Given their observations on the deficit in trauma-informed knowledge and practice across child protection caseworkers, researchers have advocated for systemic reviews of current training modules as well as ‘annual independent case reviews to report on the progress in the implementation of [trauma-informed] ... child protection practice’.<sup>724</sup>

The literature also suggests there is a general need for ongoing training of child protection workers, lawyers and judges to encourage consistent and ongoing professional development in respecting parents with disability’s rights and responding to their diverse experiences. To this end, Sasha Albert and Robyn Powell have recommended that professional training should as a matter of course involve parents with disability so they can share their insights and professionals can directly hear and respond to their needs.<sup>725</sup> Others have emphasised that such training should include modules on effective, clear and empathetic communication.<sup>726</sup> Within Australia, the Parents with Disabilities Network has highlighted the need for greater community and professional education on parents with disability’s human rights associated with the *CRPD* and the *CRC*.<sup>727</sup>

## Future research

As we discussed in the introduction to Part I of this report, there is a looming gap in the literature on the intersectional experiences of parents with disability that accounts for ethnicity, sexual and gender identity, as well as socioeconomic status. As Sasha Albert and Robyn Powell have argued, such research – which should be developed in collaboration with parents with disability from diverse communities – is direly needed to inform the development of disability and culturally safety within child protection systems, across professional practice, institutions, service design and delivery and with respect to policy and legislation.<sup>728</sup> Others have called for greater research on the numbers of parents with disability who both become involved in child protection systems generally,<sup>729</sup> and subsequently ‘consent’ to child protection orders, without being provided with legal advice or without understanding the repercussions of doing so.<sup>730</sup>

Data with respect to prevalence and distribution of parents with disability across the child protection system – disaggregated with respect to ethnicity, geography and types of disabilities – is needed to budget, plan and provide services in accordance with needs. The absence of quality data undermines our understanding of the impact of child protection systems on parents and families with disability. This includes whether parents and families with different disabilities fare differently when subjected to child protection system involvement in their lives, and how intersections with other factors, including ethnicity and socioeconomic marginalisation, affect patterns of interaction and intervention. Child protection data systems are disproportionately

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focused on children and young people affected, with limited functional data regarding the characteristics of parents and families. The information most readily available about parents and families, beyond socioeconomic status, is often focused on the behaviours of concern or apprehensions of risk relating to the abuse and neglect of their children. This leaves advocates and policy makers dependent on incomplete data and qualitative studies, often with relatively small sample sizes, to inform system and practice reform initiatives to improve outcomes for parents with disability.

Further, the available administrative data which, though limited, often finds its way into studies given the absence of other data points, offers a pessimistic, deficit-focused view of parents and families. This aligns with pervasive structural ableism and discourses of risk with respect to the capabilities of parents with disability to care for their children outlined in this chapter. Similarly, data with respect to specific cohorts – including First Nations parents with disability and culturally and linguistically diverse parents with disability – is limited, as discussed in Chapter 2. There is annually reported data regarding the significant over-representation of First Nations families generally in child protection systems, demonstrating that this over-representation grows as measures move from notifications and substantiations through to removal and entry to OOHC. Similar data does not appear to be regularly reported for culturally and linguistically diverse families. There are also significant limitations with respect to the data reported for First Nations families, including implementation of the Aboriginal and Torres Strait Islander Child Placement Principle ('ATSICPP'), which is intended to safeguard the rights and wellbeing of First Nations children. The ATSICPP is often misunderstood and misapplied, reduced to a simple placement hierarchy that fails to understand its full breadth and intent.<sup>731</sup> Significant improvements to data systems are urgently needed, ensuring that key fields are routinely collected, including the presence and nature of disability for parents in contact with child protection systems.

The literature also suggests a pressing need to document and qualitatively investigate parents' experiences of human rights violations throughout child protection systems, as another means of proactively asserting the rights of parents with disability.<sup>732</sup> This would include an examination of whether current policies and guidelines ostensibly directed at respecting parents' rights are adhered to.<sup>733</sup> Investigations should also examine the inequitable differences in the availability of resources and supports to parents with disability across different states and across metropolitan, regional and more remote locations.<sup>734</sup> Consistent with literature with respect to child protection services for all parents, modelling should be undertaken with respect to costing early intervention and adequate and accessible social supports. Such research should also examine how this investment would be offset against savings at the more interventionist end of child protection, including OOHC, its cross-over into juvenile justice and criminal justice systems and intergenerational engagement with child protection systems.

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## Conclusion: Future directions

Parents with disability who have contact with child protection systems are simultaneously rendered invisible and discriminated against. It is difficult to estimate the full scale and scope of the system's failures. A key reason for this is that while ableist attitudes are pervasive, and result in discriminatory beliefs with respect to the capacity of parents to safely look after their children, these are often held without being overtly referred to or documented in case notes which identify parents who live with disability. This directly and indirectly increases the risk of abuse, neglect and trauma experienced by parents with disability in contact with child protection systems. Subsequently, because of their awareness of the stigma and their perception and experience of being adversely judged, parents often avoid disclosure of their disability as a form of resistance. This can result in increased risk for both parents and children, when, for example, they remain in abusive relationships or otherwise do not access needed health, social or parenting support. Further, even when they do seek help in situations of domestic or family violence, this frequently results in parents with disability being required to remain in abusive and violent relationships. This can be because of a presumption held by caseworkers and others that the abuser is needed to 'look after the parent'. It can also be because their children are placed with an abusive parent because it is presumed that they are more 'capable' of looking after the child. Many of the difficulties parents with disability experience in looking after their children are closely associated with poverty and structural discrimination and marginalisation. To address these harms, fundamental changes in law, policy and funding are necessary both with respect to child protection services and more broadly with respect to social income and other social services and supports. These changes must take into account the diversity of needs and experiences of parents with disability, including at the intersection of race, culture, language, sexuality and gender.



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# Chapter 7: Policy and practice

## Introduction

The preceding chapters critically examined Australian and international literature and research from a range of disciplinary perspectives. The literature revealed significant issues relevant to the experiences of child protection systems and practices among parents with disability. These included entrenched discrimination and ableism, flawed systems and practices of assessment and intervention, reduced access to safe, relevant and effective parenting and family supports, as well as social and legal marginalisation. These challenges were particularly difficult for First Nations families and culturally and linguistically diverse families to overcome, compounding ubiquitous challenges in child protection systems. The literature review also revealed a significant knowledge gap regarding the disproportionate intervention of child protection authorities in the families of parents with disability, their experiences throughout child protection intervention, and effective systems and practices that may protect and promote the rights and interests of parents with disability and their children. These gaps are further exposed in this current chapter. Responses to concerns highlighted in the literature are contingent upon how child protection authorities formulate legislation and policy and how these are implemented in practice.

This chapter provides an overview of child protection policy and practice in Australia and considers how these might be experienced by parents with disability who are at risk of, or in, contact with child protection systems. It includes national and state- or territory-based initiatives, strategies and reforms relevant to the experiences of parents with disability of child protection systems. Consistent with the project brief, this includes consideration of the experiences of First Nations and culturally and linguistically diverse parents with disability. Our examination of these policy settings, drawn from publicly available information, information provided by child protection authorities, and evidence and submissions made to the DRC, was oriented around the following key themes, which are reflected in the broader organisation of this chapter:

- Legislation and strategy
- Engaging with parents with disability
  - First Nations parents with disability
  - Culturally and linguistically diverse parents with disability
- Risk assessment
- Staff training
- Access to advocacy
- Family and disability support.

This chapter, together with the literature review, provides background to the subsequent fieldwork chapters, in which stakeholders provide insights into how policies and practices are experienced. The themes contribute to providing an Australia-wide overview of policy and practice.

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## National policies

We commence this chapter by providing the context of the national framework, including the National Disability Insurance Scheme (NDIS), which features in subsequent fieldwork narratives. In so doing it is of note that while the recent *National Framework for Protecting Australia's Children 2021–2031* (the '*National Framework*') provides guidance to states and territories, statutory child protection is the responsibility of each state and territory government.<sup>735</sup> The departments that are responsible for operating the child protection system within each state/territory and the legislation under which it is governed vary across states and territories, a situation that has created inconsistencies and anomalies throughout Australia.

Despite the limitations of state and territory-based provisions, the development of the *National Framework* represents an attempt for shared effort across jurisdictions including the Commonwealth to build on the previous *National Framework for Protecting Australia's Children 2009–2020*. This demonstrates that Australia-wide partnerships are possible, even though frequently subject to implementation problems. It is noteworthy that the *National Framework* was developed jointly by the Australian government and state and territory governments in consultation with First Nations representatives and the non-government sector. Among the 'working together' exhortations in the document is the area of disability. It remains to be seen, however, whether the proposed Action Plans to drive achievement of the *National Framework's* goals are adequately resourced and implemented to achieve substantive change.

The current *National Framework*, like the one preceding it, is intended to lay the foundations for national collaboration. One of the stated priority groups is 'children and young people and/or parents/carers with disability, experiencing disadvantage and who are vulnerable'. It cites 2015 data from the Australian Institute of Health and Welfare that demonstrates parents or carers with disability, particularly intellectual disability, are over-represented in child protection systems. It recognises that some parents with disability will require additional supports to prevent the over-representation of both parents and children with disability in the child protection system. Furthermore, it emphasises that the NDIS, family support services and child protection services must work together at the local level to adequately support parents with disability as equal members of our society. The extent to which this has been achieved will be examined in the fieldwork sections of the report. Although there are likely to be changes to the NDIS given the change of government, it is apparent that the current manner in which the NDIS is administered makes it difficult for parents with disability to access the supports and entitlements they need.<sup>736</sup> The *National Framework* also aims to embed the four priority reforms of the *National Agreement on Closing the Gap*, and is expected to drive action regarding Target 12, which aims to end the over-representation of Aboriginal and Torres Strait Islander children in child protection systems.

National strategies have also been drafted to promote coordination in disability service provision. *Australia's Disability Strategy 2021–2031* (the '*Strategy*') is one of these; it aims to improve the lives of people with disability and promote their participation as equal members of the society.<sup>737</sup> The Strategy purports to be based on Australia's obligations under the CRPD to protect, promote and realise the human rights of people with disability. It is intended to drive



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disability inclusion and access to specialist and mainstream services through the introduction of Targeted Action Plans ('TAPs') developed collaboratively across all jurisdictions. Like the National Framework, the impact of this relatively new strategy remains to be seen. One question yet to be answered is whether the TAPs will offer guidance to those supporting parents with disability involved with child protection systems.

The major federal program that has evolved since March 2013 is the NDIS, which came into effect through the *National Disability Insurance Scheme Act 2013* (Cth).<sup>738</sup> With the passing of this Act, the NDIS replaced previous Commonwealth, state and territory disability support systems with a national approach aimed at providing Australians under the age of 65 who live with a 'permanent' and 'significant disability' with support.<sup>739</sup> The introduction of the NDIS was hailed as a breakthrough in providing tailored services to individuals, which are delivered by a range of providers. The National Disability Insurance Agency ('NDIA') manages the funds, administers access and approves payment support packages based on individual participants' needs. Both children with disability and parents with disability involved with the child protection system are eligible for NDIS supports. That said, there is lack of clarity regarding the interaction between child protection systems and the NDIS. However, the NDIS *Operational Guidelines* do refer to assistance available to parents with disability, such as parenting programs provided by non-government organisations ('NGOs'). We note that there have been moves in some jurisdictions, following the introduction of the NDIS, to de-fund state-based provision of services targeted to support parents involved with child protection systems. Alongside this, the transfer of responsibilities for disability support to the NDIA has created complex layers of bureaucracy that can hamper access by parents with disability. There appears to be an ill-founded assumption that NDIS programs are responsive and accessible to parents involved in child protection systems. As will emerge in our fieldwork analysis, several parents with disability who applied for NDIS have been refused access to appropriate assistance. Some jurisdictions have recognised and responded to this. For example, the Victorian government is now funding specialist disability practitioners in the NGO sector in Victoria to assist parents to access the NDIS. This has potential to mitigate the high refusal rate of applications for NDIS support.

While the intent of the NDIS was broadly supported by all levels of government and community, the frustrations of people with disability about the lack of transparency, consistency and timeliness in decision-making by the NDIA resulted in an independent review of the NDIS in 2019.<sup>740</sup> The review made a number of recommendations for change.<sup>741</sup> Along with establishing the Participant Service Charter and the Participant Service Improvement Plan, the recommendations included joint planning approaches, longer plans if a participant's support needs are stable and the ability for participants to see draft plan summaries. These reforms were mooted as improving the consistency and quality of decisions. They were also heralded as providing people with disability 'true choice and control over a flexible support package to achieve their goals'.<sup>742</sup>

However, one of the most significant criticisms of the NDIS is its underlying model that relies on a service 'market'. This entrenches challenges for already marginalised groups – First Nations people with disability, culturally and linguistically diverse people with disability, rural and remote

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communities, among them. Although governments present the program as supporting ‘choice’, in reality being able to exercise choice means having options available and being able to effectively navigate the systems.

Despite the endeavours in the above national policies to develop coordinated approaches across Australian states and territory, they are largely stand-alone. Their integration into state and territory practice is not always apparent. There is often limited transparency and accountability regarding implementation and reporting. From a national perspective, there are apparent inequities and injustices. Some jurisdictions have developed robust and thoughtful approaches that go some way to identifying and supporting the needs of parents with disability involved in child protection systems. This means, however, that for parents with disability there are differences in processes and outcomes that reflect the location in which they reside. Although there is little in policy formulations about rural and remote communities, research to date indicates that distance from cities is likely to minimise access to supports. Encouragingly, there is increasing recognition that there is an over-representation of children of parents with disability, particularly intellectual disability, and First Nations children in child protection systems nationally.<sup>743</sup> There is acknowledgement that while many parents with disability provide sufficient and supportive care to their children, like all parents, some may need additional and timely support from specialist disability services to avoid contact with child protection systems.<sup>744</sup> Referring to the July 2022 report of the Australian Institute of Health and Welfare which revealed that one in five people with intellectual disability aged 15 to 44 years have children, Collings et al issue a stark reminder of inequity. They note the precariousness of families that fall between the cracks of the NDIS and mainstream support with their children likely to be removed, as international evidence exposes. The gap between rhetoric and on-the-ground practice will be explored in the subsequent sections of this report.

## Policy and practice settings of Australian states and territories: An overview

Child protection authorities are increasingly turning their attention to the impact of child protection systems and practice on parents with disability. However, the policy landscape is currently difficult to navigate and in need of greater transparency. There is also an apparent and significant implementation gap, with policy settings not necessarily consistent with practice implementation, and the experiences of children, parents, families and communities of child protection intervention. In conducting this research, we examined existing policies relevant to the experiences of parents with disability of child protection systems and practice, seeking to identify broad themes. In addition to the information garnered through our research methods outlined below, we point out that as experienced academics, practitioners and advocates in the fields of child protection and of disability – including having extensive engagement with First Nations communities – implicit to our inquiry are our own experiences and observations over several decades. We recognise that policy development is incremental and continuous. Consistent with our fieldwork, our analysis particularly considered measures and practices within New South Wales and Victoria.

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## Methods

The approach to data collection for this chapter was primarily two-fold. First, a desk-based review and content analysis explored child protection approaches. This was based on publicly available materials from online sources, with specific reference to parents with disability, including through submissions made to the DRC. Second, requests were made to child protection departments in each jurisdiction for detailed information on specific policies regarding their engagement with parents with disability and the supports available to parents. We also requested information on the practice standards and risk assessment tools used by child protection workers in their assessments of parents with disability, and the training they offered to staff on working with parents with disability. The schedule of questions is included in Appendix 2.

Written responses were received from several jurisdictions. At the request of some, clarification meetings were held via videoconference to assist them in tailoring their responses. Findings from limited interviews with child protection personnel in the jurisdictions of focus have been included in the fieldwork chapters. Despite these efforts, it is noted that not all relevant policy and organisational data may have been available to this review, affecting the conclusions arising from the analysis. However, this ‘on paper’ review nevertheless provides an important context against which to consider the experiences of key stakeholders.

Given the focus of this project, analysis of policy and practice materials was oriented towards a number of *a priori* themes. These included:

- Legislation and strategy
- Engaging with parents with disability
  - First Nations parents with disability
  - Culturally and linguistically diverse parents with disability
- Risk assessment
- Staff training
- Access to advocacy
- Family and disability supports

## Legislative and organisational framing

Legislation in each jurisdiction outlines the statutory powers vested in child protection authorities, including powers to intervene in families and remove children if considered at risk of harm. In each, a relevant government department is identified to exercise this authority. In most cases, this is a single stand-alone department focused on child protection, or a specific agency that works within a broader Departmental portfolio that often includes justice, housing or

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education. Often, stewardship of the family support system is collocated with the responsibility for statutory intervention; however, recent reforms in South Australia have separated these distinct roles. The South Australian Department for Child Protection (the 'DCP') is intended to work in partnership with 'vulnerable' families, government and non-government organisations, foster carers and the community to care for and protect 'at-risk' children and young people by addressing concerns of abuse and neglect. In addition to the DCP, the Department of Human Services<sup>745</sup> ('DHS') is expected to support families, including those who come to the attention of the child protection system in South Australia. DHS delivers strategies, programs and services including the provision of early intervention to support children's wellbeing. It also includes provision of support for people with disability, people experiencing domestic violence, general support for the safety and wellbeing of children, as well as screening services and youth justice services. Furthermore it commissions human services across the not-for-profit sector and 'invests' in the community through grants and funding.<sup>746</sup> Across jurisdictions, there continues to be ongoing review and reform of the administration of statutory child protection systems and the provision of child and family supports.<sup>747</sup>

The mandate of contemporary child protection systems has been reframed to broadly reflect modern obligations under the *Convention on the Rights of the Child*.<sup>748</sup> This includes the responsibility of states and territories to provide support to people in relation to their parenting, to promote the 'best interests' of children and subsequently to keep children safe from abuse or neglect. For example, the Department of Families, Fairness and Housing ('DFFH') is responsible for child protection and the provision of disability services in Victoria.<sup>749</sup> According to the DFFH, child protection services in Victoria aim to provide child-centred, family-focused services to protect children and young people from significant harm caused by abuse or neglect within the family. The DFFH also states that it aims to ensure that children and young people receive ongoing support to deal with the effect of abuse and neglect on their wellbeing and development.<sup>750</sup> However, as the literature review and fieldwork demonstrate, deeply entrenched values founded in institutional and legal child protection history, undermine the implementation of human rights principles in practice.

The *Children, Youth and Families Act 2005 (Vic)*<sup>751</sup> and the *Child Wellbeing and Safety Act 2005 (Vic)*<sup>752</sup> provide the legal framework for statutory child protection in Victoria. Human rights legislation has also been enacted in that state. Meeting the needs of children and making sure they are safe in the family is identified by DFFH as a 'shared responsibility' between individuals, the family, the community and the government. The Victorian Child Protection Service ('VCPS') is specifically targeted to support children and young people identified as at risk of harm, including in circumstances where it determines that families are unable or unwilling to protect them. The main functions of the VCPS are to:

- Investigate matters where it is alleged that a child is at risk of significant harm
- Refer children and families to services that assist in providing the ongoing safety and wellbeing of children

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- Make applications to the Children’s Court if they determine the child’s safety cannot be ensured within the family
  - Administer protection orders granted by the Children’s Court.<sup>753</sup>

State and territory legislation frames the ‘grounds’ for intervention. This can include provisions that explicitly assert that children should not be removed from parents on the basis of their or their parents living with disability, such as in NSW, indicating a legislative attempt to align with international human rights instruments including the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Rights of the Child*. For example, section 71 of the *Children and Young Persons (Care and Protection) Act* (NSW) outlines the grounds according to which the Children’s Court may make a care order.<sup>754</sup> This includes parental death or incapacity, abuse, ill-treatment or neglect, or if the domestic environment is or is likely to cause ‘serious developmental impairment or serious psychological harm’. Section 71(2), however, clarifies that:

The Children’s Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of: (a) a parent’s or primary care-giver’s disability, or (b) poverty.

As outlined in the literature review, there has been a broad shift nationally towards promoting legal permanency for children and young people. This includes prioritisation of family preservation or restoration efforts, and the use of third-party permanent care orders where restoration is not considered possible. Across most jurisdictions this has been accompanied by expedited timeframes within which the Courts must decide whether restoration of children to their parents is in their children’s best interests. The timeframe is generally two years.

In New South Wales, for example, child protection authorities assert an intent to simultaneously reduce the number of children and young people in OOHC and improve the timeliness and quality of services for these children and their families, including through the increased use of third-party permanent legal care orders.<sup>755</sup> While this includes preference for family preservation and restoration wherever possible (see, for example, section 10A of the *Care and Protection Act*), recent reviews have criticised the Department’s use of alternatives to removal or ‘least intrusive efforts’ for families, as well as their pursuit of restoration.<sup>756</sup> As the *Family Matters Report 2021* noted, New South Wales had one of the lowest rates of children being reunified with family.<sup>757</sup>

## Child protection reviews and reform

Across jurisdictions, there has tended to be a cycle of review and reform, with governments responding to growing criticism and crises across child protection systems and practice. This includes independent reviews, parliamentary inquiries, and Royal Commissions, which may have focused on child protection systems broadly, or on the experiences of specific cohorts. There has been a particular focus on First Nations children, families and communities given the unacceptable and growing over-representation of First Nations children in OOHC nationally.

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In response, governments have proposed a range of reforms, including legislative, policy and practice changes. However, in many cases the extent to which the recommendations arising from these reviews have been effectively implemented is unclear. Furthermore, few/none have made substantive systemic change to drive improved outcomes for children and young people and their families despite amassing recommendations to do so.

Nonetheless, in some jurisdictions these reviews have led to long-term government strategies for reform, such as the 2016 Victorian *Roadmap for Reform: Strong Families, Safe Children* (the 'Roadmap').<sup>758</sup> The *Roadmap* sets out a long-term blueprint for the child and family system. Its focus is on earlier intervention and prevention, reducing vulnerability, and supporting children to reach their 'full potential'. It intends to provide families with access to supports through a single, visible 'front door' that is based in local communities and is said to be free of stigma. Furthermore, the 'front door' is targeted to 'vulnerable' families, and as an avenue where they can get help before they are in crisis. 'Vulnerable' families are defined as people who experience difficulty in accessing services including people with disability, people from culturally and linguistically diverse backgrounds, those living in remote locations and First Nations communities.

Similarly, the Northern Territory government developed the *Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023* plan ('the Plan') to implement reforms declared to better support children, young people and families experiencing 'vulnerability'.<sup>759</sup> The Plan was developed in response to the findings and recommendations of the 2017 *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*.<sup>760</sup> The reforms envisaged in the Plan are consistent with a public health approach – one that addresses the social determinants of health and wellbeing and concurrently addresses the specific needs of individuals and families at different points in time. It emphasises targets of primary prevention, early and targeted support, crisis intervention, and transition and restoration.<sup>761</sup> It is assumed these can only be achieved through collaboration between all key stakeholders, including the Australian Government, territory and local governments, the community sector and the community. The Plan acknowledges the Royal Commission's recognition of the glaring over-representation of First Nations children and young people in OOHC. It also recognises the Royal Commission's emphasis on the importance of working with First Nations people, communities and organisations in designing and delivering services so that they engage from a position of empowerment and self-determination in relation to their children and families.<sup>762</sup>

Notably, the Plan states that 'disability' is one of the 'risk factors' for children's improved health and wellbeing and successful learning – an area requiring intensive and therapeutic care. This suggests and reinforces a deficit approach. What is not evident, however, is how this applies to parents with disability. With the emphasis on public health, it is difficult to assess whether structural and systemic barriers for parents are intended to play an equal role in policy and practice.

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Likewise, after the 2013 *Child Protection Commission of Inquiry* published its report in Queensland,<sup>763</sup> several legislative reforms were made. The report, *Taking Responsibility: A Roadmap for Queensland Child Protection*, raised specific concerns in relation to the spike in both child protection intakes and the numbers of First Nations children in OOHC. As in other jurisdictional inquiries, the professionalism and specialisation of child protection workers was seen as requiring attention. It also noted a pressing need to reduce caseloads. The report recommended greater attention to structural obstacles faced by parents. It recommended improving access to universal services available to them in the spheres of health, housing and family violence prevention. Accommodating children's voices in child protection proceedings was also a key recommendation, as was designing a new family support system for children and families.

The success of these inquiries in achieving change has been queried. For example, in New South Wales, following the *Independent Review of OOHC* (otherwise known as the 'Tune Review'),<sup>764</sup> reforms were introduced in 2016 under the moniker *Their Futures Matter* ('TFM'). TFM was proposed to deliver a 'whole-of-government' approach to improve outcomes for 'vulnerable' children and families. The reforms were also pitched as in line with an 'investment approach'.<sup>765</sup> Programs subsequently established include the Permanency Support Program with child and family centred support packages and funding models. The government also recommissioned Intensive Therapeutic Care and re-contracted OOHC services, including First Nations foster care services.<sup>766</sup> As a subsequent review by the NSW Audit Office noted, however,

an evidence-based, whole-of-government early intervention approach for vulnerable children and families in NSW – the key objective of the reform – was not established

It also characterised the reform as 'without a strategy or plan in place to achieve its intent'. The review concluded that 'the need, intent and vision for Their Futures Matter remains relevant and urgent, as issues identified in the Tune Review remain pertinent'.<sup>767</sup>

Some of these reviews and reforms have focused specifically on the disturbing and disproportionate impact of child protection systems on First Nations children, families and communities, and the poorer outcomes achieved for First Nations children. Two apparently positive examples of those, characterised by their partnership approach with First Nations communities and organisations, are in Queensland and Victoria. In 2017, the Queensland government, working in partnership with Family Matters Queensland, developed *Our Way – A Generational Strategy for Aboriginal and Torres Strait Islander Children and Families 2017-2037* ('Our Way').<sup>768</sup> Its overall aim is to reduce the increasing disparity in life and wellbeing outcomes for First Nations children. Similar to the later National Framework, *Our Way* embeds the Family Matters Building Blocks to drive structural transformation of child protection systems and practice. It argues that too many First Nations children live in unsafe situations that lead to their removal from their families, communities and cultures at more than eight times the rate of non-Indigenous children.<sup>769</sup> Another stated aim is to increase self-determination through empowering First Nations families to exercise opportunities to live well according to their values and beliefs and the United Nations *Convention on the Rights of the Child* (the 'CRC').

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Similarly, a tripartite agreement between First Nations communities, the state government and community service organisations in Victoria has the aim of reducing the over-representation of First Nations families within the child protection system.<sup>770</sup> An important feature of the *Wungurilwil Gaggapduir Aboriginal Children and Families Agreement* is to transfer guardianship for some First Nations children from the Minister for Child Protection and Family Services to designated First Nations children's organisations. A trial is also underway to transfer DFFH's role in child protective services to First Nations children's organisations including the Victorian Aboriginal Child Care Agency ('VACCA'), enabling First Nations organisations to exercise greater authority in decision-making. On 23 June 2022, media reports suggested that Victoria may be the first state to enshrine in law the requirement for decision-makers to consider the impacts of colonisation and intergenerational trauma on First Nations families.<sup>771</sup> These reports indicate that the proposed bill is supported by the VACCA.<sup>772</sup>

## Disability policy

In addition to introducing child protection strategies and reforms, many jurisdictions have also recently instituted cross-government strategies to better meet the needs of people with disability, including parents with disability. In many ways, these strategies reflect the national *Australia Disability Strategy* discussed above. As one example, the New South Wales *Disability Inclusion Plan 2021-2025* (the 'DIP'), professes to advance a whole-of-government strategy to improve the lives of people with disability.<sup>773</sup> Following the passing of the *NSW Disability Inclusion Act 2014*, NSW implemented a full roll-out of the NDIS across the state in 2018.<sup>774</sup> The stated intention was to allow NDIS participants access to services by placing their individual needs at the centre of the support they receive.<sup>775</sup> However, as discussed in other sections of the report, such policy statements appear to have not achieved universal benefits.

The *DIP* sets a framework for continued consultation and partnership with people with disability, key agencies and the broader community. It is implemented through Disability Inclusion Action Plans ('DIAPs') delivered by local councils and New South Wales government clusters to 'ensure that all policies and programs place inclusion and access for people with disability at the heart of the planning process'.<sup>776</sup> Examination of the plans of local governments is beyond the scope of this project, as their remit does not generally include child protection.

In South Australia, with the passing of the *Disability Inclusion Act 2018 (SA)*,<sup>777</sup> the South Australia government developed its first State Disability Inclusion Plan, *Inclusive SA 2019-2023*.<sup>778</sup> Its apparent intent was to support implementation of the *CRPD* and complement the NDIS. Through DIAPs, state government agencies and local councils are tasked to work towards prioritising social inclusion for people with disability. By doing so the stated aim is to increase the likelihood their rights will be promoted, upheld and protected, and that people living with disability will be supported to advocate for their own rights. To this end, the *DCP Disability Inclusion Action Plan 2020-2024* (the 'DCP DIAP')<sup>779</sup> outlines steps to be taken to improve outcomes for children and young people, carers and the workforce with disability, as well as to improve accessibility of the services DCP funds and delivers. The Disability and Development



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Services Program (the 'Program'), established in July 2018, was designed to strengthen DCP's focus on the needs of children and young people with disability in OOHC. It does not reference parents with disability. Overall, the resources available on the Department's website provide information focused on children with disability rather than parents with disability involved with the child protection system.

The Community and Disability Services branch of Communities Tasmania, together with community sector partners, provides support services for people with disability. According to the *Disability Strategic Plan 2019-2021*,<sup>780</sup> the Tasmanian Government has stated its commitment to working with people with disability, their families, carers, disability providers and the wider community. The government began rolling out the full NDIS scheme on 1 July 2019.

Western Australia introduced the *State Disability Strategy 2020-2030* (the 'SDS').<sup>781</sup> It was introduced in response to the DRC's findings of the need for protection of the fundamental rights of people with disability. It states its aims as the inclusion of people with disability in the broader community 'to make WA resilient, happier and economically and socially stronger'.<sup>782</sup> The SDS calls for the establishment of an office of disability, although it is unclear whether this has been introduced as yet. It also outlines a 'whole-of-community' commitment by the government, which will be implemented through two-year Action Plans.<sup>783</sup> While the SDS does not specifically mention the needs of parents with disability in the child protection system, it emphasises the need for change in community attitudes towards disability and recognises the need for holistic support from government, businesses and community groups working in partnership with people with disability to achieve the vision.

## Data collection

A key theme emerging across jurisdictions is that current record keeping and data collection systems and practice do not accurately collect and report on the experiences of parents with disability. Existing approaches are inadequate to establish system-wide data regarding child protection engagement with, and outcomes for, parents with disability and their children. Each jurisdiction has its own system for data collection and contributes to national data through the Child Protection National Minimum Data Set.<sup>784</sup> However, it appears generally that recording engagement with parents with disability is not a required field across data systems. Similarly, disability data sets appear to focus little on parenting roles and intersections with child protection systems. As discussed in the literature review and fieldwork chapters, there are challenges in practice to identifying parents with disability during child protection engagements. Where parents with disability are identified by caseworkers, they may record this information within field notes or narrative text within child protection case record systems. This can make extraction and use of this data challenging, as well as time prohibitive and resource consuming.

The Victorian Department advised the DRC that information is collected on parents with disability in contact with the child protection system in that state, but this is not required by legislation or policy.<sup>785</sup> The stated purposes of collecting the information on parents with disability are to identify appropriate services and supports for the child and their parents,

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to assess the impact on parental capacity to provide care and protection for the child, and to inform case planning.

Territory Families collects and records information on the 'disability status' and 'disability indicators' of parents in contact with the child protection system.<sup>786</sup> It does so to assist in the assessment of a child's safety and risk of harm and to ascertain the services that are required to meet the child and the family's needs in planning case management responses. This information may include the type of disability, health implications and any perceived impact on the parent's ability to safely care for their child. While there is no agreed definition of disability or agreed upon 'indicators', the Community Care Information System ('CCIS') allows for the selection of disability 'types' from a list of values. They include 'intellectual/learning'; 'not stated /inadequately described'; 'physically diverse'; 'psychiatric'; or 'sensory/speech'.<sup>787</sup> 'Disability indicators' of parents are recorded in narrative text in the case notes associated with their child and stored on CCIS.<sup>788</sup>

In Tasmania, CSS uses a single electronic database – the Child Protection Information System ('CPIS') – to manage workflows.<sup>789</sup> The DRC has heard that the CPIS

does not routinely collect or record information regarding a parent's disability status in a way that would enable reliable statistical reporting of all parents in contact with child protection services.<sup>790</sup>

It does, however, contain data fields that may be filled out in relation to identifying parents with disability. Such information may also be entered in case notes saved within the CPIS, at the discretion of the staff concerned. There is no specific guideline on how this information is to be collected. Furthermore, as the DRC heard, this generally does not occur unless it is deemed relevant to the safety, welfare or wellbeing of a child who has been notified to the CSS.<sup>791</sup>

## Accountability

Increasingly, jurisdictions are appointing independent statutory officers to provide ongoing oversight of child protection systems. In many circumstances, and reflecting previous observations about the focus on children and young people, these roles have generally been established to oversee the rights of children and young people. While their specific powers vary significantly across jurisdictions, they may include independent inquiry powers, the power to intervene in specific matters, or the power to make recommendations to child protection authorities to take particular steps to safeguard the rights of children and young people. This includes examining the operation of child protection systems, and how well they promote and uphold the rights of children. This includes the right to remain in the care of, or connected to, their family, community and culture. However, in some jurisdictions, like New South Wales, the focus of this oversight is somewhat limited to regulation of OOHC. It does not extend to the exercise of statutory authority by child protection agencies.

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An increasing number of jurisdictions are complementing these broad roles with First Nations officers, either in their own capacity or as ‘deputy’ roles to other statutory officers. These jurisdictions include Victoria, Queensland, South Australia, and New South Wales, with the ACT also announcing a commitment to establish such a role in 2022. A similar national role has also been established within the Australian Human Rights Commission. First Nations organisations, led by SNAICC, have advocated the establishment of a national First Nations Children’s Commissioner, with independent powers to provide oversight for First Nations children, including children impacted by child protection systems. There has been some limited support in federal parliament to establish a similar role, but its specific responsibilities and powers have not yet been mooted.

## Engaging with parents with disability

Across the policy and practice information made available by different child protection authorities, some provide specific or more detailed guidance to caseworkers regarding engaging with parents with disability. This guidance is generally intended to complement broad, flexibly practice mandates and frameworks that otherwise guide child protection caseworker’s engagement with children and families.

For example, the Western Australia Department of Communities Casework Practice Manual (‘CPM’) provides departmental frameworks, action plans, practice tools, process maps and additional information.<sup>792</sup> It states its aims as providing consistent practical instruction and theoretical context to enable staff to undertake their roles from initial engagement, to supporting children in OOHC. The CPM notes Australian and international research that indicates that parents with intellectual disability are subjected to ‘unusually high rates’ of statutory child protection intervention. It also notes that they are often disadvantaged and struggle due to political, social and institutional factors. Furthermore, it recognises that children with parents with disability are also over-represented in OOHC, at rates suggesting this is unlikely to be related to parenting capacity alone.<sup>793</sup> This framing provides context to practitioners regarding the risk of discrimination and prejudice against parents with disability in child protection proceedings.

The CPM notes that, when working with a family where one or more persons has a disability, caseworkers should speak with extended members of the family. They are instructed to gather information about their relationships and living circumstances, their skills and strengths in order to help meet the needs of the person with disability to engage with the system. It also suggests that consideration should be given to the fact that the child may have had to take on a caring role for their parent with disability. In such instances, while the impact on the child has to be considered, it should not be assumed as being harmful to the child.<sup>794</sup>

The New South Wales Casework Practice Advice on working with parents with disability, submitted to public hearing 8 of the DRC, informs caseworkers that there is ‘no evidence’ of a link between parental physical disability and child abuse or neglect.<sup>795</sup> It also cautions

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that people with intellectual disability are consistently perceived as less capable parents and that mothers often face negative reactions to their pregnancy from family, community and professionals. Caseworkers are advised that their approach should always be underpinned by the Practice Standards,<sup>796</sup> and that they should take extra time when making decisions and to reflect on their own biases.<sup>797</sup> The Practice Standards outline the capabilities that underpin casework practices, the 'practical and analytical skills, thinking, behaviours and interactions that practitioners are expected to use'.<sup>798</sup> With 11 standards organised by five capabilities and a commitment of practice leadership, the standards are intended to provide detailed guidance for practitioners.

In the ACT, the Child and Youth Protection Service (CYPS) *Supporting Good Practice Guide on Working with Families with Disability* ('the Guide') provides comprehensive information on disability and the impacts that it can have on children, parents and families.<sup>799</sup> It also suggests core considerations when working with families with disability, including from a diversity of cultures and a practice approach to case management when a parent or child with disability is involved. It notes the importance of reasonable adjustments to ensure people with disability can meaningfully participate in the different processes, including with respect to communication and how professionals might engage and build trusting relationships with people with disability. Finally, it emphasises the role of advocates and disability support services and scaffolds the legal frameworks and the rights of people with disability.

ACT practice resources highlight that high levels of socioeconomic disadvantage, including unemployment, can result in higher risks of parents or carers with disability, especially intellectual disability, being involved in child protection systems. It also notes contributing factors to parents with disability being over-represented such as unconscious bias, discrimination, prejudice and a lack of support services.<sup>800</sup> It points out that critical reflection and supervision are crucial for practitioners when working with parents with disability, emphasising the need to be 'objective' and to consider the impact and influence of societal and individual prejudices in decision-making and practice. Furthermore, misconceptions regarding parental capacity, the power imbalance faced by parents when working with child protection systems, and difficulties in communication are areas deemed to be of particular importance in decision-making. Further tips and practice guidance on interviewing parents with disability are reportedly available on the ACT's internal Knowledge Portal, but this information is not publicly available.

The Queensland Disability Practice Kit<sup>801</sup> (the 'Kit') of the Child Safety Practice Manual provides statistics and information on facts and myths about disability, types of disability, applicable legislation and human rights, and tips, tools and resources on supports available to help child protection workers identify and work with children and parents with disability. It provides considerable practice guidance, including on how to:

- identify a parent with disability,
- understand the impact of the disability on their life and parenting ability,
- develop practical ideas and strategies for listening to and talking with a parent with disability,

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- identify supports for a parent with disability,
  - support a child who has a parent with disability.<sup>802</sup>

How well this practice guidance is reflected in practice is unclear. However, existing research raises significant questions, as discussed in the literature review.

Practice guidelines also encourage engagement with parents and families in making decisions about the safety and wellbeing of their children. New South Wales guidance, for example, reminds caseworkers that it is vital for all services supporting a family to share information and be involved in decision-making.<sup>803</sup> In a range of jurisdictions, family-inclusive processes are advised. Indicative of this approach, South Australia practice resources note that family-led decision-making is used to bring together parents, extended family members, the child/young person (where developmentally appropriate), child protection caseworkers and other service providers.<sup>804</sup> Family-led decision-making processes recognise the pivotal role of families in the care of their children and seek to empower families to lead decision-making to achieve safety for children and young people. There is limited public data regarding the implementation and impact of these processes, and the extent to which they achieve the stated objectives. However, concerns have been raised about the effectiveness of family group conferencing approaches, particularly in the context of child protection systems. For example, research exploring the impact of family group conferencing reports mixed results. One recent study identified four conditions related to success, including the presence of a family network, the appropriate combination of formal (professional) and informal supports, active avoidance of paternalism and humiliation, and understanding client reluctance to utilise their informal supports.<sup>805</sup> Similarly, AbSec, citing research by Ney, Stoltz and Maloney, notes that:

Family group conferencing, done well, remains a powerful tool for achieving real and sustainable change, engaging families and their broader networks in solutions to keep children safe within their family. However, research has demonstrated that where tensions between participatory practice and legalistic child welfare practice discourses emerge, children and families are adversely affected. In particular, the voices of families are subjugated by the more powerful statutory child protection system, undermining the social justice intent of participatory approaches. In order to guard against this abuse of power and genuinely empower families, such approaches must be distinct from processes seeking the transfer of parental responsibility, allowing families a safe space to discuss issues and work collaboratively towards family-led solutions.<sup>806</sup>

## First Nations parents with disability

Specific policy advice may also be provided regarding engaging First Nations parents, in particular aligned to the well-established Aboriginal and Torres Strait Islander Child Placement Principle. As noted in the literature review, the Aboriginal and Torres Strait Islander Child Placement Principle comprises five inter-related elements, *prevention*, *partnership*, *placement*, *participation* and *connection*. However, compliance with this principle remains inconsistent.<sup>807</sup>

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There is limited examination of the intersection of practice guidance for First Nations parents with disability. However, this is consistent with the broader practice approach, supporting individual practice through broad practice principles, standards and frameworks that are intended to promote practice that is responsive to cultural difference, including for First Nations peoples. Caseworkers are expected to consider these standards or principles holistically, considering the various elements and their intersections. This may be supplemented by additional resources and training related to the history of policies of violence and assimilation, including interference in First Nations families, and the enduring impacts for individuals and communities.

Such considerations extend to reflections regarding the imposition of contemporary systems. For example, statutory oversight authorities have noted that contemporary systems are constituted by non-First Nations service frameworks and predominantly non-First Nations practice models.<sup>808</sup> This increases the likelihood of adverse outcomes for all First Nations parents and their children when they come to the attention of the child protection services, as they are not cognisant or supportive of First Nations cultural values, traditions and perspectives.<sup>809</sup> Additionally, underlying factors such as dispossession, racism and socioeconomic injustices, and associated risk-related issues such as alcohol dependence and misuse, have resulted in over-representation of First Nations people in child protection and OOHC.<sup>810</sup> The South Australian Commissioner for Aboriginal Children and Young People similarly noted that the experiences of First Nations parents with disability in contact with child protection systems is informed by the parents' experiences of entrenched issues that disproportionately impact First Nations people. These issues 'include racism, intergenerational trauma, poverty and the exacerbation of socioeconomic disadvantage in key life domains such as housing, education, employment and health'.<sup>811</sup> The Commissioner also noted that disability (whether identified or not), in addition to underlying experiences of poverty and failure to access services, is used to justify removal of First Nations children by the DCP.<sup>812</sup>

Many practice resources acknowledge these historic and systemic challenges. South Australia's DCP Practice Principles<sup>813</sup> acknowledge that the over-representation of First Nations children and young people within the child protection system results from a history of injustice embedded within laws, policies and social, institutional and professional practices. They recognise that culturally safe and responsive practice is essential in reducing this over-representation as is the need to recognise the strengths of First Nations approaches to parenting, family-led decision-making, and the importance of ensuring First Nations children and young people in OOHC maintain connections to culture.<sup>814</sup> Similar information is included within Queensland practice guidance, acknowledging the impact of historical and past practices. It also notes that the forced removal of children from First Nations families continues to have a severe impact on families, communities and cultural continuity. The guidance states that caseworkers should endeavour to protect the rights of present and future generations by reducing the over-representation of First Nations children and young people.<sup>815</sup> It also notes that First Nations people have different understandings of disability, with many traditional languages not having a word to describe it making it difficult for them to self-identify or identify their family member as having a disability and less likely to receive a funded disability service.<sup>816</sup> To engage with

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First Nations parents with disability and their families, the guidance notes the importance of respectful communication and culturally appropriate services.

In Western Australia, the *Aboriginal Services and Practice Framework 2016-2018* acknowledges the significant and ongoing over-representation of First Nations children and families in the child protection system as one of the most pressing human rights issues they face.<sup>817</sup> According to the practice guidance, one in four First Nations people are identified as living with a disability. They face additional barriers and more extreme disadvantage directly related to their disability due to transgenerational trauma and longstanding disadvantage related to colonialism. Due to geographical distance, lack of support services and culturally unsafe responses in healthcare settings, First Nations people are also less likely to engage in services such as the NDIS.<sup>818</sup> When English is a second language, they may find the process of goal setting and disability planning difficult to manage without additional culturally safe support services.

Practice guidance in Western Australia also advises consultation with a First Nations practice leader or other relevant senior worker when considering the needs of First Nations families with a disability to identify what additional supports they may need to engage in culturally important activities. Where available, Aboriginal community-controlled organisations ('ACCOs') provide services, and where these are not available caseworkers are advised to meet with the service providers and the family to ask how they can help in creating culturally safe spaces for families. Caseworkers are also encouraged to seek assistance from and work in partnership with ACCOs when engaging with First Nations families and young people.

However, as noted previously, there remain concerns about the realisation of these guidelines in practice, and the experience of First Nations families (including those with disability) of these systems. A recent review by Nyamal psychologist Dr Tracy Westerman revealed widespread racism within the Western Australian child protection department, including significant deficits in cultural safety and cultural competence, as well as gaps in staff training and service provision. Two years after the report, the author noted concerns about the department's response to the recommendations, no doubt in part reflected in the initial secrecy around the report and its findings.<sup>819</sup>

Similarly, the *NSW Practice Framework Standards* offers guidance to child protection and OOHc practitioners. It includes some specific reference to practice with children and parents with disability, and First Nations and culturally and linguistically diverse children and families. This includes expectations regarding implementation of human rights instruments, effective communication with children and families. It also includes consideration of 'culture, language needs and any disability', holistic, tailored assessment including family strengths, effective engagement with families and collaborating with services for impact.<sup>820</sup> However, the recent *Family is Culture Review* raised significant concerns, supported by file review evidence, about the poor experience of many First Nations families, noting that 'contemporary caseworker practice reinforces the memory of the authoritarian state that dominated and subjugated Aboriginal lives during the protection era' and the 'historical continuity' with these past approaches<sup>821</sup>.

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These practice standards may be better characterised as the aspirational goals of practice leaders. They are not a description of current practice. The practice standards may also operate to offer a façade of principled practice which, in the absence of effective scrutiny, promote unwarranted confidence in casework practice. They could, in effect, obfuscate poor practice and invalidate the experiences of children, parents and families who are exposed to practices that do not meet or are inconsistent with those standards. The fieldwork chapters reveal these issues in further detail.

Some jurisdictions have developed comprehensive policy frameworks to improve systems and practice with First Nations families. In one jurisdiction, New South Wales, a distinct 'Aboriginal Case Management Policy' had been developed. The *Aboriginal Case Management Policy* ('ACMP')<sup>822</sup> states an intent of supporting First Nations families and communities to overcome key barriers and obstacles including poverty, intergenerational trauma, disadvantage and marginalisation. This policy is said to uphold the rights of First Nations communities to determine the systems and supports that impact on their lives, and to make decisions about the safety, welfare and wellbeing of their children, families and communities. It says it does so by translating the Aboriginal and Torres Strait Islander Child Placement Principle,<sup>823</sup> including the principles of prevention, partnership, placement, participation and connection, into everyday practice. The development of this approach has been somewhat unusual, with a First Nations peak body, AbSec, commissioned to develop the policy. AbSec has also been commissioned to support aspects of its implementation. However, the DCJ-led program of implementation has been criticised as inadequate. It has also been criticised as publicly presenting the ACMP as a core component of current practice despite there being limited evidence of its application in practice more than two years after it was formally endorsed by DCJ.<sup>824</sup>

## Culturally and linguistically diverse parents with disability

As noted above, jurisdictions may rely on broadly applicable practice standards or principles to guide practice with culturally and linguistically diverse parents, including those with disability. In general, this guidance reminds practitioners to be considerate of or responsive to the diverse cultural needs of children and families. However, consistent with evidence regarding First Nations families, there remain significant questions about how this is realised in practice.

Practice resources for caseworkers in Queensland acknowledge the state's diverse population, with almost two in five people being either born overseas or having one parent born overseas according to the 2016 census.<sup>825</sup> It is less clear regarding its conceptualisation of cultural diversity and cultural identity as intergenerational. Culturally and linguistically diverse people are identified as less likely to access disability support services because of barriers such as lower English-language literacy, lack of awareness of available supports and eligibility or a preference among some cultures to offer care to their family and community members as opposed to relying on formal support systems. It also notes that stigma can be a contributing factor to culturally and linguistically diverse families being less likely to access disability supports.



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This is exacerbated when service providers lack ‘cultural competence’ and when disability assessment processes are not conducted in a way that is culturally sensitive with diagnoses from overseas not being clear to Australian services or providers.<sup>826</sup> Caseworkers are encouraged to explore available culturally and linguistically diverse resources online or in the community and consider contacting such services to help understand cultural perceptions of disability, caring and raising children.<sup>827</sup>

In the ACT, consistent with considerations for First Nations communities, practice resources recommend that caseworkers consider how disability is perceived and addressed in different cultures.<sup>828</sup> It also suggests that it is important to ensure that staff have accurate information about parents’ communication needs and the reasonable adjustments needed when working with a specific family. It urges caseworkers to not make any assumptions on what culture a family is from, what religion they may practice or how a disability may impact them, although it is unclear about the guidance and support offered to practitioners.

A December 2013 (revised edition) of the Culturally and Linguistically Diverse Services Framework<sup>829</sup> submitted to the DRC’s public hearing 8 acknowledges that WA’s culturally and linguistically diverse communities may apply diverse cultural practices in child rearing and parenting. It does, however, note the over-riding factor that turns on child protection engagement with them remains the safety and wellbeing of the child. It therefore stresses that children from culturally and linguistically diverse families should be afforded the same level of safety as others in case practice decision-making and safety planning. However, it is unclear how respect for diverse parenting practices is considered and understood in safety assessments. The findings from the review led by Dr Westerman noted above should give significant pause as to its implementation in practice. Further, this framework does not specifically address culturally and linguistically diverse parents with disability and as in other jurisdictions privileges the circumstances of children without reference to the inter-relationship of child and parental needs and rights.

According to the WA framework, culturally and linguistically diverse people with disability may face additional barriers and more extreme disadvantage directly related to their disability. Disability is identified as culturally constructed, and is regarded differently in different cultural contexts. It notes that in some cultural groups, disability is associated with shame, fear and supernatural events. The latter may lead to parents ignoring or declining medical intervention or withholding treatment. In others, a person with disability is valued and they or their carers are provided with additional supports.<sup>830</sup> The CPM notes that the primary reasons for culturally and linguistically diverse clients’ contact with the Department are domestic violence, other child protection concerns, family support and financial assistance.<sup>831</sup> It suggests that special (unspecified) considerations need to be taken into account when dealing with the family and parents of children in contact with the SCPU.<sup>832</sup> It also encourages working with extended family members, key community members and other agencies working with the family in order to best meet the needs of culturally and linguistically diverse families.

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## Risk assessment processes

Across jurisdictions, a range of risk assessment processes and tools have been developed or introduced, including the US-based Structured Decision Making tools, Signs of Safety, and other state-based approaches. While these approaches, and the tools that support them, vary across jurisdictions, there are some relatively consistent themes emerging across them.

In general, the stated aim across jurisdictions is largely to guide an ongoing, holistic process oriented towards understanding the child's lived experience and presence of relevant risks or dangers as is the case in New South Wales.<sup>833</sup> As with practice frameworks, not all of these approaches provide specific guidance regarding parents with disability. Where guidance is present, caseworkers are generally prompted to consider the implications of any identified disability on parenting. This includes whether the circumstances arising from the parent's experience of disability may contribute to the presence of danger for children or inhibit necessary supervision and care. Some tools and practice guides provide contextual information focused on existing evidence and the likely biases that may contribute to discrimination against parents with disability. However, the implications for implementation and practice are unclear.

The actuarially-based Structured Decision Making (SDM) tools used in some jurisdictions (such as New South Wales, Queensland and South Australia) seek to guide practitioners through critical decision-making points.<sup>834</sup> However, correspondence from the Queensland Department indicates that they intend to cease using SDM<sup>835</sup> In NSW SDM is purported to be an evidence and research-based system that identifies key points in the life of a person. The use of structured assessments is said to improve the consistency and validity of each decision. The model consists of several assessments that aim to help agencies reduce subsequent harm to children and to guide decision-making regarding child protection intervention.<sup>836</sup> The stated aim is to ensure that staff make consistent, accurate and timely decisions that result in the delivery of high quality child protection services to children and families. It also emphasises that it is important for caseworkers to recognise whether human rights are affected by a decision or action and subsequently only limit rights proportionately and reasonably as appropriate.

In Queensland until its cessation, the SDM Policy and Procedures Manual provided child safety staff with definitions, policy and procedures and instructions for screening, prioritising responses, assessing safety, evaluating risk for abuse or neglect, assessing the parents' and child's strengths and needs, and assessing the prospects of family reunification. The Practice Guide on Assessing harm and risk of harm<sup>837</sup> outlines factors to be considered when assessing harm and risk of harm as part of a child protection assessment. The assessment begins at intake and continues until the intervention is finalised. Guidance in South Australia notes that assessment is a continuous process that takes on different foci depending on the phase of the intervention.<sup>838</sup> In Queensland a parent's physical or intellectual disability is mentioned as one of the 'complicating factors', among others, in assessing parental attitudes and characteristics to harm.<sup>839</sup>

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The *Family is Culture Review* noted a range of concerns regarding safety and risk assessment practice, including the use of SDM tools that may contribute to the over-representation of First Nations children in OOHC.<sup>840</sup> It is understood that DCJ is currently reviewing the SDM tools in light of the *Family is Culture Review*. To date, however, it appears that the DCJ is only working with the SDM owners in its review. It is critical that First Nations communities and stakeholders are likewise included, as recommended by the *Family is Culture Review*.<sup>841</sup>

The 'Signs of Safety' model represents a more practice focused risk assessment tool, guiding caseworkers in how to effectively engage with families to understand the safety and risk concerns and make better decisions about actions. Developed through a collaborative learning approach with child protection caseworkers in Western Australia over the last three decades, Signs of Safety seeks to mobilise partnerships between professionals and families to assess risks, strengths and safety, and respond effectively to promote safety.<sup>842</sup> Information provided to the DRC notes that the Signs of Safety approach is focused on achieving a shared understanding across all stakeholders, recognising assessment in child protection practice as a process of mapping and understanding a family's circumstances in support of quality practice with families. According to these materials, Signs of Safety seeks to guard against paternalistic casework practice that disempowers families, grounded in three related principles. These are constructive relationships, critical thinking and a 'stance of inquiry', and elevating practitioners and skilful practice. The approach includes a range of tools and practice guidance for caseworkers to engage with families and understand their experience, and support them to make informed decisions about risk and safety. While this approach may not include specific reference to 'disability', the flexible and participatory nature of the approach will arguably enable tailoring to the needs of parents with disability, in the hands of an adequately trained and experienced caseworker.<sup>843</sup> Importantly, assessment and safety planning is seen as a continuous process, rather than a 'product', emphasising the dynamic nature of working with families and their networks to create safety for children.<sup>844</sup>

However, risk assessment tools and approaches are in a state of change, consistent with child protection systems themselves. In addition to the reviews of SDM noted above, other jurisdictions are developing new approaches. For example, Victoria has recently commenced implementation of a 'guided professional model of risk assessment' known as the SAFER Children Risk Assessment Framework ('SAFER').<sup>845</sup> Policies, procedures and advice have been updated on the CPM to reflect a 'new' way of working and aligning with changes made to the Crisis Referral Information System ('CRIS'). CRIS is an online directory containing information on a large number of Victorian community-based support services and other organisations. Consistent with their statutory responsibilities, child protection authorities screen, assess and manage family violence risk using the Multi-Agency Risk Assessment and Management ('MARAM') framework. MARAM in child protection practice is now aligned with the SAFER children framework.<sup>846</sup> An assessment tool for use when working with parental intellectual disability is available in the CPM.<sup>847</sup> Although this refers to structural barriers, the emphasis is on pragmatics and outcomes, relating to parental training and parental capacity.

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## Staff training

The child protection workforce is diverse, including social workers and those holding other formal qualifications and professional experiences. In this context, jurisdictions tend to develop and implement their own processes for staff training, including induction and ongoing professional development. For example, in New South Wales, all child protection practitioners undertake the Caseworker Development Program ('CDP') with sessions designed to support caseworkers to build their capabilities in working with people with disability.<sup>848</sup> Learning is shared through content that directly explores disability, practice scenarios, activities and workshop discussions.<sup>849</sup> The Office of the Senior Practitioner ('OSP') is responsible for leading, supporting, reviewing and improving the practice of frontline staff in their work with 'vulnerable' children and families. This is undertaken through training, research, reviews, publications, and mentoring.<sup>850</sup> The OSP develops and updates resources on the internal Casework Practice intranet site for practitioners working with parents with disability.<sup>851</sup> As this is confined to intra-agency communication, access by the researchers was not possible.

Similarly, in the NT, Territory Families offer a compulsory block induction training program to new frontline child protection staff. The training is aimed at developing knowledge and skills and practical strategies necessary for undertaking contemporary child protection practice in the NT context.<sup>852</sup> In Queensland, courses are offered to frontline departmental staff that are either directly or partly relevant to their work in assisting parents with disability in contact with the child protection system. Courses include Working with Intellectual Disability, Foundation Studies in Culture, Working with Children and Young People with a Disability, NDIS and You – the Basics Explored, The NDIS and You – Expanding Your Knowledge, and NDIS in Practice – Practical Applications. In addition, the Department also makes available via iLearn, a Public Service Commission eLearning course titled [CYJMA] Disability Awareness – Online.<sup>853</sup>

According to the statement of Lois Boswell to DRC public hearing 8, most service delivery staff in South Australia are qualified in social work, with a small number of staff holding allied health qualifications. Culturally responsive and trauma responsive training is said to be provided to all staff to ensure 'core competencies' for all staff. They also note that First Nations service delivery staff hold a range of different qualifications complemented by lived experience.<sup>854</sup> Providing evidence to the DRC, Commissioner Lawrie in South Australia noted they had

regularly heard from Aboriginal children and young people and their families ... about the value of Aboriginality and the importance of having Aboriginal caseworkers and dedicated Aboriginal staff.

The commissioner also noted that First Nations communities have urged internal changes to elevate the scope and role of First Nations practice leadership across the organisation.<sup>855</sup>

In Western Australia, the Department of Communities commenced delivering a 12-month disability training pilot program for child protection staff in 2020 that included workshops and one-on-one mentoring. Contracted to a disability sector organisation, the training targeted

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Team Leaders and Senior Practice Leaders. While the current focus is working with children with disability negotiations are taking place to expand the scope to include parents with disability involved in the child protection system. The Acting Director General of the Department advises that although current training approaches are primarily directed as supporting children with disability, the principles of the training have broader reach, including supporting parents with disability in contact with the child protection system.<sup>856</sup>

## Access to advocacy

Support for parents' access to advocacy varies across jurisdictions, ranging from passive support for the presence of family-selected 'support people', to active, funded advocacy services, including specialised disability advocacy services. However, advocates, as outlined in the literature review, are generally seen as vital to ensuring impartiality in decision-making for 'vulnerable' children and young people and having their voices incorporated to meet their interests and needs.<sup>857</sup> Access to advocates and support is also recognised as important in enhancing the ability of parents and families to meet the safety and wellbeing needs of their children. However, there is a lack of independent advocacy available to children and young people and their families involved with Australian child protection systems, in particular specialist disability advocacy services.

In the ACT, practice resources note the role of advocates in reducing stress for parents and helping child protection authorities to convey important information so that parents 'can engage meaningfully and with dignity'.<sup>858</sup> Four advocacy services are identified as operating within the ACT, two of which specialise in providing advocacy for people with disability – ADACAS (the ACT Disability Aged Carer Advocacy Service) and Advocacy for Inclusion.<sup>859</sup> In addition to a formal advocacy service, a friend or a family member can also act as a support person when working with CYPS. Advocates and support people can provide support and advocacy during meetings with CYPS, provide knowledge of services and assist with accessing them, access NDIS programs and resources, and communicate with CYPS about any reasonable adjustments or communication needs.<sup>860</sup> However the experiences of families and communities of these advocacy supports and services warrants independent evaluation, which is beyond the scope of this current review.

As discussed in the literature review, in Victoria the Independent Family Advocacy and Support (IFAS) service provides non-legal advocacy and support to parents and primary carers who are involved in the child protection system. However, as far as we are aware, it only assists parents prior to the commencement of court proceedings.<sup>861</sup> The service is focused on a range of key cohorts, particularly parents and carers with an intellectual disability, First Nations families, and culturally and linguistically diverse families. The advocates are geared to enabling people to understand their rights and responsibilities in the system and identify what is needed and how to get it. The Centre for Excellence in Child and Family Welfare also provides links to parent and carer support groups and disability advocacy groups to assist parents to find support.<sup>862</sup> Similarly, in New South Wales the Intellectual Disability Rights Service operates the Ability

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Rights Centre – a community legal service specialised in providing legal services for people living with cognitive disabilities, as well as a specialist Parent’s Program that provides legal and non-legal advocacy for parents affected by the child protection system.<sup>863</sup> According to evidence provided to the DRC, this program is a unique disability advocacy service focused on supporting parents with intellectual disability with child protection matters. There remain however significant concerns about the severely limited access to specialised child protection advocacy supports for parents with disability, with existing negligible, insecure funding unable to meet service demand.<sup>864</sup> This builds on existing evidence noting limited access to advocacy for parents and families facing child protection intervention.<sup>865</sup>

## Family and disability supports

Jurisdictions generally note the importance of prevention through the provision of family supports. This has been noted in many of the reform directions outlined above, and is consistent with an understanding the rights of children and parents, considering children in the context of their important familial and cultural relationships. For example, in Victoria the DFFH asserts that parents have the biggest influence in a child’s wellbeing and development and provides the following programs to build their skills and confidence that the department believes to be proven to make a difference for children and families:

- Regional Parenting Services<sup>866</sup> – for parents with children from birth to 18 years
- Strengthening Parent Support Program<sup>867</sup> – for parents with children from birth to 18 years with a disability or developmental delay
- Parentline<sup>868</sup> – for parents with children from birth to 18 years
- Positive Parenting Telephone Service<sup>869</sup> – for fathers, grandparents caring for grandchildren and parents living in regional Victoria with children from 2 to 10 years. Delivered by Gateway Health with funding from DFFH.
- Supported Playgroups<sup>870</sup> – for parents with children from birth until school age
- Family support<sup>871</sup> – for families experiencing difficulties that impact on parenting and family life or if additional support is required.

Further, in Victoria the Office of the Public Advocate provides comprehensive information on their website for people with disability to access both formal and informal supports under the NDIS.<sup>872</sup> This is intended to assist parents with disability to make their own decisions and put these into effect.<sup>873</sup> However, while such information provides an important baseline, its role in supporting access and agency for parents with disability, including those at greatest risk of child protection involvement or otherwise requiring assistance in providing safe and responsive care to their children, remains unclear.

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As an example of the most common approach taken across jurisdictions, in South Australia, early intervention services are targeted at families with ‘complex needs’ and are inclusive of families with disability. Further, the Parenting SA website<sup>874</sup> provides Parent Easy Guides on a wide range of parenting topics including some especially designed for First Nations and culturally and linguistically diverse families. However, guides on disability are only available for parents with children who experience developmental delay<sup>875</sup> or children with disability who have brothers and sisters.<sup>876</sup>

Similarly, in Queensland caseworkers are advised to support a parent with suspected or confirmed disability, including by supporting them to access the NDIS in a timely manner if they are not already receiving NDIS support. This may be either directly, through the support of another agency or through informal supports, especially if their disability is seen as impacting on their parenting capacity.<sup>877</sup> Parents with disability can access or be referred to support services provided by Family and Child Connect<sup>878</sup> (FaCC), Aboriginal and Torres Strait Islander Family Wellbeing Services<sup>879</sup> (FWS) and Intensive Family Support<sup>880</sup> (IFS) funded by the Queensland child protection authority. These services are purported to take a family-focused, child-centred approach to respond to ‘vulnerable’ families with children and young people (unborn to 18) who are at risk of involvement in the statutory child protection system. They deliver parenting support through tailored interventions to build the skills and capacity of parents and carers to safely nurture and protect their children and help address issues that negatively impact on the ability of parents to attend to the needs of their children.

IFS is delivered over an extended period until case plan goals are met, such as measurable improvements in the wellbeing of children and their families.<sup>881</sup> However, expertise in disability varies across providers, as do their links with the disability system, which the Queensland authorities are apparently seeking to enhance with the NDIS.<sup>882</sup>

Despite these efforts, investment in family supports remains limited. The Report on Government Services 2022 reveals that approximately 17 per cent of child protection investment nationally was directed to family supports or intensive family supports in 2020/21, compared to 19.3 per cent in 2011/12 – the earliest period noted in the 2022 report.<sup>883</sup> It is not known what proportion of this investment is itself targeted to the needs of parents with disability and their family, including First Nations or culturally and linguistically diverse families. The proportion of investment reported in the Report on Government Services data varies markedly across jurisdictions, from less than 10 per cent of child protection expenditure in Western Australia (5.8%) and South Australia (9.7%) to approximately 25 per cent of investment in Victoria (27.3%), Northern Territory (26.4%) and Tasmania (25.2%). These comparisons should be considered cautiously across jurisdictions given differences in jurisdictional circumstances, as well as likely differences in how investment is categorised. However, what they reveal is that within jurisdictions, the proportion of resources invested in supporting families, including parents with disability, remains low relative to expenditure in removal and OOHC, despite the poor outcomes achieved by those responses. Across jurisdictions, this remains a key area for reform, with greater investment in prevention, early intervention, family preservation and restoration

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supports urgently needed, including specialised services for parents with disability and their families. This investment to address social determinants of child protection involvement, and respond in timely, purposeful and ultimately more effective ways is essential to transforming systems and achieving improved trajectories and outcomes for children and families.

## Discussion

There is a complex and shifting policy frame relevant to the experiences of parents with disability in child protection systems. This includes national and state- or territory-based policies and strategies, as well as often disparate child protection and disability policy frameworks. Coordination across jurisdictions and domains remains a challenge, despite the efforts of national approaches such as the *National Framework for Protecting Australia's Children*. While such frameworks include disability as a broad, cross-cutting consideration, it is unclear how effectively this translates to adequate focus on the distinct needs of parents and children with disability in reforms to systems and practice. It remains to be seen to what extent this is reflected through actions and realised in practice, or if the specific needs of parents with disability continue to be marginalised within such reform efforts.

Child protection systems in particular are characterised by an ongoing cycle of review and reform. The reforms include legislative change and variations to the machinery for the exercise of statutory authority to intervene in the lives of children and families. Legislative frameworks rarely reflect the various international human rights obligations of states, including those under the *CRPD*. Many have a stated intent to provide meaningful supports to families generally or provide for a prevention or public health based approach, however there remain significant gaps in investment and implementation, emphasising again the distinction between rhetoric and action. Despite most jurisdictions advocating a 'whole-of-government' approach, the consideration of the distinct needs of people with disability within portfolios, including child protection, is often underplayed and the various plans and policies are frequently the subject of separate provisions.

We note that the examples provided in this report represent just a small sample of reviews undertaken over a lengthy period. The longevity of the concerns provides further evidence of ongoing systemic issues confronting governments and communities and the lack of redress as our research revealed in our report, specifically in the literature review. It raises significant questions regarding reform efforts, and the extent to which they grapple with the structural and systemic factors identified in reviews, rather than more superficial elements. Questions persist about the courage and completeness of reform efforts, and whether recommendations are implemented in full and aligned to their original intent. In many respects, public transparency and accountability of these reforms remain weak.

Whether jurisdictions show responsiveness to past policy failures, or minimise or ignore the phenomenon in policy deliberations, without effective independent oversight reforms can become mired in confusion and an inability to gauge efficacy. It is likely this constantly shifting



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landscape also creates significant challenges for caseworkers and families in understanding child protection policies and practice, and caseworkers' responsibilities in seeking to achieve improved outcomes. Many of the themes highlighted in the reviews agree with our present-day analysis throughout the report, including the disjuncture between policy and practice, over-representation of First Nations children, insufficient attention to prevention and family support, the need for early intervention, structural barriers and addressing workforce issues. The absence of attention to parents with disability is stark. In this context of numerous reviews of child protection systems, and countless series of reforms, child protection systems are still seen by reputable commentators as fundamentally 'broken'.<sup>884</sup>

Increasingly, jurisdictions are establishing independent statutory oversight of child protection systems and practice, with some including a specific focus on First Nations children. The powers and responsibilities of these roles vary. At their best they provide a robust, independent and empowered rights-based oversight body – that is, an oversight body that is able to consider how child protection systems exercise their authority and uphold the rights of children, including their right to be supported to remain safely with their family wherever possible. Such roles may also support greater transparency and accountability of reform efforts, interrupting the cycle of reviews that have not been successful in achieving necessary structural and systemic change. This change includes broader improvements that enhance the experiences of parents with disability and their children. It should also include a specific focus on parents with disability in order to address existing biases and discriminatory practices.

The absence of reliable, system-wide data makes it difficult to assess the extent to which parents with disability are involved in child protection systems. However, the evidence that does exist indicates that parents with disability and their families are more likely to face child protection intervention, including the forced removal of their children. The data gaps extend to outcomes-focused measures that provide transparency regarding how child protection systems promote and uphold the rights and wellbeing of children. This includes how complex measures are coordinated and triangulated to understand the lived experiences and implications for children and families subject to child protection intervention, including risk of harm. There appears to be renewed focus on developing more effective and reliable data processes and measures, driven in part by the attention of the DRC as well as relevant national strategies. However, the fulfilment of this intent is yet to be demonstrated.

Significant improvements to data systems are urgently needed, ensuring that key fields are routinely collected, including the presence and nature of disability for parents in contact with child protection systems. This is essential to the development of robust data systems to promote transparency and accountability of child protection systems, the NDIS and other related systems in supporting parents with disability. It is also important to drive system and practice improvements. The perspective of people with disability is central to the development of just systems that intervene in their lives. It is essential that the development of data systems is conducted in partnership genuine partnership with people with disability and their representative organisations. We also suggest that reform efforts consider the following points.

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First, the collection and use of data should be explicitly framed as independent of risk assessment. Instead, the data should provide opportunity for the holistic appreciation of family circumstances at the time of notification and child protection involvement. This includes the presence of strengths and opportunities relevant to parenting, including access to informal familial and community networks of support as well as appropriate child and family services. In other words, the collection, use and interpretation of such data should accord with a broader, strengths-based focus on child and family functioning and wellbeing.

Second, the data should be collected according to clear and consistent definitions. There should be systems and practice guidance to promote appropriate engagement with families and the accurate collection and recording of data. Again, these definitions should be framed in partnership with people with disability and their representative organisations.

Third, and consistent with the above, the data should be understood holistically. It should include where possible interactions with other service systems so as to help provide an integrated service experience for parents with disability and their families.

Fourth, data should be appropriately disaggregated to enable transparency and its effective use in guiding policy development and service design and delivery. This disaggregation should include adequate detail for regional or place-based service planning, as well as tailored responses to distinct cohorts including First Nations and culturally and linguistically diverse families.

Finally, data regarding First Nations parents with disability and their families should be collected and governed according to established principles of Indigenous Data Sovereignty and Indigenous Data Governance. These principles, associated with the recognition and expression of First Nations rights to self-determination and self-governance, emphasise the importance of positioning the collection and governance of data about First Nations people within First Nations governance processes. Doing so aligns data collection and use, including system, policy and service design, according to First Nations perspectives, aspirations and priorities. It therefore intervenes against the perpetuation of settler-led approaches to knowing and intervening in First Nations families. Such principles are consistent with those within the National Agreement on Closing the Gap, and likely require clear formal agreements with settler governments as well as investment in First Nations data systems and infrastructure to realise these principles in practice. This could be done as part of the broader development of data infrastructure and systems by and for First Nations, with data related to First Nations people with disability being led by First Nations disability organisations.

Policy and practice frameworks guide casework practice with diverse populations, including parents with disability, as well as culturally diverse and First Nations families. While this contributes to broad, flexible and principle-based approaches to practice, it relies heavily upon the expertise, skills and capacity of child protection caseworkers, and the systems that support them. However, significant questions remain regarding the effectiveness of existing policy and practice frameworks as well as training approaches in challenging persistent ableist attitudes

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and assumptions that contribute to discriminatory outcomes for parents with disability. Turning this around would mean recognising that parents with disability, like parents without disability, have strengths and possess capacity to learn new skills.<sup>885</sup> It also means recognising that the broader community, including child protection systems, have responsibilities to support all parents in undertaking their parenting role.<sup>886</sup> Most important is the inclusion of parents with disability at the negotiating table so that their experiences are at the centre of decision making at all levels. Their voices are paramount to devising revised approaches to child protection that are formulated from grass-roots advocacy and activism.

Similarly, while there are various approaches to risk assessment practice, supported by a range of tools, there is relatively consistent reliance on the skills and judgement of caseworkers to apply those tools effectively. More 'objective' actuarial tools aim to provide greater consistency of guidance to practitioners in decision-making. They may, however, fail to recognise the complexity and nuance of people's lives and reproduce intersectional biases. In turn they may reduce structural and systemic concerns to an individualised focus that aligns with a medical model of disability. Similarly, the hyper individualised concept of 'risk' that has increased in neoliberal climates has harmful consequences for many. It is also likely that the tools and other mechanisms in place are not readily understood by parents, including parents with disability, although in some cases accessible information for parents does exist as discussed above. Importation of approaches from overseas can also result in practices that are devoid of local context. Whether or not service providers adequately convey the meaning of risk to people with whom they work is unclear. It is likely dependent on such factors as experience, time allocated for assessments and recommendations/decisions and heavy caseloads. Further, policies and practice guidelines and associated practice tools and approaches change frequently in the light of reviews, new national directives, changes in leadership and other factors. Although this creates potential for positive change it can also result in irregularities and confusion that make it particularly difficult for practitioners, advocates and most importantly, parents with disability who must navigate the disjointed and disparate child protection system.

Practice guidance also encourages practice that is considerate of cultural difference, further relying on caseworker expertise and supervision to ensure safe practice with First Nations, and culturally and linguistically diverse families. This includes working with differences in understanding fundamental concepts of family and disability. Most jurisdictions have procedures in place, sometimes formal and sometimes tacit, to connect with First Nations communities, often through ACCOs, both state-wide (including service provision and advocacy) and nationally (such as our partner advocacy organisation, SNAICC). There is perhaps an artificial blurring of what is commonly known as 'case advocacy', rather than 'cause advocacy'. The extent to which parents, particularly those with disability, are centred in these relationships is not fully established. What we do know is that despite the stated intent of policies and practices, over-representation of First Nations children in child protection systems and OOHC continues. The landmark findings of the 1997 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families,<sup>887</sup> as well as the cycles of subsequent child welfare reviews in each jurisdiction, noted in this chapter, have not successfully spurred governments to take adequate action to transform systems and practice. Recent reviews

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continue to identify endemic racism and inconsistent and oppressive systems and practices.<sup>888</sup> All contribute to the ongoing and growing rate of intervention by child protection authorities in the lives of First Nations children, families and communities. Policy failures highlighted in this chapter are reinforced in our fieldwork chapter. Several participants spoke of the difficulty to dislodge existing paradigms, despite the strength of the First Nations advocacy movement. Further, it remains concerning that many government efforts remain focused on achieving 'cultural competency' within such systems. While addressing the ongoing harm inherent in culturally unsafe systems and practice, the prioritisation of establishing the 'competency' of settler-colonial systems seems likely to perpetuate systems that remain structurally unsafe for First Nations people and communities. The imposition of settler-colonial systems of intervention in First Nations families and communities is inherently violent, undermining their security, integrity and survival. While cultural competency may contribute to minimising the harm so inflicted by such systems, achieving 'safety' for Aboriginal and Torres Strait Islander communities seems dependent on the realisation of self-determination.

Child protection policies and practices for culturally and linguistically diverse families remains patchy. When migrants and refugees become entangled within formal systems, although there may be 'tools' in place to be culturally sensitive, the degree of training available to practitioners or the extent to which practitioners from culturally and linguistically diverse backgrounds are employed and tasked with imparting their own knowledge and experience is unclear.

The training of caseworkers is clearly an important element in the application of flexible, principle-based practice frameworks and assessment tools. It is critical that caseworkers receive adequate training to work with parents with disability.<sup>889</sup> There are some attempts at imparting knowledge about working with parents with disability to frontline workers, but these are variable. Reviewing the impact of these efforts is beyond the scope of this research. Social workers in Australia are perhaps the largest child protection workforce, but there is also significant variability, including among the First Nations workforce where community connections and experience may also be highly valued.

Comprehensive training may promote human rights and social justice, which are enshrined in national and international statements by peak social work associations. Additionally, they have obligations towards critically reflective practice and to challenge injustices. Social work educators are generally aware of the disjuncture of what they teach and the reality of practice. When graduates enter practice they are expected to comply with organisational/government dictates and to privilege service delivery compliance over advocacy for systemic and organisational change. The extent to which these factors affect social workers and other child protection caseworkers in practice is under-researched, and much of the evidence is anecdotal and illustrated by high staff turnover. Although a number of jurisdictions appear to take seriously the importance to frontline staff of further training, there is limited transparency regarding the translation of training to practice.

Our examination of policies and practices, building on the literature review, highlights the neglect in most jurisdictions of the importance of advocates and peer supports, particularly their

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role in contributing to transforming systems and practice from the experience of those subject to those policies, rather than from those who administer them. The literature review emphasises the importance of wrap-around supports, advocacy and peer supports, and the inconsistent and generally inadequate funding existing services receive. Findings from our interviews also highlight limitations on advocacy that restrict attempts at system change and individual support, including limited interaction between child protection authorities and advocacy groups.

The literature review suggests that advocacy supports are not readily available to parents, despite knowledge of the benefits of advocacy. Information from departments is somewhat patchy, and, in some jurisdictions, advocacy appears valued and in others less so. The literature review presented examples of attempts at advocacy that are thwarted. Interviews with external advocacy groups in two states highlight prospects and difficulties, and interviews with ‘insiders’, those working in formal organisations, particularly non-government service providers, assist in gauging the extent of organisational advocacy. This form of advocacy can produce tensions between funded service delivery expectations and the push for change. It is also noteworthy that some insiders, particularly in state government departments, are not permitted to speak out publicly about poor practices. This minimises the importance of advocacy as a means of promoting accountability and transparency in the public interest. Research participants included advocates and supportive service providers, and their views are captured in subsequent chapters.

Access to specialised family supports is also critical. However, evidence suggests that prevention, early intervention and restoration supports are under-resourced nationally, attracting just 17 per cent of child protection investment.<sup>890</sup> The importance of this support has been recognised in policies across state and territory jurisdictions and nationally through the *National Framework*. Yet, this has not been matched by a significant shift in the proportion of investment directed to family supports globally. There is scant information on support directly related to parents with disability. While some jurisdictions appear more attentive to their needs and rights, it seems that family supports specifically directed to parents with disability, or First Nations families, remain under-resourced despite the identified over-representation of both cohorts. With the advent of the NDIS, some services that were available have been transferred. The NDIS is seen as a major service support in some jurisdictions but there have also been concerns, also raised in the literature and fieldwork, as to the type of support that is funded, and the extent to which parents with disability can access sufficient and timely assistance to prevent escalation of child protection involvement. The complexities associated with accessing the NDIS suggest that overhaul is needed. This will be further discussed in our fieldwork findings.

Within neoliberal climates, the decline of the welfare state has not boded well for public funding of community services that appropriately respond to and recognise the needs of parents with disability. Additionally, neoliberal and marketisation paradigms that are encapsulated in community attitudes of stigma and in media representations may be influencers of policy. These interact to stereotype parents with disability and minimise recognition of agency, adaptability and resourcefulness. There is frequently a focus on deficits and what are described as ‘vulnerabilities’. As noted in our research design and reflected in the literature review, a human rights approach is one that takes into account both structural factors that deny people

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with disability their dignity as well as the incorporation of human rights discourses within practice. This interaction between structural and systemic imperatives and day-to-day support for parents with disability is one that requires care in implementation, not just acknowledgement in documentation.

Overall, limited attention is given to the needs (and particularly the human rights) of parents with disability in their interactions with child protection systems, or to addressing the systemic barriers that they face. In the absence of robust guidance, training and practice support, as well as limited access to tailored family supports, parents with disability and their children face significant discrimination throughout their involvement with child protection systems. Standardised approaches are generally non-inclusive. They provide at most cursory attention to parents with disability who remain in the shadowlands of policy deliberations but are disproportionately subject to statutory intervention. This is not to say that individual practitioners do not pay attention in their day-to-day decision-making to the rights of parents with disability, as participants in this research demonstrated.

## Conclusion

This chapter provided an overview of policies and practices in each jurisdiction, demonstrating the limitations on the interface between parents with disability and child protection systems. Our analysis at the national level included the NDIS, pointing to the difficulties of the Australian federal system where child protection remains the responsibility of state and territory jurisdictions. Reflecting the time limits of this project, we substantially relied on publicly available information, sometimes supplemented by information provided by statutory authorities. We also did not have the opportunity review case materials to examine issues of implementation. As such, this 'on paper' review could be said to outline the aspirations for child protection systems and practice. However, this exploration of the policy and practice context provides an important point of comparison with the research presented in the literature review and in subsequent sections which explore the lived experiences of stakeholders including parents, service providers, advocates and caseworkers, providing evidence with respect to the limited extent to which these aspirations are realised. A number of reviews across jurisdictions, discussed in the literature review, have raised concerns about compliance with policy and practice guidance, as well as the implementation of recommendations and reforms. There are additional concerns that this aspirational façade may function to obscure ongoing harmful practices and negate attention to structural hurdles such as entrenched poverty or social marginalisation that contribute to child protection involvement and intervention.

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# Part II: Findings from the fieldwork

## Introduction to Part II

A key focus of this project was to explore the experiences of parents with disability across the spectrum of engagement with child protection systems. Part II of the report explores these experiences from the multiple perspectives of fieldwork participants. Participants included parents, child protection practitioners, advocates, clinicians, and lawyers. Their experiences contrast with the policy and practice aspirations presented by child protection departments on their websites outlined in Chapter 7. Chapters 8 and 9 address general child protection system issues and experiences. Chapters 10 and 11 address parent's experiences with the legal system.

The scale and timeframe for the project – July 2021 to September 2022 – limited the scope of the fieldwork, including the jurisdictions (NSW and Victoria) which could be covered. The jurisdictions were selected based on the locations and experience of the research team. Forty-three participants were interviewed from 26 organisations. Most interviews were conducted individually to ensure greater confidentiality with respect to the sensitive information participants might choose to disclose, and to encourage a depth of narrative. However, participants were invited to choose whether they participated individually or with others. Subsequently, two interviews included two participants and two focus groups were conducted with multiple participants.

To maintain participants' confidentiality, in accordance with the project ethics requirements, neither organisations nor participants are identified by name. Instead, participants are cited through generic attributions that reflect their experience, such as 'parent', 'advocate', 'lawyer' and by the number of the interview session that they participated in. There were 28 interviews and two focus groups. In the attribution of participants, sessions 27 and 28 are labelled as a focus groups to avoid confusion with respect to multiple participants being attributed to these sessions. To provide an additional level of protection for parents they are not identified by session.

Constructivist grounded theory was adopted as the methodology to analyse the fieldwork interviews because it suits the intersectional and critical standpoint of the research. Constructionist grounded theory supports contextualising participants' contributions historically and socially and enables active engagement between researchers and participants. For a full description of the fieldwork methodology, including ethics approvals, recruitment of participants, interview processes, data analysis and limitations with the field research please see our discussion of the methodology in Chapter 1.

Chapter 8 introduces participants' perspectives on the structure of child protection systems and then presents findings with respect to challenges with the identification and intake of parents with disability in child protection systems. These include a failure to identify or collect data with respect to parents with disability. Experiences with risk assessment processes reflect and reinforce those identified in the literature review, including structural biases in risk assessment tools and a lack of adequate training or awareness with respect to communicating with parents or assessing functional parenting. This is reinforced through biased presumptions about the abilities of parents with disability, in particular parents with intellectual disability.

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Poor child protection workers communication exacerbates the difficulty that parents with disability experience navigating child protection systems. This underlines the importance of independent advocates to redress power imbalances between departments and parents. Advocates can assist parents in understanding and engaging with child protection processes while also assisting caseworkers to better understand and engage with parents with disability.

Chapter 9 presents participants' experiences of service provision, including challenges experienced by parents with disability who are from First Nations and or culturally and linguistically diverse communities. Participants present a picture of fragmented and inadequate child protection service systems that fail to provide adequate early intervention and support. There are few services that are inclusive or specialised to support parents with disability. Participants report biased attitudes across systems, particularly with respect to parents' capacities to learn and change, resulting in some parents not being offered referrals to the limited support services available. The artificial presumption that parents' interests and needs are in opposition to those of children is described as particularly marked for parents with disability by parents, advocates, lawyers and a number of clinicians and caseworkers. In addition to being marginalised prior to removal, parents with disability also often receive little support following removal, making fulfilment of requirements to attain restoration unlikely. Participants provide examples of good practice and opportunities to improve systems.

Chapter 10 addresses participants' observations of how child protection legal systems fail to respect and protect parents' rights to informed participation. Discriminatory conflation of parents with disability, risk and parenting incapacity often lead to departmental failures to provide parents with appropriate explanations of child protection concerns and processes. Parents will often engage in such processes without being made aware of the legal repercussions or their rights to receive legal advice. Indeed, parents usually only receive legal advice once court proceedings have been instigated to remove children from their care. That is, only after they have engaged in departmental processes that are then used as evidence to substantiate the department's case. Lawyers will often subsequently advise parents to concede to child protection concerns and their children's removal from them due to insufficient time to compile alternative evidence. All participant groups stressed the need for greater resourcing and training for lawyers to effectively represent parents with disability, and the important role of advocates in supporting parents' rights to informed participation throughout their involvement with the child protection system.

Chapter 11 presents participants' experiences of and perspectives on parents' involvement in Children's Court proceedings, and the legal support offered to parents in the aftermath. The chapter begins with consideration of the disadvantages parents with disability experience both with respect to having their perspectives heard in affidavits and in taking the stand to give evidence in court. Parents, advocates, lawyers and clinicians describe how parents regularly have their experiences and perspectives supplanted by others within court proceedings, particularly court appointed and department assessors of risk. Parents, lawyers and advocates also paint a bleak picture of how the legal system supports parents in the aftermath of court proceedings – there is little oversight of court orders or accessible avenues for appeal.



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The discussion with respect to Part II is presented at the end of Chapter 11. It brings together key findings across the fieldwork to provide a comprehensive picture of the experiences of parents with disability of child protection systems and practice.



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# Chapter 8: Child protection systems principles, intake and risk assessment

## Introduction

Parents, lawyers, Children’s Court clinicians, caseworkers, advocates and service providers shared their experiences of child protection systems and practice intended to support parents with disability and their children across the child protection continuum. Participants outlined a system that in principle recognises the need for comprehensive services that are accessible, responsive, flexible and tailored to the needs of families, including families with disability, but that in practice fails to deliver on this intent. This chapter addresses child protection system design and principles, including risk assessment and intake processes. Chapter 9 addresses casework, services and support and better practice. The discussion with respect to both chapters is at the end of Chapter 9.

This chapter first outlines how Department Practice Experts frame the aims and design principles of child protection systems and practice, and how these are intended to apply to parents with disability and their families. Second, participants’ experiences of how these systems and practices assess risk and engage with parents with disability and their families are presented. Participants discussed how the child protection system responded to parents who experience multiple and varied impairments including cognitive impairment, physical impairment, mental ill-health and responses to trauma.

Participants informed of fundamental failings to identify parents with disability or to collect associated data. This results in a lack of appropriate supports and service provision. It also impacts caseworkers’ perceptions of and responses to parents. Participants related how child protection systems evaluate ‘good enough’ parenting, including risk assessment processes that often discriminate against parents with disability by underestimating their capacity to parent if offered appropriate education and support. Ableist systems and practice impact parents with disability’s capacity to engage effectively in safety planning or participate in programs which participants reported are misattributed as an inability to learn or moralistically as a ‘poor attitude’, and therefore as contributing to risk. This is compounded by class and cultural differences also being misattributed as risk.

This tension between departmental aspirations and the experiences of parents with disability is outlined in the following chapters, building from the analysis of policy and practice frameworks. This includes commentary by Department Practice Experts regarding those policy and practice frameworks (Chapter 8 Section 1), as well as participants’ experiences of service provision from multiple perspectives, including parents, service providers, Department practice experts, advocates, legal practitioners and Children’s Court clinicians (Chapter 8 Section 2, Chapters 9–11).

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## Section 1 – The child protection and disability framework

The child protection system aspires to provide a holistic service that actively assesses parental functioning, the apparent risks and strengths present within families, and responds to keep children safe. This includes risk assessment, safety planning and other processes to identify family needs and orient action to meeting them. It also includes the mobilisation of resources to provide effective, tailored supports to parents and families.

Participants described practice models and frameworks that were expected to be broad enough to respond effectively to the needs of all families without requiring specific adjustments for parents with disability. The approach appeared to be one of using existing models and relying on caseworker knowledge of and practice skills in working with parents with disability, supplemented by casework training that may include specific content and guidance in some organisations.

What should happen is that our standards and our framework should shape our practice. There's principles around relationship-based practice and partnerships and even language and what language we use to describe parents or families, and how that inform our thinking, that partnership work. I think that that's what we should be seeing in practice. That's certainly how our caseworkers are trained to work with families. In terms of specifically working with parents with disability, again, for that I think those standards really apply.

The way that we would expect people [to] work with parents with disability is the way that we'd expect them to be able to work with all parents, aside from understanding anything that they may need to consider when they're doing their partnership work. But, like I said, that's the way that we would want them to understand anyway.

– Department Practice Expert 12

Further, it was suggested that a specific mandate that focused on parents with disability might be counter-productive, compounding negative social assumptions:

There's no policy specifically for working with parents with disability. And one might argue that ... there might be more danger in doing that because we don't want to create or contribute to any assumptions that disability equals risk or danger for children. That's something that we would need to be careful about if that was to ever be considered in the future. But I do believe that our framework guides our caseworkers to work with parents with disability in the way they need to.

And there probably are barriers in the system that would certainly, I think, support that a little bit more as well as more capability for our staff. I've said before we don't include very, very specific targeted information about working with parents with disability in a 'this is a module' in our Caseworker Development Programme. But that's not to say that that's not something

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that we could benefit from in terms of training down the track. It's about the priority of that and the availability of funding and ... time and all those kind of things ... And I would strongly be advocating for training to be considered and available to caseworkers, no matter their expertise in the agency, whether they're new or not.

– Department Practice Expert 12

Despite this concern about stigmatising parents with disability, a Department practice participant outlined how child protection caseworkers are obliged to consider whether a parent's disability may impact on their ability to parent:

When caseworkers first visit a family for a safety assessment, one of the things they have to consider is whether the parent has a disability or their functioning may impact on their ability to parent a child. We have a very specific definition of that, and it has to meet a certain threshold for us to mark that as a danger ... 'The parent's current emotional, psychological or cognitive functioning or physical condition, disability, seriously impairs their ability to supervise, protect or care for the child or the unborn child upon birth.' That's the definition. If that's met, that would result in a danger being identified for the child.

– Department Practice Expert 12

The risk assessment process may include prompts for child protection caseworkers to consider if a disability may be impacting on parenting function, with any 'dangers' identified needing to be addressed during the planning phase.

If that danger is scored in the safety assessment, then it needs to be addressed. If the child is considered to be safe with plan, then we would need to address that specific danger in a safety plan. If the child is determined to be unsafe, then, obviously, the child would come into care. But 'safe with plan', we would need to address it. So that would be the immediate things that can happen to create safety for the child while we complete the risk assessment. It would be included in the safety plan.

And then when the risk assessment is happening ... Like I said, there's no specific definition around the parent's disability in the risk assessment. It is more about considering the ability of the parent to care for the child. It is a little bit different because it's not identified as a danger. But, ideally, through risk assessment, if it's identified that there are factors contributing to a parent's ability, then that would be addressed through a family action plan, which is the process that's developed between the family and [the child protection authority].

It's supposed to be agreed. It's held by the family. It's owned by them, and it's something that they contribute to but is really about how we can support them to keep their child at home.

– Department Practice Expert 12

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These processes require clear and consistent communication, so that families understand the concerns that child protection authorities have for their children, how they might be addressed, and what parents and families should expect from their caseworker.

The danger should be identified in that safety plan, so it should be very much about, this is what we're worried about, and the plan is, this is who, what, and when something will happen to address that.

And then part of that is, this is what we know safety will look like, so this is what change will come about as a result of this action. And it's the same, really, for the family action plan, the same kind of principle. Our worries are identified through action. There's also a range of other tools, but these are the tools we expect our caseworkers to use when they're talking with families. Whether that happens consistently or not, I think, is a question, but that's the expectation.

The other thing that I think we're not doing as well, but we're working on something around this, is working on some information to give to parents around what they should expect from us when we work with them, particularly for Aboriginal families. We're doing some work with Legal Aid around how we can make sure that parents know.

It's part of our mandates, actually, that when we go to visit an Aboriginal family, particularly, we certainly provide the information about Legal Aid and the Aboriginal Legal Service and let them know and encourage them to seek support from them. But also we're working on a pamphlet to give to families where it says, this is what you can expect from your caseworker. Those are aligned with our 11 standards, and they're written in plain English and, really, written to be accessible to all families.

We're also thinking about other ways we can be more consistent in the way we communicate about our general role, as well as what we're communicating about our worries and what needs to change in order for that child to stay safely at home.

– Department Practice Expert 12

While these processes are expected to enable effective and responsive assessment and case planning tailored to the specific needs of parents and families, some practitioners believed there are specific challenges affecting parents with disability. For example, child protection systems often rely on significant written information and highly technical language, but without considering the needs of families to be supported to engage with and process this complex information, often in short timeframes. Parents with intellectual disability may be particularly marginalised through these approaches, which can in turn impact on child protection caseworker perceptions of the capacity of parents with disability to engage with planning processes or be viewed as cooperative or compliant by caseworkers in the field. Assumptions about the capacity of parents with disability to participate in such processes may increase the likelihood that children will be assessed as unsafe and in need of statutory intervention to remove them to OOHC.

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We know from research that ... the perceived cooperation of parents highly impacts on the decision to bring children into care. So that's something that I'm thinking about in terms of any bias or assumptions that we might make about parents with disability and the perception of cooperation. Does a parent's disability impact on our perception of cooperation? I think that's something that would have an impact.

I also think that the way our tools are designed, if you identify a danger ... then in order to keep that child safely at home we have to identify at least one protective ability. And so in order for that child to be determined as safe or safe with plan, if we can't identify a protective ability, then that child needs to come into care. And one of those protective abilities is, and it's in fact one of the main ones, a parent to participate in safety planning. We provide a definition around that.

I actually haven't had a specific look at that with this lens in mind, but I would question ... I guess it's a question that I'm putting out there in terms of how consistently are we able to find those protective abilities with parent, particularly with intellectual disability. Do we see them, and do we look for that capability, or are there assumptions made that they don't have the capability to participate in a safety plan and, therefore, more children are coming into care?

I think the cooperation and our ability to find and to notice protective abilities are probably two factors that I'd say would raise the likelihood of children coming into care for parents with disability.

– Department Practice Expert 12

## Section 2 – Challenges in intake and assessment

### Identification of parents with disability

Given a broad intent by departments to engage with families holistically, identifying risks as well as strengths and supports, it was noted that while the presence of disability may feature in understanding risks and strengths, there was not always a specific focus on identifying disability. Participants, including those from child protection agencies, emphasised the importance of robust needs assessments to identify and respond to parents with disability and their families' needs.

This was particularly felt to be the case for 'invisible disabilities' – those that may go unrecognised, and therefore fail to mobilise supports that might assist parents and families in the care of their children. One service provider noted:

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Eyesight, hearing, things that you can get around and not ever be visibly identified as. If you're hard of hearing, if your eyesight's not good, you can live for many years without anyone knowing. Or the children, as well. They do those tests at school, and you get a note saying little Johnny needs glasses.

– Service Provider 4

A lawyer argued that disability could apply to the 'vast majority' of parents involved in child protection systems:

If we think about the definition of disability in the context of the Royal Commission, which is an incredibly broad definition, then I would say that the vast majority of parents that we see in a care and protection environment would fall within that definition. They're an incredibly, if not the most, vulnerable cohort of clients.

– Lawyer 15

Parents and families were noted as experts in their own functioning. It was recognised that some resisted the 'labels' of disability given the negative connotations and assumptions they carry. However, this was itself identified as somewhat fraught, as it meant that key services directed to parents and families with disability were not made available to them. One service provider said:

Most parents that I've worked with have a pretty solid understanding of the disabilities that their children may have or of their own disabilities ... Sometimes, they're just ignoring it because they don't want to be labelled as a parent with an autistic child, they don't want to put a label on their child because they think it's harmful. But something that I always like to reiterate to parents who are pushing this aside is that the label is not there to outcast your child or to outcast yourself, the label is there so you can access services, because you cannot access most services ... without a diagnosis.

– Service Provider 20

The delay or failure to provide timely, tailored supports made it much more difficult to achieve positive outcomes that preserve families. A First Nations service provider said:

A lot of children are removed from their parents for reasons of neglect and it's after we start trying to do restoration that we find the disability ... If we identify parents or a parent with a disability, that's under the eyes of a child protection agency, we actually get in and do some family preservation work with them. We feel once the children are removed, it's very difficult to change the circumstances of why they were removed in the first place and support the parents with disabilities ... we might link parents into NDIS packages, or mentoring groups that can support them through mums and bubs clubs that we set up ... Our clinical studies are showing that a lot of our kids in out-of-home care are suffering trauma which is inherited



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from their parents. A lot of our parents have what we would call a disability because they have a trauma of being removed or being part of a previous systematic government policy that is generational, put into a home, their grandparents put into a home. So, we're finding that there's a lot of historical reasons why current parents today don't really identify, unless it's a physical disability. But if it is psychological or mental illness, a lot of the times it's not shown, and I don't think [child protection authorities] actually have any idea of how to deal with it. It's just purely a process of removal.

– First Nations Service Provider 2

The failure to identify disability and delays in provision of tailored support contrasts with the stated intent of child protection policies and practice to create change for children and young people through providing timely and effective supports to their parents and families. A Children's Court clinician urged much earlier assessment to enable planning and engagement with the appropriate family supports:

I had this discussion the other day with the Children's Court about doing assessments much, much earlier because ... they don't do the assessment until there's a finding. They need to think about the contribution of all these disabilities ... how they might contribute to the harm that this child's experienced, the related parenting capacity around that. That requires an in-depth assessment of the whole family dynamics.

– Children's Court Clinician 5

## Data processes monitoring prevalence and outcomes

For many participants data collection processes were inadequate, lacking systems and processes focused on identifying and recording information about the prevalence of parents with disability within the child protection system. For example, one government department participant noted, consistent with evidence presented in hearings, that:

I think from a systems perspective, I don't see much data about the parents we're working with and levels of disability. It's something that I don't think has necessarily been something that we're pivoted towards recently, or even in the past. I think in practice we are not great at identifying disability. I think we've got really firm processes around how we understand the impact, how children experience parents with disabilities. I think that that's fairly solid.

I don't think that we are as good in having enough processes in place for how we communicate with parents with disability, how we bring them on board to partner with them, planning, that kind of thing. But in terms of data, I don't think we collect that, and I don't think that that's really something that the agency as a whole understands.

– Department Practice Expert 12

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They noted improving systems in this way had recently been raised, in part as a result of the inquiry undertaken by the DRC, in order to build a greater understanding and assist in appropriate service design.

Many participants noted that data collection systems and processes were more oriented to identifying the needs of children and young people, rather than their parents. As a result, existing approaches often relied on indirect measures, such as if parents were identified as being eligible for the NDIS.

Some departmental practice participants suggested that such gaps, while significant, could start to be addressed through a comprehensive review of files. This would allow an assessment of whether disability was present, whether it was clearly identified, and what steps if any practitioners took in response. One commented:

I'm sure that if you spent time really, really dipping into records, you would be able to determine whether the parent has a disability potentially and then compare that to whether we've identified that. Because I think that's a huge gap. We might suspect it, but we never actually pursue looking at it. Or we might just say this parent has a disability without understanding that there's no diagnosis.

– Department Practice Expert 12

This absence of data to support service design and to evaluate service responsiveness and quality for parents with disability extended across the child protection system, including the Children's Court Clinic. System administrators were implementing ad hoc processes to try to explore these issues and understand the implications for their services within already limited resources. A Children's Court clinician said:

We do have a template in which we identify issues that ought to be assessed. And it might be mental health, drug and alcohol, intellectual disabilities. So that information is there, we just do not have the time to use it. And no one's given us any money to do it either. And other things are more important. So unfortunately, no, we don't. But some weeks I'll go through and I'll think 'Oh, that's right, this is the fifth one in a row', or for Aboriginal people, I've just looked at 15 Aboriginal cases this week.

– Children's Court Clinician 5

One First Nations service provider related having asked the child protection department for local data regarding the number of children in care whose parents have a disability. They noted that the response they received indicated, consistent with observations noted previously and in evidence provided to the DRC, that existing data systems are unable to share such insights. For this participant, such limitations were indicative of a broader issue present within child protection systems:

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They're not looking at why they're in out-of-home care. They just don't think like that, which probably being in an NGO is a great advantage to me because the community tells me everything. I see first-hand people struggling, and I go, why is this young mum or this young dad struggling? It could be because of an undiagnosed disability, but they haven't told their family.

- First Nations Service Provider 2

## Risk assessment

Risk assessment processes were identified as a key challenge for parents with disability. Participants drew attention to assumptions within tools and practices that reflect negative judgements about parents with disability, contributing to experiences of discrimination. Some service providers believed that parents with disability face judgement and discrimination, based on assumptions about their parenting capacity, throughout risk assessment processes. One said:

I asked for an independent assessment of mum because the department were hanging their judgement of mum on a neuropsych report, suggesting that she couldn't learn.

- Service Provider 19

A parent observed that what is lacking are appropriate ways of assessing, communicating with and supporting parents with disability

If you get any parents with an intellectual disability, realise they've got things they can do and things they can't do, just like anyone. The only difference, really, if you're talking about someone with intellectual disability, is that we learn things differently. Work out how we learn things and then give it to us in that way. Because you might be surprised that we actually want to learn something.

- Parent 22

## Assumptions of deficit

First Nations service providers were particularly critical of assessment tools that they felt tended to view parents with disability in a negative light, based also on cultural and socioeconomic differences. One noted:

We used to do the family risk evaluation tools ... If you had a mental health or disability it was marked down as a negative. So, it was a very deficit based, risked based, assessment which is really uncomfortable ... My workers used to hate doing that assessment ... Something like having a disability, or being a First Nations person, you're deemed bad, for lack of better words. Yes, it wasn't really appropriate for our families and they felt really judged.

- First Nations Service Provider 11

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The same service provider later noted:

I think there's a bit of racism in there within that assessment. And yes, ableism too. They're not looking at the strength in that tool or ... how they're managing that safety risk or safety issue ... It can be a real deterrent for families engaging. When there's people who have had to do drug tests or they've got mental health issues or they've got something going on and they don't turn up and that's read as a negative because they didn't turn up. And they're not looking at okay what is the mental health issue or what is the disability that's not enabling this person to get to this appointment today. What is it that they're going through?

– First Nations Service Provider 11

Another First Nations service provider also criticised the way risk assessment tools focused on deficit:

The Structured Decision Making ... doesn't necessarily ask the question well what is the parent's capacity or capability of the parent. They may have a disability or high needs but that doesn't necessarily impact on their ability to still provide a safe and protective home for their children or young people. Or they themselves have been putting safety plans into place which aren't necessarily followed up by the powers that be.

– First Nations Service Provider 11

This focus on deficit was not always complemented by effective, proactive strategies to address identified risks. According to First Nations service providers, this could be compounded by a failure to recognise different child rearing approaches, particularly those of First Nations communities:

Participant A: Whenever we used to go to family group meetings with child safety of the department, we'd never ever hear about an intervention that they're going to put in place. And they'd always tell us what the safety plan was but then they never told us, 'okay this is how we're going to support, this is what we're going to do'. We'd be the ones at the table going this is all the strengths and this is what we're going to continue to build on ... or these are the different supports that we could put in place. Yes, so it's quite deficit based ...

Participant B: We're really strong for that importance of family-led decision-making and having family at the table and our collective way of child rearing. That in itself can sometimes be seen as 'Oh, that child actually spends two days a week at nans and spends two days a week at dads or mums, that's not safe'. But that's our collective child rearing way ... I think family-led decision-making can play such an important part, especially when it comes to working out what is the best intervention.

But I completely agree, even though we're quick to put into place safety plans there's not necessarily that okay, but this is how we're going to help you as well. It's a two-way street as

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opposed to at the moment just being that one way street or parents having that expectation that they have to do all of the work.

– First Nations Service Provider 11

Another First Nations service provider gave an example of how a woman with disability raised her son with strong family supports:

One particular lady is in our social support disability group, and she's raised a single child pretty much by herself. Not long after she was born ... she had a stroke. So, her arm is quite debilitated and she couldn't do a lot. Fortunately, she had a lot of strong family supports around her. I would suggest that if she was in an isolated situation, she would have her child removed. However, the strong community got around and helped her. There was a lot of things she had difficulty with, like changing nappies and things like that. She tells me that she coped with it, and she learnt a way of doing it, and she learnt a way of keeping the child clean, tidy and looked after.

But from the outset, she also tells me that the welfare government of the day were always saying, we're going to take the child away because you have a disability. It was only the strength of her family members and community saying no, no, no, she's capable ... I don't like the word discrimination, but it's almost like instead of looking at the mechanisms of how they can cope, I think [child protection authorities] just go, no ... we don't think they can cope.

– First Nations Service Provider 2

Some expressed a view that parents with intellectual disability or mental ill health received different attention and were subject to different assumptions by child protection systems. For example, parents with physical disability may experience a 'softened' approach that was more focused on support, while parents with cognitive disability faced greater judgement and negative assumptions about their capacity to parent or to make changes to address identified risks. However, robust assessments are needed to genuinely understand parenting capacity and the supports that may be put in place to assist parents and families. In their absence, caseworkers are likely to make determinations based on discriminatory presumptions about parents' abilities to provide adequate care. Another First Nations service provider said:

Especially with [people with] intellectual disability the stigma is they're just not capable or they shouldn't be parents ... Whilst you don't hear those words, because obviously that would be a direct form of discrimination, you know that stigma is there.

And quite frankly some of the parents with intellectual disabilities that raise kids are more capable than some families I've ever seen ... They always see life in such a simple perspective which is the beauty of it, I think ... They can gain true happiness from such simple things. And correct me if I'm wrong, everyone in life needs to know that it's the simple things in life that count. But that stigma is always there and it's really unfortunate.

– First Nations Service Provider 23

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A parent identified how they were marginalised in assessment and planning processes by child protection agencies, until they were able to engage an advocate:

No one would listen to me. I was just a parent of the system ... Before I had [advocate] in my camp, they found me to be an unfit parent from the get-go. Before even my sister had said that she was willing to move in, they either wanted me to move into a place where I'd be watched 24/7, or have a carer move into my house and watch me 24/7. But I doubt that DCJ would have listened to me if my advocate wasn't around. They weren't listening to me until advocate came on board. I've got to be absolutely honest right now. If I didn't have my advocate helping me, I doubt I'd even have Mick in my care.

– Parent

A Children's Court clinician agreed that parents with intellectual disability were particularly vulnerable to uninformed and ableist judgements by child protection caseworkers:

I think it's changing, but I think that you've got to be careful of a tendency to say that parent [has] a disability and therefore they can't parent effectively ... I've come across, for example, an attitude that if the parent's IQ is between 65 and 75 the parent can't parent effectively independently.

Independently, most people would probably find parenting by themselves extremely difficult, and you really need a community to help raise the child. The parent, obviously, there's got to be someone with the decision-making from that legal point of view, but I think there is ongoing discrimination. And some lack of understanding about intellectual disability, that that's not a catch-all term, it's not a homogeneous thing. There's a lot of diversity that falls under people who have been diagnosed with an intellectual disability, not just intellectual disability, but disability which might include Autism or ADHD or any other conditions that might impact certain areas of functioning.

There's a lot of diversity there, a lot of strengths, and different deficits in functioning. I think there's more of a recognition about how trauma impacts development ... I think it's hard to say how well-recognised it is about the role of trauma and having disruptive childhood and how that affects education and then that stigmatisation that can go with that. It's a very complicated area. That intellectual capacity must be understood more broadly.

– Children's Court Clinician 9

This clinician noted associated implications for assessment practice, given potential interactions with poverty, education, and other social and economic circumstances that can affect performance on IQ scales and similar standardised assessment tools. These impacts need to be considered as part of the assessment process to create a meaningful picture of ability, parenting capacity, risks, challenges and strengths. A service provider said:

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I think most of the families that we work with are discriminated [against] in this space, because obviously the space that we're working in is about really being trauma informed and not a lot of services are trauma informed. And I think people with a disability are probably discriminated even more because it's a too-hard basket sometimes for people.

– Service Provider 17

## Assumptions of immutability

It was noted that a propensity to see disability as both associated with risk but also immutable contributed to the removal of children from parents with disability. The presence of disability, and assumptions made by child protection practitioners about the implications of disability, particularly intellectual disability, played a significant role in decisions to remove, or even became the primary reason for removal. Reflecting on one case they were involved in, a Children's Court clinician, for example, said:

I don't think [the mother living with intellectual disability] was the only grounds, but it was one of the bits that was leading to [the Department] not being prepared to change the case plan. It may not have been the thing that led to the initial removal because there were other things happening, but it certainly contributed to a view that she didn't have the capacity to change.

– Children's Court Clinician 5

A lawyer made a similar observation, describing how a parent living with disability emerged as a 'primary reason' for child protection intervention, particularly with subsequent children:

It wasn't initially a primary reason and then by the time the second child was removed, after mother made some progress, in my view, it then became the primary reason. And at that time, it was explained very clearly to the mother that this child was being removed because of your disability.

– Lawyer 13

These assumptions about the immutable nature of the risks facing parents with disability, combined with the absence of tailored services or supports to assist them to parent, could lead to a series of removals from the same parents, all grounded in the same evidence, without active efforts to change those circumstances. One Departmental practice expert said:

Child protection workers find it very, very hard to manage as well, struggle with it, because it really is a lack of alternative services or a lack of solutions to actually assist parents, particularly with an intellectual disability, to be able to parent independently. And so, children are removed even though mum's not a bad mum and mum loves the children desperately. But she just doesn't have the capacity to actually care for them independently and to keep them safe. And we had a bit of a run of it when I was in child protection. I think we probably had four or five pretty much one after the other where babies were removed in hospital.

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And that's heartbreaking for child protection workers. It's heartbreaking to have to go and do that after a mum's just given birth.

In all of those cases, this wasn't the first child, and other children had been removed and were in care. And I think that's the thing that you do see is that often these mums, they have their children removed and they have another child. And so that child gets removed. And it's just horrible, horrible to see.

And usually the first one, there's evidence, too, to support the fact that it's usually in her care. And there's evidence to support the fact that she can't care for the child and it's removed. And then it's that evidence that then gets used for number two, number three, number four, number five.

– Department Practice Expert 18

For one parent advocate, however, the perinatal period presented a significant opportunity to engage with parents with disability to create change, particularly by working with expectant parents and their families to safety plan in preparation for the child's birth. Perinatal family conferences ('PFC') were identified as an important element of casework practice to give parents and families a voice and an opportunity to address identified risks.

I like to work with pregnant mums because pregnant mums, with their PFCs, their perinatal family conference, have a voice. With the PFC you've got plan A, plan B. Plan A is what needs to be addressed so baby can go home and be safe after birth. It's not real safe for baby to go home, but what do you want? I'll always advocate skin on skin, staying in the hospital for a week, bond with the baby, breastfeeding if you want them to be breastfed. There's a whole range of stuff that plan B can do.

– Parent Advocate 1

## Responding to risk: intervention and surveillance

In many cases, the long-term trajectory for these children is to remain in long-term care, whether foster care or some other form of permanent legal placement of children away from their parents (in this chapter referred to as 'third-party permanent care orders'). One First Nations service provider expressed particular concern about the imposition of third-party permanent care orders. They noted that such orders do not deliver for children and young people. The orders perpetuate cycles of harm and intergenerational trauma that undermine the wellbeing of First Nations children, parents, families and communities.

We have great difficulty with [third-party permanent care] orders because of the moral concept of them. The bill was put through very quickly. You have two years. We talk about trauma and we talk about disabilities or mental illnesses. Can you imagine a child going into [third-party permanent care orders] and the trauma associated with the fact he/she may never live with their birth parent/s again. Unless these [carers] do something bad, I'm never



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going to get my kids back. So culturally, morally and ethically as an Aboriginal man and as head of an Aboriginal agency, I put my hand up. I have great problems with it.

– First Nations Service Provider 2

Some participants saw the system as almost punitive towards those parents living with mental health challenges or the long-term impacts of trauma, particularly in circumstances where parents also lived with addiction. Some felt these parents faced the judgement of practitioners and the system, instead of benefiting from an approach that looked for underlying causes and provided needed supports:

First Nations Service Provider A: You've got some mental health, say, drug affected. They've [child protection departments] got no empathy whatsoever ...

First Nations Service Provider B: No empathy for those people.

First Nations Service Provider A: Because that's more [self-inflicted]. Not knowing their trauma, which they disregard sometimes [and] which may have led to their AOD [alcohol and other drugs] issues in the first place. [The systems sees] they can't manage to parent [and says] 'Go and seek counselling. Go get on a tablet because a tablet fixes everything.'

First Nations Service Provider B: [Child protection authorities] look at the here and now, not the past.

– First Nations Service Providers 27 (focus group)

Another outlined how a lack of resourcing and capacity to truly engage with families to understand their circumstances combined with discriminatory processes could have dire consequences for parents with disability:

They [child protection departments] don't have the time or mechanisms or ... the capacity to actually sit down and say, these are the things we're going to do. It is their practice to remove rather than to support. That's where I've been fighting, the last probably six months, with [child protection authorities] about. Before removing them, let's have a look at the issues. Obviously, if the kids are at harm, I'm going to say remove them every day of the week.

But sometimes, and I'll give an example, there was a mother who had two small children. They were school-aged. They were probably six and seven. They went to primary school, and for about three days, they went in soiled unironed uniform. But one of the teachers ... put in a [report] to say the kids were being neglected.

Now, we got a phone call. We went out and saw the mum and the dad, who were really, really great parents. The washing machine died. They were handwashing the clothes, sending the kids to school washing them overnight. We bought another washing machine and the problem was solved ...

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Fortunately, we got involved because we thought it was unusual, for this family. But if either of the parents had a disability, and not a physical breakdown of appliance, I don't think we would have been contacted. I think the children would have been removed.

– First Nations Service Provider 2

Parents with disability can also be subject to increased surveillance and scrutiny, which is likely to compound challenges facing families by increasing their experience of stress. A lawyer said:

Because the mother had had children removed previously and she had a disability, [child protection authorities] were all over them like a rash. The minute she became pregnant, they were all over them. I just remember reading they were in their house all the time constantly checking on them and [child protection authorities] were being critical of these poor parents ... They were measuring out how much formula was being given to this little boy and being critical of these parents when they mismeasured the amounts by five, 10ml. That's the level of scrutiny that these parents were under, and that child got removed.

We opposed it from the beginning and ran a hearing about all of these issues because I thought it was terrible. And ultimately ... there was a clinic report that indicated that my client, whilst he had an intellectual disability, he had the ability to look after this little boy. Of course the level of scrutiny would impact your parenting.

– Lawyer 15

Even when parents are able to marshal resources and address the concerns of child protection authorities, they continue to be subject to greater scrutiny, creating an environment of significant stress for parents and families. A First Nations service provider said:

Our biggest frustration is that the family goes through, and they do ... everything that's asked for. And then they go back to [the child protection authority] and [they] have committed [to] closing [the file] as well and they're still sitting there two months later, haven't closed. And that creates more anxiety in the family.

– First Nations Service Providers 27 (focus group)

A parent described their experience of discriminatory surveillance combined with a presumption that issues such as failure to thrive are a result of parenting issues rather than unrelated medical issues

They put me into a mum's and bub's refuge. They put in reports against me about everything I did. Even stuff that was scientifically sound, like doing tummy time, which you can do in the hospital. Everything I did was second-guessed, and then my second child was taken from me and put into care. My parenting other than still seeing the father was fine. She was happy. But she was born with birth defects, which caused her to fail to thrive. And that wasn't

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to do with me but because we didn't know about these birth defects yet. It wasn't until she ended up in care that we actually found out what was going on.

– Parent

The additional surveillance also contributed to families feeling even greater marginalisation and discrimination. A parent advocate said:

It's a little like they're closing us in and not letting us be part of that normal everyday thing that a parent does. Well, they're discriminating.

– Parent Advocate 22

Several First Nations service providers emphasised that in many circumstances perceptions of risk were connected to broader social issues outside the control of parents with disability, particularly their experiences of poverty.

Participant A: If a parent is unable to access quality housing and they're in an overcrowded situation and then you had disability on top of that, that automatically adds to people's involvement with the child protection system ... There's not a lot of focus on poverty and the impact that poverty can have. And I think that that is something that is really not taken into account ...

Participant B: Over my time, it's probably changed a little bit ... but early on definitely used to see that. Parents ... well if you can't find a house we'll have to take the kids ... the risk of homelessness and poverty definitely seen as a deficit. But I can tell you now I grew up in a three-bedroom house with four families in it ... probably for about two years. And I tell you what it was some of the best times I've had. This was out in the bush with all my cousins and we'd go outside playing footy all the time. We didn't know we were poor, we were just always having fun. And I guess that what happens in the outback, that sense of community and that family around you. And I think that's something that doesn't get looked into.

– First Nations Service Providers 11

Risk assessment practices can also harm engagement with families, which in turn increases the perception of risk by child protection authorities. In a sense, this creates an escalating cycle that increases the likelihood of child protection intervention and removal. While this is likely to affect all families within the child protection system it was noted that this process interacts with a lack of understanding and expertise about disability, and the implications for how child protection practitioners might best engage with parents with disability and their families. A First Nations service provider said:

It can be seen as a negative if families aren't engaging with the child protection system. So if they could be seen as being, just not wanting to engage and therefore that automatically puts them at a higher risk of intervention just because the worker's knowledge of ... why

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they're acting in this particular way is because of intergenerationally, not just the trauma but also the experiences of child protection systems ...

There is a lack of understanding about disability and high needs. And so I think that comes into it too, like people don't truly understand disabilities or they don't really understand high needs. And so when you're ticking a tool or working alongside a family and you're acknowledging that they have a disability or some sort of high need then people don't really know how to properly work alongside that person or that individual ... People just have their own kind of conclusions and say 'Oh, I can't really engage with that person'.

– First Nations Service Provider 11

## Recognising ability

The intent of risk assessment processes is to guide the development of plans to promote safety for children and young people. There was consensus about the importance of developing tailored plans to respond to identified risks and actively supporting families to mitigate those risks wherever possible. Some participants provided additional detail about the nature of that support for parents with disability, noting that intensive coaching and support, particularly early on, is often necessary to ensure children are adequately cared for while their parents learn new parenting skills. Participants noted that these should be presented in various modalities, tailored to the circumstances of families, and saw significant opportunity for change where this was promoted effectively. A Children's Court clinician shared one example of helpful family support:

Someone who could drive her to and from medical appointments, doing a family meeting where there were people in the family who could agree with [child protection authorities] and the case about what she needed to do, and when, and making sure that there were people who could do all that stuff for her, go with her to a doctor's appointment, and then meet with somebody about it afterwards, and then talk with her about what she needs.

That doesn't happen for people who've got children in care. A, they don't go to the doctors. And, B, they're not allowed to bring a support person. And, C, no one sits down and talks to them afterwards about what happened.

– Children's Court Clinician 5

A parent advocate told us what she thought would be useful for expectant parents:

Parents with an intellectual disability ... they've got things they can do and things they can't do, just like anyone ... The only difference, really, if you're only talking about someone with intellectual disability only, is that we learn things differently. So, work out how we learn things and then give it to us in that way. Because you might be surprised that we might actually want to learn something. So, instead of end goals, you might be wanting to say, 'Well, okay,

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I'm going to be a mum in eight months' time. How do I do that?' And start getting support workers to teach you how.

– Parent

A Children's Court clinician gave an example of such an approach in practice:

I went and saw this house as part of my assessment. There [were] pictures all over that place of what to do, making the bottle, bit by bit by bit, everything written in a picture for her. That's very rare that you see that. Maybe you do now, but this is probably 15 years ago. They didn't do it very often ... And if someone's got an intellectual disability or even any other kind of disability, that's a way of mediating the problem in order to look at how you make sure that the risk is not going to cause more harm. And for us, the professionals, that's a big deal.

– Children's Court Clinician 5

However, while there was consensus about the need for tailored approaches, it was also noted that these could be extremely limited for families experiencing crisis, given the lack of investment in child and family supports. This meant that the additional supports needed by families with greater challenges, including parents with disability, had to be found elsewhere. It was recognised that unless families are able to secure their own supports privately or through the NDIS, they may not receive the supports they need. A Children's Court clinician explained some of the barriers:

I said that I thought that she probably wasn't in a position to do it on her own, but if someone could afford for her to have, for the first month, 24-hour-a-day someone living in the house, teaching her bit by bit, and then for the next three months ... spreading it all out. And they had the money to pay for it. So, it happened.

So, I think that's one of the issues is that for some of the people that we have with disability, they need that level of intense work with them that costs a lot of money and needs to be properly written out and formulated. And there is not that much money, and there's not that much will, let me say, to spend that money in that situation because you don't want children inadequately nurtured, or inadequately fed, or whatever. They need to have their basic needs met. And if the parent can't meet their basic needs, then you have got to figure out how that happens.

– Children's Court Clinician 5

## Navigating child protection systems

It was acknowledged that inconsistencies in practice can lead to parents having widely divergent experiences and outcomes. This was attributed to a range of factors, including staff capabilities and turnover, numerous competing pressures and priorities, and resourcing.

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Quality practice was identified as being undermined by a sense of ‘crisis’ within child protection systems. This deprived child protection caseworkers of the space required to work in deliberate, intensive ways alongside families, identified as critical for effective practice with parents with intellectual disability. For example, as a Departmental practice expert put it:

There are some areas of this agency where we have such a high turnover rate of staff that building capability in order to be able to work effectively with parents is really difficult to sustain. Particularly because we have such a high rate of caseworkers leaving in their first year of service, first two years as well. Also, when an office or a practitioner or a district goes into crisis mode all the stuff falls down around them.

Which is the time to work with families, particularly with disability, in a way that they need. It takes time to work effectively. I’ve worked in disability myself, particularly with people with intellectual disability. It takes time and a whole lot of patience, and I can’t guarantee all our caseworkers have that.

– Department Practice Expert 12

However, participants also noted that, too often, systems and practice fail families, exercising power in ways that are unwarranted and harmful. This can reflect a lack of understanding from caseworkers about disability and how to work effectively with parents with disability. Despite policy and practice (and in some cases, such as NSW, legislative) frameworks to the contrary, participants suggested that formal processes and assessment are utilised to add a veneer of legitimacy to what they viewed as fundamentally discriminatory practice – removing children from families due to issues associated with poverty and disability. As a parent advocate explained:

Generally speaking, people actually try to come from a good place. They just don’t understand that what they’re doing is disabling a parent more ... Because they are not allowed to use the word disability or poverty, they use lack of insight, inability to blah blah whatever issues. They can’t use disability as a reason. However, ... the psych that does their capacity assessment will use the reason as disability, unable to parent. It’s everywhere. And because it’s a psych that says that, we can’t get them for any sort of discrimination.

– Parent Advocate 1

System processes were seen as overwhelming experiences for parents and families, with little recognition of how these impact on families and their opportunity for effective engagement and change. This was identified as particularly affecting parents with intellectual disability, with cases moving forward in a way that effectively excluded their involvement. A First Nations service provider said:

There’s so much happening. The hearing, support, [removal] ... this needs to change, none of that’s computing at all, none of it. They don’t understand so they just become overwhelmed, and they can’t actually process what’s happening. So, what happens if,

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say for that example, child protection would need to come in, they would need to take a step back and they would need to take their time with that specific case and peel back the layers very slowly. That's how you're going to achieve a goal better, there's going to be a better outcome from that. And allow that family to really process what's happening and take their time, because that's the biggest thing is that they need time to process this information. It's rule 101 for any individual with an intellectual disability.

- First Nations Service Provider 23

Some child protection agencies have acknowledged these failings, including extending apologies to parents harmed in this way. However, there was also criticism that this acknowledgement is not necessarily accompanied by reparations or action to redress the harms inflicted. Rather, such actions were seen as largely performative, assuaging the conscience of child protection systems and caseworkers inflicting harm rather than making harmed families whole. A parent advocate asked:

Well, what's the purpose behind an apology? Is she [the mother] going to get anything? You shouldn't have done this in the first place because that's what you're saying. You are actually saying, I'm sorry, we shouldn't have done that. We shouldn't have treated you like that. Well, is she going to get her kids back? No. Well, what's the purpose of an apology? Mum's survived for this long without your apology. Mum's doing quite well without your apology.

- Parent Advocate 1

## Independent advocates

Independent advocates were seen as playing an important role in supporting parents with disability. They were perceived as promoting better communication and understanding between child protection authorities and parents. They were also identified as challenging the power imbalance that exists between powerful state agencies and relatively powerless parents and families. For example, a Department practice expert described the potential for advocates to assist engagement:

Advocates who can ensure that the caseworker is understanding and hearing the parent's perspective. I'm not putting all on there that it's absolutely our job to do that, but also in that communication back. And if there is some information that's left, if you are sitting down with that parent and helping them to understand that, that's the role of a caseworker. But we know the power exists between caseworkers and families.

And we may leave, assuming that the parents have understood us, primarily because they haven't wanted to say otherwise because of the power dynamics there, so someone who's independent.

- Department Practice Expert 12

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This could be particularly beneficial where previous negative experiences of child protection authorities, including as children and young people themselves, increase the likelihood of parents' distrust of, and disengagement from, service systems. As noted above, this disengagement and lack of cooperation and compliance can increase the likelihood that risk-averse child protection systems intervene to remove children, despite their responsibility to engage effectively. Advocates can assist engagement and provide an opportunity for scared parents with disability to be heard and access child and family services. However, as one parent advocate explained, that requires trust and understanding from child protection caseworkers:

As I said to DCJ, if the parents are still talking to me, because I'm not a mandatory reporter, and if I can say to you that they're okay, then you know the baby's okay. The majority of caseworkers will follow that lead. But you get some idiots that I refuse to work with, and I just work with the management because they just don't understand life issues, especially Aboriginal families, just the stuff that they've gone through. But the other thing is that I find that a lot of the parents that I work with were kids in care themselves. There's something that needs to be addressed as well.

– Parent Advocate 1

A parent also noted the lack of life experience of some caseworkers and, in particular, their limited experience or training with respect to parents with disability. The parent saw this as affecting caseworker understanding and their ability to engage.

That's another thing we [parent peer advocacy group] gets cross at. [Child protection workers are] quite often fresh out of uni and they haven't got a family of their own. But they're willing to say to us that we can't parent. It might be because they've had no involvement with anyone who has a disability in their family. I've often said child protection workers should have to have Cert IV of disability as well. But they don't. They've only got to do the training for the drugs and the alcohol and how to see abuse. But if we're going to be high on their thresholds, then they need to have Cert IV of disability, so they understand how disability works if they really want to keep taking our children.

– Parent

Advocates also assist by directing realistic, goal-directed action towards addressing identified risks and supporting parents with disability and their families to navigate those supports. One parent advocate described their practice as follows:

I'll walk in and I'll say, 'What are the issues? How can we address these issues? Let's work together so we can address these issues so babies can come home. What are their concerns?' I'll always make sure that the parent is part of that conversation as well. If the concerns are something like, you need to go jump through that flaming hoop. I'll go, well, no. They can jump through a hoop, but not the flaming hoop. And let's make it realistic and possible, achievable. If they don't feel that it's realistic for starters, mums will tend to shy away and drop off. DCJ are listening to me because I do make good sense ...



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Look, I think dealing with lawyers for so many years I'm a good arguer. I can put forward a really good argument ... But I'll make sure that I back it up with some good information. It's not like I just come in and go, Right, restore the baby because you're shit. It's like, Come on, what's the issue? Let's discuss the issues, the concerns. How can we address it together? You want mum to do a parenting course? Right, you pay for it. Things like that ... I make DCJ very accountable. Everybody's different. Every parent is different. Every caseworker is different. There's some really amazing, wonderful caseworkers.

– Parent Advocate 1

The importance of respecting the agency and ability of parents with disability was also an issue raised with respect to advocacy work. One challenge is that advocates can over-step their responsibilities, particularly if they start to speak for, rather than empower, the parents they serve. A lawyer explained that it is important that advocates do not act in a paternalistic manner when working with parents with disability.

I think, with parents with intellectual disabilities, there can be almost like a parental way of helping them and not actually giving them the autonomy to own their case and to make decisions within their case.

– Lawyer 14

Advocates were seen as specialised roles, having knowledge of both working with parents with disability and working in the child protection sector. Further, as one parent advocate explained, those roles must have adequate capacity to provide the level of support that parents with disability require to navigate these complex systems effectively:

To do what I do, you need to be a specialist advocate. I know very few advocacy services. None of them will touch care and protection because it's just too specialised, too time-consuming, too intensive, and too difficult for a lot of people. It's not an easy job. To have a universal approach I don't think would work, unless you have numerous specialists that understand this space really well and can work the job.

– Parent Advocate 1

## Support in navigating child protection systems

A related but distinct role identified by participants was that of an experienced 'navigator' to walk alongside parents with disability, navigating systems and supports. This was seen as particularly important given challenges in service coverage and access. While such roles were not common within the service system, participants noted the contribution of system navigators where they were present, including promoting collaborative working relationships between family support services, child protection authorities, and parents and families; identifying and following through on referrals; and facilitating effective working relationships towards achieving change for parents and families.

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One service provider noted the significant impact that such navigators can have in creating positive outcomes for families:

We had really good working relationships with some navigators that went above and beyond, even though they weren't supposed to be doing some of that work, but they just know the good outcomes that it leads to for families. So they go above and beyond and still do some of that work.

– Service Provider 17

However, they also noted that, over time, the navigator role had been diluted and limited in ways that compromised its value, due to inadequate funding and investment.

They've diluted this role because they say there's not enough funding, but it was one of the highlights.

– Service Provider 17

Assistance in navigating service systems prevented parents with disabilities from falling through the gaps in service systems. For example, a Children's Court clinician noted one example where the statutory child protection authority had referred parents to a support that the parents only attended once. When they didn't continue, neither the service nor the child protection authority who referred them followed up with the family to understand the reasons or promote engagement and service access. This was a missed opportunity to support change for the family. The clinician compared it to a more active model of support that was able to support those facing an oppressive, negative cycle towards change.

People, if you're going to pass it on to another agency, there's an accountability loop that's got a problem. And people, as I said, they need a coach. They need someone on their side who's going to actually help them to overcome the things that are a problem ... a bit like what they do with ... the drug court. They have somebody there alongside them who helps them to get to what they need to do, who gives them a reward for doing it or just encourages them ... So, I'm not saying you need totally that model, but it's got some components of it that may well be helpful to motivate people who are unmotivated and who are oppressed already because of their disability and because of the lack of resources. Somehow the flavour of that system needs to change.

– Children's Court clinician 5

## Responsive practice

Some participants noted efforts to respond better to parents and families, including parents with disability, to keep children safe at home. However, a service provider explained that service gaps threatened the success of these initiatives:

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They're just scrambling child protection to look for supports to put in place. But they don't have time to manage those supports realistically with their caseloads and the pressure that system's under ... Well give them a service, well what service? And what does that look like, and how is it empowering to the family?

I think that again it's like outcomes, it becomes almost subjective, even with tools in place there's still a subjectivity around it. So, I know the Victorian Child Protection, they're just putting a new bundle in place that's taking the place of the best interest case model. They now have a model called Safer. They don't like to be risk-averse because they don't want to be ... just removing children from homes, they're doing everything possible not to be removing children from homes, but then at the same time they talk about percentages of families they've been able to keep together and at home.

– Service Provider 17

Another service provider noted:

The Child Protection worker, mostly they were overworked so if there's a Family Services person involved they would just go okay, you deal with all of this stuff. We're there to make sure that little Johnny is attending school every single day. And then we'll check in and see that the house is clean, and they check the fridge, and they check for this, and they check for that. And then if the risk is mitigated, that specific narrow risk, then they pull out. Child protection is not holistic ... [It's] really reducing the parenting skills to the management of that incident rather than seeing the broader picture of if it's unsuitable housing, if it's family violence that's happening ongoing, if it's substance abuse, if it's mental health related, all of those things are the broader things that impact on the parenting. Never about that. It's just you need your kid to attend school, it's compulsory. You need to understand that. Get little Johnny to school.

Any referral you make for services, if it's to do with testing, dental appointments, behaviour, parenting skills, or parenting courses, the waiting lists are ridiculous. So, child protection can't remain involved for three months because the next parenting course only starts in three months.

Or they can't see a child psychologist for another six months. So, they're realistically looking at it and going well, the Family Services worker is ... working with them even though we don't actually do any counselling or any of that stuff. If little Johnny's going back to school, then we'll pull back. We'll touch base with you, we won't close but we won't get as involved, because the risk is being managed by a professional person.

– Service Provider 4

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Supports were often implemented too late, with many urging a shift to an early intervention framework. A Departmental practice expert noted:

The child protection model ... I guess it's driven very much by KPIs ... A lot of it's risk mitigation and it's not necessarily about those long-term good outcomes for families and making a difference to children's lives long term.

That was where I moved to in my work with [non-government child and family organisation], that I really focused on making a difference in kids' lives, particularly engaging with education, as a means to setting them up for best outcomes in life. And I found it incredibly challenging and disappointing that child protection don't work from that model. It's about ascertaining the risk, doing what's necessary to reduce that level of risk and getting out ... they'd refer to other services, but there wasn't that follow-up to make sure that families had connected with our services, and so families kept falling through the cracks and kept coming back in through re-reports. And that's what happens.

The other thing you see is when the numbers get really, really high, and they would do that ... periodically. And so you'd actually close cases earlier than you probably should because you've got to keep your ... cases under a certain number, because that's a KPI. And so, of course, you close before you've really done the work you needed to do, so then the re-reports would come back in.

But it was almost like, well, that's okay because you've closed them for now, so you've ticked that box. There was no consideration of, okay, so for a re-report to happen there's further abuse or neglect of that child. I just found it quite a soul-destroying area to work in. And I know at the moment I think they're having a bit of a look at the operating rules, so I'm hopeful that things might change. But the demand is just through the roof.

They just keep putting money into it. The state government just keeps employing child protection workers. And I keep saying, and I guess the focus of my work now is around developing partnerships and projects that look at system issues and look at changing systems for those long-term, better outcomes for vulnerable communities.

If they don't actually start to look differently at it and look at that early intervention prevention approach with families, then they're always going to be having to put child protection workers in at the other end. So what they've got to do is do that work at the other ... If they do it at that intervention prevention space so that these families never become known to child protection. Never. Those children never go through that level of trauma that ends up with them being removed, and the damage is for life.

– Department Practice Expert 18

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One service provider and advocate noted that this positioning of services within the context of child protection interventions created a troubling system that predicated the provision of support on the presence of harm, rather than prioritising the prevention of harm.

Families shouldn't have to abuse their kids in order to be able to access those services, they should have trust that the community can step up and be there. That they know who's looking after their kids, they choose it, they choose whether they have centre-based care or home-based care etc. And very likely can have a long-term relationship with people who are in a caring role for their kids, who are part of all those services, so that they can feel that they can trust their kids' carers in those sorts of services.

– Service Provider and Advocate 3

## Communication of risks and worries

For some First Nations service providers, a key challenge in assisting parents with disability and their families in navigating child protection systems was a lack of clarity regarding the worries and risks that had been identified by child protection authorities. In failing to communicate those issues clearly and effectively, parents and families, and particularly those with disability, are often poorly served in terms of accessing services and making the changes needed to address their concerns to either prevent child protection intervention or successfully achieve restoration of their children following removal.

Participant A: Unfortunately, I don't think that [caseworkers give clear information about why child protection is intervening]. Then when you add the complexity of having a disability or having high needs then that is even further lost in translation. And, so, people's ability to comprehend why there is the statutory intervention when there [isn't] providing information in a way that is clear and succinct and makes sense for that individual, then I think those opportunities are really missed.

And it's what we hear not even just about Aboriginal and Torres Strait Islander families who have disability or high needs. We unfortunately hear that across the board that people don't really understand the reasons why the department may be intervening. But I think when you add that complexity of disability and not being able to put it in a friendly way then that exacerbates that intervention, from my experiences, yes.

Participant B: Yes I would agree with that. And that's why it's really important that we can have people there that can advocate and support. And the [family preservation] programmes and things like that, it's really important that they're involved. But yes, our families don't work from our lens, we have our own child protection speak and they don't necessarily get that and it's quite difficult.

– First Nations Service Provider 11

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## Conclusion

This chapter has presented the aspirations of child protection systems in their practice with parents with disability. It has also presented the perspectives of a diverse range of stakeholders about the barriers that child protection systems nonetheless pose and create for parents with disability. The next chapter presents participants' experiences of the capacity of caseworkers and services to support parents with disability to look after their children safely. It addresses participants' perspectives with respect to caseworkers' practice and training, the fragmented and inadequate service systems and how the NDIS interfaces with and impacts an already disjointed and difficult system of services and supports. Discussion of the findings in both chapters is provided at the end of Chapter 9.

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# Chapter 9: Challenges in service provision and better practice

## Introduction

This chapter presents insights from parents, caseworkers, advocates, clinicians and lawyers with respect to casework and supports when child protection agencies have assessed that risks present within the household need to be addressed. Building on the previous chapter, which explored the aspirations of child protection systems as well as perspectives on the experiences of parents with disability, this chapter explores caseworker skills and training, as well as service system design, with respect to responding to the needs of parents with disability, including with First Nations and culturally and linguistically diverse parents. Frontline casework requires complex engagement with families, yet it is common for the least-experienced caseworkers to be doing this work. The impact of this, together with factors such as power imbalances between parents and child protection agencies and high caseloads, on fulfilment of child protection agencies' practice aspirations is discussed. Participants canvass the role of advocates in supporting parents and assisting with holding caseworkers to account.

Different cultural understandings of disability and how people with disability are included within diverse communities, as well as diversity of child protection workers, are considered. This raises issues with respect to the intersection of ableism and racism. Participants also identified that child protection systems often focus on children to the exclusion of parents, and that privatisation of services impacts the quality of services and accountability to parents, communities and the wider public. A fragmented service system is described, exacerbated by the introduction of the NDIS, with implications for parents with disability who have contact with child protection systems. While offering opportunities for tailored support, the implementation of the NDIS was also linked to the loss of community-based services and barriers to registering for and then accessing services. The chapter concludes with participants' experiences of services and practices that are effective and reforms that could improve casework and service provision.

## Practitioner skills and capacity

The capabilities and capacity of caseworkers were central to the experiences of, and outcomes for, parents with disability and their families. Participants noted the significant complexity in the circumstances of many families who come to the attention of child protection authorities, and the often negative judgements made about these families. In some cases, these appear to be moral judgements about their lives, or how parents 'present' to child protection authorities, which may not be particularly related to risk and safety concerns for children. One advocate provided the following example, reflecting on the frustration and disengagement that can result from judgemental practice, and noting particularly the role of caseworker inexperience – both professional and personal – in these processes.

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If you get a good worker, you can work really well with them and you can make things happen. If you get a caseworker that ... I call them 12-year-olds that have no idea. They've just come out of uni ... A lot of power, too much power, they don't know how to handle or manage their power, which is unfortunate. It's hard.

I said to the caseworker, she's been with the same father for six years, there was major DV. She finally escaped that, no thanks to you guys. Then you're saying that she's promiscuous. So what? None of your business.

'Oh, we are so sorry. We didn't realise you were with the same person for six years.' The poor mum was there, Oh, oh, oh. I walked out of that meeting furious because I thought, what if I wasn't there at that time? She would have been labelled as a promiscuous woman, sleeps around, has numerous children. That's what gets me. So it's not just supporting the families that I work with. I have to be there to make sure this doesn't happen.

One call was, you need to talk to the mum because after contact she'd go out the door and collapse and would start sobbing. You need to tell her she has to stop doing that. And I went, you can go and stick it. You can tell her. Then, literally a couple hours later, same day I got a phone call from another caseworker saying, Mum is really flat. She's blank. She needs to show some emotion. She's not showing any emotion. And this student would take these calls and she's saying, Can you explain to me, how are these people supposed to react? And I said, its a million dollar question. It happens all the time.

– Parent Advocate 1

The accuracy of the information that caseworkers rely on and the language they used with parents and families were also raised as issues. As one parent advocate noted, the exercise of caseworker power often left parents scared and voiceless, unable to speak up for fear of negative outcomes:

I worked with another mother, they [the child protection agency] talk about her in a way which is really disrespectful and inappropriate, and I may jump in and go, well, actually that information that you've just disclosed is completely incorrect. Because some parents I work with don't have a voice and they're too scared to have a voice, because if they speak up, the child will be removed.

– Parent Advocate 1

This responsibility to remind and challenge practitioners to adjust their practice and presentation to better serve parents with disability was seen as critical, building on perspectives about the importance of advocates outlined in the previous chapter:

I'm on their back all the time. I make them accountable. If something's not done properly, I'll jump down their throats. People forget that these parents have intellectual disability, and sometimes the way they speak about, or speak to, these parents can be quite



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condescending. It's like, Pull back. You need to change your language. I do a lot of education around language. Don't speak to the parent like this. She's not an idiot; she just needs more time to process what's been said.

– Parent Advocate 1

Participants reported that often the structure of the workforce within the child protection system results in some of the most inexperienced practitioners – those who may have only recently commenced in the sector – serving at that critical front-end of service delivery. Given the complexity of effective risk assessment, including identification of the needs of parents and families, and the development of comprehensive strategies for support, a Children's Court clinician argued it was important to have considerable practice wisdom involved from the very beginning:

I think one of the problems is for triage, for receptionists, for all those people at the front-end, we have the most junior people. They're not the people to do complex assessments. The people who should, who've got more capacity to do that are more experienced people who've got a broader perspective and have got a bit of wisdom behind them, not ones who need to tick the risk assessment box and decide if anything needs an intervention or not. I don't think that works.

– Children's Court Clinician 5

This lack of awareness about how to respond effectively and inclusively to the needs of parents and families with disability was not restricted to the child protection system, with one service provider noting that other key stakeholders also struggled to respond effectively:

The lack of knowledge and information and training in schools regarding neurodivergencies; autism, ADHD, dyslexia, oppositional defiance disorder, it's quite shocking to see how uneducated a lot of school staff are, including school counsellors and wellbeing officers.

– Service Provider 20

Expectations in frameworks and policies regarding practice with parents with disability and their families were undermined by the absence of adequate training. Without specialised training, practitioners were ill-equipped to walk alongside parents with disability as they attempt to navigate the child protection system and make the changes required of them to provide safe and responsive care for their children. A service provider said:

Are parents with a disability given clear information about why child protection's intervening? I think that's dependent on the CP practitioner. They don't receive training with regards to working with people a disability. And I don't think the documents they use are user-friendly for people. Well for anybody really, never mind people with a disability that are just given these case plans or court reports, there's just reams of written information.

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When we're involved with a family we'll try to unpack it with them, sit with them, try and make more visual aids, if that's going to be more helpful. Generally we will have done a neuropsych to see what's their best way of learning or what's happening for that person. I would say that they could be done better.

Even in Family Services to be honest. I think that it's just go and work with families. We have training, cultural training, family violence training, training about how to access the NDIS, but we don't actually have training of working with somebody with a disability, so I think there's a gap across the system. Training for the sector. I don't think it's prioritised.

– Service Provider 17

A First Nations service provider agreed inadequate training of caseworkers was an issue:

They don't have the skills. They're not disability trained. They don't know what alternate ways there are to communicate with someone experiencing a disability. And if you're not trained to communicate with someone with a disability or to know different strategies and have a whole toolbox of ways that you can try and get someone to understand what you're saying, you're not going to get anywhere.

So, in some ways I don't blame them that they are not able to achieve that result in the end because it's not in their training, they're not experienced, and this is why our role is so important and why we work so closely with child protection is because we then bring that expertise to the care team. We're able to advocate, and we advocate especially in [the Aboriginal service's] setting because no one in that care team really wants the children to be removed.

And I think if these people were better trained in their roles and understood more about disability and had a framework for the way that you may need to interact with a family who is experiencing disability, you may actually get better outcomes from your clients. And child protection will be doing less removing and more reunifying and more keeping families together. That's my biggest recommendation, there needs to be more training.

– First Nations Service Provider 21

Given the importance of a skilled workforce that is properly supported to engage effectively with parents with disability and their families, some suggested that minimum standards for training might make an important contribution to improving systems and supports. This could include child protection caseworkers or child and family support staff, but also be extended to all key service systems involved in the child protection system. A First Nations service provider suggested:

Even if they were to just do a Cert IV in disability, which I think should be mandatory, something as simple as that would go a long way, 100 per cent, but ongoing training, because it's not there. You can even go as far as the police. They don't get enough training for that sort of stuff too. It's just a massive gap.

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I've worked with intellectual disability for eight years and there's a lot to take into account. If we use intellectual disability as a prime example, their level of comprehension is just so much harder, they don't understand. They have emotional regulation issues; their ability to process and retain information is not the same as ours.

Some of the child protection workers are fresh out of uni. And I feel like that lack of life experience does play a massive role in how you're working with that family. I understand they have a job to do, and they need to do the best for the child, but that lack of training, life experience to expand your thought process can be quite horrific for some families.

– First Nations Service Provider 23

The relative inexperience of child protection caseworkers in understanding the lives of families they are working with, and exercising authority over, was a common theme. This has important implications at the intersections of class, race and ableism, imposing ill-suited perspectives and expectations on families that caseworkers don't understand, in ways that aren't clearly or conclusively aligned to the developmental needs or interests of affected children and young people and their families. A parent advocate agreed that child protection workers should have specialist disability training:

[T]hey're quite often fresh out of uni and they haven't got a family of their own. But yet they're willing to say to us that we can't parent. Now, it might be because they've had no involvement with anyone who has a disability in their family.

I've often said child protection workers should have to have Cert IV of Disability as well. But they don't. They've only got to do the training for the drugs and the alcohol and how to see abuse. But if we're going to be high on their thresholds, then they need to have Cert IV of Disability, so they understand how disability works if they really want to keep taking our children.

– Parent

A Child Protection Department participant argued caseworkers needed to understand the limits to their own knowledge, and have the skills to seek further advice. However, this also requires that specialist advice to be available to support their day-to-day work, with further attention needed to ensure that caseworkers are appropriately equipped to work effectively with parents with disability, their children and families:

They're [caseworkers] equipped to understand the impact on children. What they're not necessarily equipped about is understanding how they then partner and work with those families. For me, that's a missing piece ... Our message about working with parents with disability is very much the same as working with all parents. You meet them where they're at. You provide something that they're comfortable with. You communicate in a way that meets their needs ...

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But I guess that the difference is understanding what they specifically need and using any information about their disability in order to inform that. I think that that's really where the sector comes in. That's where caseworkers need advice. [In our caseworker training] we do talk about disability. We don't spend a lot of time going into the different types of disability because ... it's a foundational programme. I'm trying to think about how we would do this in a way that caseworkers would retain that.

But the preference always, and it's the same for mental health issues. It's the same for anything. When you're in that situation, you know to ask advice and you know to think about how that advice applies to this family. I don't expect a caseworker to come out of their induction training knowing every type of disability, what it means ...

What I do expect them to do is understand and seek information and always be learning and thinking about the best approach when they're working with families. It's a big challenge that we're thinking, particularly with some of the stuff that's been emerging from the Disability Royal Commission about how we do equip caseworkers, properly.

– Department Practice Expert 12

Failing to properly equip caseworkers for the challenging work of child protection was also seen as damaging the wellbeing of caseworkers and contributing to a difficulty in retaining them. A Child Protection Department participant explained:

To send a new grad, first year out, to hospital to do a protection application on a new baby, that's pretty soul destroying. That's what happens because if they're on that team, that's their job. There is a high turnover. And, look, they get supervision. They get support. They get training. They get all of those sorts of things, but at the end of the day, a lot of them have had no exposure at all to that type of work. Even placements don't really expose them to those. I think for the Child Protection workers who struggle most with these cases, it's because of that social justice, human rights lens that they're applying to it.

– Department Practice Expert 18

Service providers acknowledged the significant demands and caseloads experienced by child protection caseworkers undermined their capacity to respond effectively to identified risks. The presence of risk and high caseload demands contributed to approaches that did not live up to a broader policy intent of responsive, relational practice with families. Instead, simplistic obligations unlikely to address the underlying risks present were imposed on parents and families. One service provider said:

There's a risk here, we've identified it and I'm sure it's a very complex system but it's not black and white. All too often it's just like, you have to go to family violence counselling or you won't get your children back. Or we're going to remove your children if you don't go to family violence counselling. We'll remove your children if you don't go to drug and alcohol.

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There are so many intersections about supporting the parent to be a parent first and then address those other things as they become more confident as a parent.

- Service Provider 19

Participants noted that overwhelming caseloads could create particular challenges in working effectively with parents with disability, who may benefit from additional time and consideration to engage effectively with child protection systems and family support services. A Children's Court clinician said:

They [child protection caseworkers] are an overstretched resource, and particularly in the regional areas they often they don't have the time and they have huge caseloads. When I'm sitting here saying, 'Get to know them, get the person to feel they can trust you', that's all well and good for me, but that might not be built into their caseloads ... We know that to ensure that people with disabilities understand and can implement things, it needs repetition and it needs time, and I don't know that [caseworkers] necessarily have the opportunity to do either of those things.

- Children's Court Clinician 10

## Working with cultural diversity

Participants argued that there may be specific challenges when working with parents with disability who are First Nations people or from culturally or linguistically diverse communities, emphasising the need for a culturally capable workforce that is able to effectively engage and communicate with these groups. A Department Practice expert said:

We know that we haven't in the past and continue to not practice well with Aboriginal families and families from a [culturally and linguistically diverse] background. And the cultural capability of a caseworker is highly dependent on the success of their work with a family.

Add to that how we communicate with a parent with disability, how that's integrated into our planning while still keeping a focus on their child and their safety. It's absolutely a further challenge and something that, it's really safe to say, we're not getting right.

- Department Practice Expert 12

A parent advocate provided an example where child protection workers appeared to misinterpret cultural differences in emotional expression as an issue of emotional regulation, possibly compounding judgements about the capacity of parents with disability to regulate their emotional state, and contributing to decisions to remove children and young people from their parents. One advocate related one such example in which a loud and dramatic style of expression was interpreted as an inability of emotional regulation, which was seen in terms of potential risk and contributing to decisions about removal. The advocate noted that, in their view, such emotional

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expression was entirely normal in their cultural group, and from that perspective 'it would never occur to anyone that there were child protection issues there'.

It was noted that working with cultural diversity required specific training and skills. However a service provider argued workers had limited knowledge of First Nations communities and the broader context of their over-representation in OOHC :

No concept of the intergenerational trauma or Stolen Generation, impacts of Child Protection in their lives. None at all. They're so focused on the minutiae of the tiniest of incidents that happened, it's so narrow.

– Service Provider 4

First Nations communities may understand disability in a different way to non-Indigenous communities in Australia, with a resistance to labelling individuals. This can create additional challenges to engaging parents with disability or connecting to supports like the NDIS. A First Nations service provider explained:

I don't think Aboriginal communities see a disability as a disability. It's not so much targeted. It's just they might say they have trouble or they struggle. I don't think in Aboriginal communities we like to label our people, so I don't think it is seen the same. Aboriginal people don't like to be labelled with a disability; they say I don't have a disability, I'm limited in my ability.

A lot of their trauma and disability is from not healing a previous trauma in their life. I have an excellent clinician that's up here and he works three days a week with carers and parents and he just talks on strategies with them. The feedback I'm getting from parents is that he is just wonderful. He's terrific. He doesn't look at it, you've got a disability. Let's have a look at it. He'll say, Okay, you're having some issues. Let's go through the issues.

– First Nations Service Provider 2

Other First Nations participants similarly outlined a different perspective:

Participant A: I think when it comes to our people who have disability and high needs we don't see it as a difference, we just see them as a person. And we just see them as still being very much a part of the family, part of the community.

I think it is seen differently in Western society as to what it is in Aboriginal and Torres Strait Islander. And we hear that too from other First Nation societies too as well that disability isn't seen as a disability, it's actually just that person. They're still very much welcome in the community.

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Participant B: Yes, I would agree, it's the same where I grew up. We didn't judge people because of their disability, if anything we looked after them more. And we all know members of the community and we just looked out for each other.

– First Nations Service Providers 11

First Nations participants noted that ableist narratives about the capacity of parents with disability to meet the needs of their children, and racist narratives about First Nations parents, families and communities, intersected as part of a dominant deficit discourse about First Nations parents with disability.

Participant A: Caseworkers don't understand how important culture and family is. It can just be seen as a total deficit rather than looking at the strengths. We get a lot of young university students dealing with high crisis situations and they have very little life skills or very little understanding of Aboriginal or Torres Strait Islander people. About how important our community is and how our communities raise a family.

I think it can still be an unfair assessment because you're Aboriginal or a Torres Strait Islander if you have a disability. There's all these generalisations; Aboriginal or Torres Strait Islander people generally come from [poor] background, generally don't look after their kids very well, generally have mental health issues, generally.

So when there are deficits that you can clearly see, it can be determined as worse than if it was a non-Indigenous person, I'd say. Over my nine years of working, I'd say I've seen that.

Participant B: I think we do see that difference between a visible disability and an invisible disability. If people can't see the disability unfortunately they don't necessarily understand the disability such as mental health but also people with cerebral palsy or any of those types of disabilities. Where they have a stuttering speech or they walk with a limp. People think that they're drunk or they're high whereas it's actually the disability and there's just a lot of assumptions I think, unfortunately.

– First Nations Service Providers 11

Participants also noted the significant strain this can create for extended families. The failure of systems to offer effective supports tailored to the needs of First Nations families, and the commitment from families and communities to keep First Nations children within families, means that grandparents, aunties and uncles are often carrying care responsibilities.

One participant said:

In the Aboriginal community, a lot of the care of children is taken up by grandparents. It's almost like this new Stolen Generation ...

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[Caring for children] is falling very much to grandparents, in particular, and aunts and uncles. We're seeing more and more of that. The kids that were in out-of-home care in Child Protection were round about 50 per cent Aboriginal children and 50 per cent non-Aboriginal. So they're well over-represented. It's really sad to see.

– Department Practice Expert 18

The experience of stress for First Nations families was also compounded by strained relationships between child protection authorities and First Nations communities. Given the importance of relationships of trust in effective service provision, these structural and historical challenges for contemporary child protection systems contributed to poorer outcomes experienced by First Nations families. One First Nations service provider said:

In terms of relationships with child protection workers: Look it's mixed emotions to be honest ... in terms of positive experiences; next to none.

– First Nations Service Provider 23

These skill and knowledge gaps can be addressed through bespoke training. One First Nations service provider described their on-boarding process and the steps taken to ensure that practitioners were skilled enough to work effectively with First Nations families, including understanding verbal and non-verbal cues:

I had to be very specific, I had an induction process with my staff about how they needed to do the tools and that went over about three weeks. I needed to make sure they were doing it properly otherwise they weren't going to get the engagement that I needed.

And we even had a cultural supervision framework that went for eight weeks and a lot of that was around how do you engage, how do you take past history, what does that mean, what's the trauma that our people have faced, how do we then move forward. Half my team was non-Indigenous. So that was really helpful for them in getting them even to read body language, because a lot is unspoken with our mob. And always going out there when the family's not in crisis.

So if there's a crisis drop everything, forget what you're doing, forget your day's plan, deal with the crisis first and go out there and just support them and help them today. And then next time we come out when they're in a lower state of crisis we'll then have that yarn, trying to give them calm, thinking with their frontal lobe and getting them to relax is really important for us. So, I'd say it's very much individual and for a non-indigenous person that can't read Aboriginal social cues it can be quite difficult for them to pick up when they say one word or they look a particular way.

– First Nations Service Provider 11



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## Fragmented and inadequate service system

### Preservation and family support

Participants noted a disproportionate focus on decision-making – the forming of judgements and the evidence in support of those judgements – rather than the provision of services and supports to address those risks. A Children’s Court clinician made clear the need to shift to a practical, action-oriented approach to create change for families and children, being explicit and deliberate about responding to address the challenges that families face, and the risks those challenges confer for their children:

You’ve got to go, ‘You’ve got this and this. And you’ve got this.’ So what? What’s the implication for a disability and somebody who doesn’t know how to play with their child? What do you do? Or somebody’s got to deal with schools. And they’re scared of principals. What do you do? So, it’s very specific and very practical. If you don’t, you don’t get any wins.

– Children’s Court Clinician 5

Other participants noted the need to create space for parents, including those with disability, to manage their own stress, including the stress associated with expectations of parenting and the desire to be a good parent for their children. A First Nations service provider described the support they provided to a parent with disability and their family:

We had a mum with a disability, a mental illness, and what we did in the family preservation is we actually gave her respite every second weekend from the three kids ... We paid somebody just to look after the three kids, and we just said to mum and to dad, but mainly to mum, have a break.

Now we’re seeing her ability just increase incredibly because these were all school-aged kids, and just having Friday night to Sunday night to herself, and all weekend, we were able to work on heightening her awareness of responsibility. Just something as simple as that alleviated some of the trauma in her head about being a good mum and trying to do it. She was getting to a stage where she was over-thinking it and trying to be perfect because she knew that she had some sort of delay ...

We did this for probably six months, and the family preservation team would have a coffee on a regular basis with the mum, and just have a walk around the end of the beach and a bit of a talk, and then highlight some of the things that are frustrating or difficult for her to do and work out a system of dealing with that.

Sometimes it was just, ‘After tea, you need to say to the kids, watch the TV, read a book, whatever. I’m going to have a cup of tea and I’m going to have half an hour to myself.’ But just give her some strategies. Once we work out that the kids are in a safe environment, we then have a look at the parents. We also do it when we’re doing contact or restoration.

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The kids are being removed, so we're having contact, so we know the files well, why they're being removed. But if there is some physical or intellectual disability, we then work with the parent before contact and say, 'What are you doing about it? Are you taking your meds? How do you feel about that? What sort of supports are you doing? Are you doing regular exercise or whatever?'

Because my experience is every child wants to go home and every parent wants every child home, so it's about looking at the conduit between removal and putting them back together. A lot of times, our young mums in particular just don't have the confidence. They didn't have their mother or their grandmother teaching them parenting skills, so they are not confident that they're doing a good job. This heightens their intellectual disability.

– First Nations Service Provider 2

However, participants generally felt there was inadequate access to family supports for parents with disability facing child protection system intervention, including prevention, family support, working towards restoration, or in promoting ongoing relationships between parents with disability and their children following removal. A lawyer said:

I think there's a gap in what services are available to support parents who have intellectual disability that have had children removed from their care ... I don't know of a residential planning service or anything like that that specifically caters for parents with disability ...

I think improving a parent with disability's ability to respond to child protection concerns can only really happen if there are more services that would cater to assisting them doing that.

I think if I could frame it this way, if your drug use is impacting on your ability to parent a child, you go to a specific program in relation to that which has all these flow on benefits. So, you don't have a house because you're addicted to drugs. You're in a bad relationship because you're dependent on that person's drug supply. Your mental health is very poor because of your drug use. And all of those things lead to child protection concerns. And then you go to a service that helps you resolve that issue, but also you do domestic violence counselling within the service, you see a psychiatrist within the service. They help you get at housing transfer, so you can get housing on your own.

So, by the time you're ready to leave that program, after six months, you've got all this stuff ready to go and then you can say to a court ... 'Not only did I do rehab, but I did every single other thing you asked me to do because it was so convenient, how could I not? It was all there in front of me.'

But a parent with a disability who's in a poor relationship and has housing insecurity, doesn't get to go to rehab unless they've also got a chronic drug problem ... The client wouldn't last in a mainstream rehab with all the things that go on in rehabs. All 30 people living side by side ...

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So, I think a parent with a disability's ability to address the concerns is so impacted because there's not those kind of services available to them and they don't get the opportunity to access services that other parents do.

- Lawyer 13

A First Nations service provider noted that service provision could be tokenistic, using the example of parenting programs often requested by child protection authorities:

We use a service provider that does all that, PPP (Positive Parenting Program) and Tuning into Kids and all these other great names and they vary in programmes, and they [child protection authorities] ... think is going to solve all the problems. You send the family to that and bingo it's all fixed. It's just a tick of the box really.

- First Nations Service Provider 27 (focus group)

Another First Nations service provider noted that, given the intersection with poverty and financial stress, budgeting is often a key parenting skill with which parents with disability may benefit from further assistance. Given the structural nature of poverty for many families, parents with disability facing child protection intervention may be positioned within broader social networks that are similarly unable to assist in navigating services and supports:

Their own families are in the welfare system. And they don't know how to navigate to assist their family member who has this disability to receive NDIS services or to assist with managing their finances so that they are not leaving themselves destitute.

- First Nations Service Provider 27 (focus group)

Parents with disability may be vulnerable to exploitation within social networks, including financial exploitation such that disability supports are not utilised for their benefit. High interest rentals and services such as Afterpay were also seen as compounding financial stress, creating significant strain in terms of the ability to pay for essentials like groceries, rent and electricity on limited incomes once those bills become due. Access to safe and stable housing was consistently noted as a key concern, particularly for parents with disability. A First Nations service provider said:

because the criteria for renting at the moment, they looking more towards people who are working, affordable housing, rather than people on unemployment or Centrelink ... So that's another barrier for them ... This family that we had, the mother and the father had mental health issues, disabilities. And the real estate [agent] just didn't want to look at them because they thought they couldn't afford it or couldn't manage the home."

- First Nations Service Provider 27 (focus group)

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Another First Nations service provider explained how housing challenges were seen as child protection issues, despite the structural nature of this issue putting it beyond the control of parents and families:

We're finding that [the child protection agency] is saying, you're living in a crowded house, and this is the type of neglect. But our parents can't afford to rent. They can't get [public housing]. If they are fortunate enough to get into that environment, they are absolutely struggling, so they pretty much stay in an environment where they have a collective of people. [Child protection agencies] go in and go, 'There's six people living in this house' and remove the children ... There's not enough public housing. If we could get public housing, and if we could get supports for these people one-on-one, it would take away a lot of the problem.

– First Nations Service Provider 2

A Department practice expert argued child protection systems needed to address poverty as a known factor contributing to risk for children and young people:

We've been wrestling for a long time in this agency about removing the idea of poverty from an assumption about neglect of children and really seeing our role in addressing poverty for families in that social justice lens of how we do that ... And ... try to remove some of the systemic barriers for families that, for no other reason than poverty, are creating risk for their children. We know what the research says; families who are in poverty are much more likely to be known to the child protection system ... The intersections between poverty and parents with disability I'm not as clear about. It's the same as anything else. I'd only say that it would be far more likely to compound it. And we know that parents who are receiving pensions for disability support, or whatever it might be, will, understandably, be in poverty.

– Department Practice Expert 12

The fragmentation of the system also contributes to parents with disability not being aware of key supports that may be available in their local area. A First Nations service provider said:

And as much as they may be getting the Disability Support Pension say if they're eligible for that, if they've got no one to help them with the NDIS claim, then they're having a struggle on that payment from Centrelink. Because they know nothing. It's kind of like they live in the Centrelink world and that's the be all and end all ... I find that that quite a lot. Because when you try and introduce them to services that are available within their towns, they go, 'I didn't realise it was here. I didn't know I had to go and do that.'

– First Nations Service Provider 27 (focus group)

One of the most fundamental issues facing parents with disability navigating child protection systems was the failure of child protection agencies and services to effectively communicate

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how and why their family has been referred to a service and how they could be impacted if the risks identified by child protection departments are not addressed. A First Nations service provider said:

We've come to meetings where it is their role to actually say why they referred that family. And we're all just sitting there looking at one another. We're waiting for them [child protection authorities] to do the narrative and we end up doing the narrative because ... the family have no idea why they're getting referred to us, and to the severity of the risk whilst they're getting referred to us. They don't realise they're referred to us because they are at imminent risk of having their children removed.

- First Nations Service Provider 27 (focus group)

Gaps in communication with parents with disability also affected access to services. For example, one First Nations service provider described the confluence of expectations that parents will initiate service referrals with the use of telephone assessments in on-boarding as a particular barrier to access:

It's them that have to initiate the assessment, the client, for some of these services, and again, that's also the delay. Because getting ... the person to get on a phone having to sit through a phone assessment is tedious. And because they don't understand why they are doing it, and do I get locked up? Not locked up as in jail but locked up in mental health ward or all that kind of stuff.

- First Nations Service Provider 27 (focus group)

For some, it was important that services had the flexibility to go beyond the specific risk of harm concerns identified by child protection authorities, providing a more comprehensive service that responds to the needs and aspirations of families. They argued service system design should consider the intensive and sustained effort necessary to achieve long-term change for families experiencing crisis, particularly for parents with disability, who may respond well to more intensive, longer-term tailored supports. A service provider said:

They're saying it's a prevention [service], so it's to reunify or preserve families, and they talk about ... that within 240 hours, or six months ...

We used to be able to get involved when a mother was 20 weeks pregnant, well now we have to be careful because we've got 240 hours. So now we're thinking okay we need to do it around 28 weeks when we know that research tell us there's a great amount of work that can be done antenatally with a parent and that motivation is high. Now we can only get involved at 28 weeks really because we need to be able to be there post-birth to provide that support too ...

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So there needs to be services ideally that can help at those different stages and those first three years of a child's life are really important. So 240 hours can't provide for that, whereas with [other longer-term programs] we could be there over the gamut of that time.

– Service Provider 17

Assessment processes may not identify all of the challenges that a family is facing, emphasising the need for an integrated and skilled service system that is able to respond dynamically to the needs of families. One service provider explained some of these challenges:

There were so many issues that were invisible issues, that weren't really noted anywhere, that I found to be extraordinary barriers to parenting, to family wellbeing, to ability and capacity to navigate the changes in society.

The other thing that I saw that I've never seen in my life, was pretty much, I'd say about 80 per cent of the people I worked with, male and female, including children, had severe dental decay ... the direct impact was that they were not eating proper food ... and it was then passed on to the kids.

Number one was teeth and number two was literacy. Very low literacy for parents. Low to the point where it was really hard to understand how much they could and couldn't [understand]. With Covid, most of the kids are working from home with digital or sometimes just printouts. Parents couldn't help their kids with any of the learning. Not even understanding instructions. How do we communicate to the person to get to an appointment if they can't read maps, they can't read the messaging, they can't look up stuff and research it.

So, the doctor says 'Oh, your little Johnny has, I don't know, an audio issue' and they give them a word. Most parents would research it, read up about it, there's just no ability to. There's a complete dependence on other people, if you're not ashamed, to find out more information so that you can help your child. Even just getting a script and going to the pharmacy and the doctor's talking to you in professional language ...

That was an incredible barrier for the parenting, to be able to feel that, if you've got four children, and two of them are on, and they're all either prescribed with medication, to make sure you give the right medication, the right dose at the right time to number two and to number four. It makes it really difficult if you can't read.

No one talks to the parents. 'Did you get the sheets that little Johnny sent home?' Yes, yes, I got it. They're covering up all the time because there's this perpetual fear that if you're not a good parent, if little Johnny's not making it to the camp or hasn't filled out that form and signed it, that you're going to lose your kid, child protection is going to be called. You're not parenting them in a healthy way.

– Service Provider 4

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In addition to longstanding views that there is inadequate investment in and access to family supports in the child protection sector generally, participants noted that parents with disability require specialised supports that understand disability, and how to work effectively with parents with disability to support them in their aspirations to provide a safe home for their children. A parent advocate noted that some services supporting parents are wary or ill-equipped to engage with the child protection system, meaning those rare services that operate effectively with child protection agencies are often over-subscribed and difficult to access:

A lot of other services won't touch care and protection, too intensive, too specialist, and too long. Other services, just to try and get them is really hard.

– Parent Advocate 1

Failing to properly align services with the needs of parents with disability set families up for failure. One lawyer recalled a matter where a client with a significant intellectual disability was referred to a parenting program that was not well suited to their needs, emphasising that caseworkers need to spend more time getting to know parents with disability, not just to identify risks that may be present, but also to identify how best to respond to those circumstances to effectively create change:

There were some allegations about excessive discipline and the caseworkers said to him, 'You need to go off and do this parenting course, otherwise we're going to remove your kids'. And this was not a course that was pitched to him or that he was going to have the ability to properly engage with. He wasn't able to do that, and it was almost like in some ways he was set up to fail because the children were then removed. And I was looking at and reading this and talking to him and understanding his situation and going, this was never going to work.

They weren't able to recognise that the usual approach ... was just not going to work for this particular person. It didn't seem to me as though they'd taken the time to sit down with him and understand or talk with him enough to know that wasn't going to work. It didn't take me long to figure that out. I don't imagine it would have taken them that long, but it was this bizarre matter where they also had his information about his disability on their file that they didn't seem to access or think, 'Gee, I might read this before I go and speak to this man'. Hopefully, I'll be able to communicate in a better way that's more tailored to him and get a better outcome.

– Lawyer 15

Participants also noted significant issues with the distribution of those services, with families in regional and remote areas facing particular difficulty with access. This can include long wait times or being required to travel long distances to access services in regional centres. A First Nations service provider said:

There are just not enough supports. We also have the issue of transport restrictions. We don't have trains or buses like they do in the city. Parents here can't just get on a train and go into [a city hospital] and get some counselling support. Without the clinical support,

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it's very hard to work with the parents with disabilities. Once they go back into their home environment, there's no service that actually says, I'll come out once a week and work with you. It's just back to where it is and then the road crash happens.

– First Nations Service Provider 2

Participants also noted that tailored family supports for parents with disability were not equally distributed for culturally diverse populations, particularly First Nations communities. This reduced opportunities for community-based approaches. A First Nations service provider said:

I think if we had an equitable distribution of resources within our community control sector then we would be able to see so much more opportunity for community-led solutions for our families who do have disabilities and high needs to access.

– First Nations Service Provider 11

First Nations service providers noted that they had observed a significantly limited approach, generally placing the bulk of responsibility on already over-burdened and under-resourced Aboriginal community organisations, or even on an individual worker. One said:

So, we'll send one worker into that community to solve the issue ... That there's just that 'Oh yes, we'll have one support worker thrown into this massive organisation or we'll have one specialist'. I think we would have the skills and abilities to work alongside our families who have disability and high needs, but we need that equitable resources to be able to do that.

– First Nations Service Provider 11

Another noted:

There's just not enough clinicians ... to be able to see them on a regular basis ... It's probably a three-month's waiting list. That is the major problem, I believe, is there's just not enough clinicians to see the parents on a regular basis until there is no crisis.

– First Nations Service Provider 2

These issues were compounded by experiences of poverty for many families affected by child protection systems, with waiting periods in the public system contributing to delays in accessing needed services for parents with disability. One First Nations service provider noted this was particularly the case for First Nations parents and families:

If you want to see a neurosurgeon or a specialist, unless you're in a private health fund, you just can't get a referral. That's another disadvantage for [First Nations] people. A lot of them aren't in private health funds, so they can't access a lot of the paid clinicians on a regular basis. They've just got to wait, take a number, and in three months' time, come back and see a generalist.

– First Nations Service Provider 2



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This systemic failure to invest in First Nations community-based services and supports, including for First Nations parents with disability, was of significant concern for many participants, and child protection systems more generally, given the high and growing over-representation of First Nations children being removed from their family into OOHC. One First Nations Service Provider noted:

I had some discussions yesterday with [the child protection authorities]. Surprise, surprise, they're really concerned with the [regional] figures of over-representation of Aboriginal kids in out-of-home care. It's about 46 per cent. They're just going, ah, these numbers are too high. But they've never invested into the area of disabilities for parents, or healing of parents to be able to do something about it. So, we're getting a crisis in kids removed because the disability sector is not being supported in out-of-home care.

– First Nations Service Provider 2

These challenges were summarised by a service provider who noted the challenges that emerge as a result of under-resourcing of family supports and poor service system design, both in failing to meet the specific needs of parents with disability, as well as in overwhelming practitioners and contributing to staff burnout:

That can be a presentation from a single mum parenting alone where there can be ongoing occurrence of control, violence, drug and alcohol, lack of education, disconnection from community and bringing up young people or children. There's such a mistrust of professionals and adults because of those traumas and fears of service systems. But also, just the ability to actually get any traction or to even get them linked into services can take months and months of work. It's a hard process.

We're going to be putting in 20 hours a week to have a really intensive response to see if there's any capacity for this to be contained or any changes to happen or to get the wraparound support service required. But we're funded for one to two hours a week of service per client.

So, we'll typically try as much as possible to be client centred and family centred and we as a team will put in those resources. But then there's accountability pressure. When it comes to caseloads a team member is holding ten, 12, 15 cases sometimes, they can maybe manage one case like that, but we're getting all of our cases like that. So, just that trickle-down effect where you're handed a huge amount of complexity with not a lot of resources. So, it's set up for burnout.

That scatter gun approach that we just look at problems and then cut and paste to multiple services just doesn't work. It's a quick fix solution to complex problems that is really actually ineffective.

– Service Provider 16

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Similarly, there may not be good communication pathways to raise awareness about the services that do exist, to ensure that families that need the support are able to access them:

It's the knowledge about services in the area and, particularly, for rural communities, it's access to those services. We can have amazing disability support services in cities, but whether that's consistently accessible to other families is another issue.

– Department Practice Expert 12

## Restoration supports

In addition to the challenges of accessing effective, skilled and responsive family supports for parents with disability experiencing crisis and child protection intervention, participants also noted significant gaps in service access for parents with disability following the removal of their children by child protection authorities. This had implications for restoration and ongoing family connections during any periods of OOHC.

As with the broad remit of practice frameworks, there were no specific supports for parents with disability to support the restoration of their children, with the general practice mandate of tailored family plans expected to guide responsive practice. A Department practice participant said:

The intersections between contact and restoration are really important. And setting up quality family time is something we're really trying to work on as an agency ... I'm not 100%, but I don't think there's anything in our system that provides additional support for parents with disability to have their children restored. I think it's very much dependent on the plan that's established in order to get that child safely home.

– Department Practice Expert 12

Access to counselling supports for parents following removal was identified as a critically important resource. Statutory child removals are an extremely traumatic experience for parents as well as children, and may include the involvement of police. A parent advocate said:

There needs to be counselling. You've just had your child ripped out of your arms. Yes, 100 per cent counselling. The amount of times they get the police involved, that doesn't work for either party. The kids are petrified. Aboriginal family, they removed three kids and eight cop cars turn up. What was that? That traumatises the kids and the parents. The dad was institutionalised, an Aboriginal boy, as a child, and the mum was a kid in care herself. And then they have eight cop cars to remove three of their kids.

– Parent Advocate 1

The pain and loss for parents and their love for their children is often not recognised: As noted elsewhere, often the system is focused on the child to the exclusion of their parents and family. This includes failing to meet the needs of parents following removal, undermining the

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opportunity to move forward towards restoration. A parent advocate explained how they tried to provide support in this context:

I'll have counselling. I'll be in there. There'll be wrap-around support, make sure they're safe because the amount of times I've received phone calls saying, I'm cutting myself, I'm going to kill myself ... There isn't. [The child protection authority] don't do that. They're not there for the parent, they're there for the child.

– Parent Advocate 1

The experience and professionalism of caseworkers was seen as key to minimising the trauma of removals for children and parents. For example, there was a view that child protection authorities assumed parents with intellectual disability were not capable of self-regulation, and as such enacted defensive strategies such as involving the police in statutory child removals that contributed to the experience of trauma for children and parents. More experienced practitioners were perceived to make better judgements to navigate these challenges more effectively. A parent advocate described a less confrontational approach from experienced caseworkers:

I find that the caseworkers that have been around a little bit longer, or the caseworkers that have been mentored by the better managers, will make sure that it's as less intrusive as possible to remove the children. So no police, it'll be just them. They will have the police on standby just in case.

– Parent Advocate 1

One First Nations service provider noted that while many parents did not receive any support following the removal of their child, there appeared to be a more recent shift towards a presumption of restoration for children first entering OOHC, in recognition of the harms of the removals:

Now it seems when a child if it's a new entry, that parents are engaged because that's ... supposed to be an automatic restoration with the children so lessen the trauma and also the separation.

– First Nations Service Provider 27 (focus group)

However, some First Nations service providers reported that restorations were rare in practice, particularly for parents with disability:

Participant A: In most circumstances that [restoration] doesn't happen. Once the kids are removed [it's] very unlikely for the caseworker to go back and try and salvage that. The main times that I've seen it happen is when there's been lots of kids that have been removed and those kids are having trouble within out-of-home care and then they'll go 'Oh shit, we've got a problem here. Let's try and get the kid back with family because no one wants to look after the kid in out of home care' ...

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Participant B: If you add that complexity ... of a disability and my experience and from my conversations with the sector is that hardly ever happens as well. Because for that exact reason ... of 'Oh well it's a permanent disability, how can this parent still be a parent who's willing and able if we've assessed them as having a disability?' So unfortunately from my experience it is seen as no longer progressing.

– First Nations Service Provider 11

Participants also noted the harms associated with growing up in OOHC, particularly for First Nations children, and the need to work diligently to foster restoration any time it may be possible. However, as was consistently noted across participants, supports are often not available. A First Nations service provider explained:

If there's a glimmer of hope for restoration, we work very closely with the parents. We have strategies of like, it might be an idea if you ring up once a week and talk to little Paul, and we'll start very, very slowly.

I'm conscious, as an Aboriginal man, that these kids being removed are going through trauma, they don't understand the adult concept of why they're removed. They only understand they're being removed and they're going through trauma. So, for me, age-appropriate. One of the things we do is we talk to the kids. We see the kids at least once a month, sometimes more. But a minimum of once a month.

We always talk to them about, what do you think about mum or dad? What do you think we can do to have mum and dad come back? We also have a bit of an assessment where we ask the kids to list who they feel safe with, and we also get them to say, if they had a preference, who would they live with? Now, again age-appropriate. But if a child lists mum or dad number ten, we're saying, 'Okay, there's some concerns here'.

But if they say, 'I'd love to go back to mum and dad, but mum gets really upset, and gets really cranky, and gets really agitated' and whatever, we go, 'Okay, well, they're not scared to go back. Let's have a look at what's agitating the aggression'. It could be an undiagnosed psychotropic behaviour. A lot of times, we have to sit with the birth parents and actually go through their lives, and there's a lot of stuff that has to be healed with them because they do have an illness that's not diagnosed.

In the old days, probably 30 years ago, what parents used to do when they were stressed or had a mental illness, they'd go away for two or three weeks and let the family look after the kids. But these days, we try and keep the kids very connected to the family, as long as they're not being harmed. But there's just no supports for the birth families to actually start getting some counselling and some really quality work on a regular basis. That's the problem.

– First Nations Service Provider 2

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The failure to provide support for parents after final orders often leads to further trauma for parents and contributes to cycles of removals of subsequent children. The lack of support for parents post-removal seems to be premised on a failure to recognise their humanity and the trauma that removals cause.

When the court ordered that there was no reasonable chance of restoration with Dona, I went down a really bad spiral. It wasn't until the final [orders] came in that I felt like I was defeated. It was very, very difficult to pull myself out of it. I still want to get custody. And it wasn't until I found out I was pregnant with Rod that I actually felt like I had a case. I know that sounds weird. But it kind of felt like, well if I can prove to them that I can look after Rod, then I have a case to get Dona back. And that's basically what we've done. I had to build myself up from the ground up. I pulled myself out of that rabbit hole. I stopped doing drugs, I went cold turkey on everything. I stopped communication with the Dad. I have taken out an AVO and still I don't have contact. All of my focus is on my kids. All I want is to have my kids in my care.

– Parent

## NDIS

Participants noted that the NDIS had changed service availability for parents with disability, including those facing intervention from the child protection system. While this might include access to personalised supports for some parents with disability, participants also noted this policy change corresponded with a reduction in critical community-based programs, and additional barriers for parents with disability experiencing crisis to navigate to access the supports they need. Among those barriers were lengthy waitlists and waiting periods to move through the various assessment processes, which must be worked through prior to receiving a service. One participant suggested that the proliferation of barriers, and the difficulties experienced in trying to navigate the NDIS, contributed to the stress and strain experienced by families, stating 'there's so many barriers it's crazy-making'.

Even though it has not lived up to expectations, the NDIS was also seen by some participants as an opportunity with the potential to provide parents with disability who are facing intervention from child protection authorities with key supports to assist in meeting their needs. A parent advocate said:

It's like, right, mum needs support. She doesn't have NDIS. You're [child protection agency] going to pay for her to be assessed so she can get the access request form, she can get NDIS, she can get supports. And if she gets supports, then what happens? You guys can get out. I'll do a lot of NDIS stuff as well now, which is horrible but I do.

– Parent Advocate 1

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While the NDIS was seen to have a huge potential to improve services and support for people with disability, including parents, navigating the packages remained a highly variable process. One participant said:

I'm a supporter of the NDIS, and I think it's got huge potential, and I think it can work really, really well for people. But I guess what we've seen in [a regional area] is what a lot of other areas have seen, is that it's about ability to access the right resources for that family. Ability to have someone that can use the right language to get the level of package that the person needs. And that can be quite an art form I believe ... And that comes back to being able to write the right way, being able to have it to be flexible enough to do that sort of thing. Because there are some things that NDIS won't fund, but other things that they will. So it's how you can actually maximise what NDIS will fund and then bolster that with what, for example, child protection could fund or disability services could fund ...

I think it could be done, but it probably takes a level of coordination. So, you'd probably need that skilled broker or coordinator that can actually put all the parts together, really look at what it is and look at what's required and look at how we can best build this package for this person. So that very individualised approach, that very family-centred practice, but with someone that really has that very, very good understanding.

– Department Practice Expert 18

At the same time, participants reported that the transition to the NDIS also corresponded with a significant reduction in specialist services previously provided by the government, which had the impact of reducing access, including for parents with disability at risk of child protection intervention. A Child Protection Department participant explained:

When the NDIS came in, that service dissolved almost instantly because parents and their coordinators weren't necessarily identifying that as their biggest priority in their NDIS plans. So the ability for those services who had to pivot towards providing NDIS-specific services couldn't then continue to provide that. I think that's had a major impact ...

The lack of specialist family preservation services for parents with disability has [been] impacted. It's understandable that the NDIS can't necessarily provide those needs purely because there's got to be priorities, really.

– Department Practice Expert 12

A parent advocate noted other issues that arose with the NDIS roll-out:

The NDIS did have that effect of killing off funding for group-based programmes. It's just an individualised model.

– Parent Advocate

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Similarly, a service provider noted that the implementation of the NDIS resulted in a reduction of community-based supports that many parents with disability facing child protection intervention had previously accessed:

Those community based relational based programs all disappeared with NDIS. The great barrier then becomes getting somebody assessed, able to attend an appointment, get to an appointment, tolerate the assessment process, get an assessment and then do an application before they even get any kind of support. And then advocating a lot for case coordination to be part of the package so that actually they are supported to navigate it, to access services that are meaningful to them ...

Those place-based services that offered particular funded services for those that were eligible, that kind of approach, when that all ... All of that shutdown with NDIS ... We had to start navigating a very complex and new system that actually had a whole lot of access issues

– Service Provider 16

Participants noted that these changes created a gap affecting parents with disability who might benefit from supports but did not meet the NDIS criteria. This increased the risk of child protection intervention and required workers to navigate how those services might be provided between NDIS and child protection services. A parent advocate said:

Unfortunately, a lot of the parents that I work with are borderline or mild intellectual disability, so they don't meet access for NDIS. They don't meet the criteria so they don't have those supports. Usually if you have dual diagnosis in mental health and intellectual disability, I will try and get them assessed, get a diagnosis and try and get NDIS. It's hit and miss with NDIS. Sometimes we get it, sometimes we don't ...

There are numerous different ones or businesses. I work with a number of different businesses, then there are support coordination businesses. They're the ones that manage the NDIS packages and then they manage the support services that get involved. I work with support coordinators on a regular basis because I'll be saying to them, Right, you need to get this service, you need to get this service, you need to get this in. Can we do it by NDIS? If we can't I'll get [the child protection authority] to pay for it. It's a bit of a balancing act.

– Parent Advocate 1

For some, the NDIS further exacerbated the complexity and fragmentation of the support system for families experiencing crisis, including child protection involvement:

I think that NDIS in and of itself also appears to be chaotic because it depends on the case planner that you get, it depends on what people understand about the supports that actually a person is needing with respect to adequate supports. And in the space of dealing with

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child protection what happens sometimes is that the NDIS comes on board. You've got all these different staff coming in. They are not necessarily skilled and trained the same way as Family Services are, which is more social work-focused and capacity building.

– Service Provider 17

There were also concerns that more recent efforts to reduce the costs of the NDIS system increasingly saw applications for support turned down. Some families did not receive supports and service providers also saw significant discrepancies in packages offered to families they felt were not well aligned to their relative needs, with one noting an example of a child requiring significant support to assist with primary school on a relatively low-value package, while another requiring lower intensity behaviour support had access to a package more than three times larger.

A First Nations service provider complained about changing criteria for NDIS funding:

They've changed the goalposts earlier about how people can apply or how much they can receive, for whatever reason. They needed to have a diagnosis. And now they're asking them to have more than one diagnosis. And say, ADHD does not qualify for NDIS unless they've got behavioural problems within the school or it's noted in mental health, they've got records to support it.

– First Nations Service Provider 27

As such, while the NDIS offers the potential for a more individualised approach to support, this was dependent on being supported to navigate 'entry' to the system to receive an appropriate funding package, and adequate casework to support tailoring and coordination of supports. Service providers saw families and services having the capacity or supports required to navigate the NDIS system as a key challenge:

Initially, the process of applying seems fairly straightforward as an access request form that you need to complete, but even for someone who has completely functional brain capacity and no deficits whatsoever, it can be quite confusing, the actual form.

And then the form also needs to be completed by a relevant practitioner, and not every person has a relevant practitioner who's been treating them or the child who's being applied for who's seen them for a long enough amount of time to be able to complete that part. And that's basically the diagnostic criteria, it's a professional advocating for the person who's applying, to basically advocate for why they should be able to access and why they need NDIS support.

And then most of the time, the application gets rejected for one reason or another, usually due to insufficient evidence or lack of evidence stating that the condition, the disability, is long term and basically needs that long-term intervention. They can be rejected three or four times before they get accepted, which is really, really frustrating.

– Service Provider 20



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One service provider found the NDIS posed particular difficulties for First Nations families:

But it's so hard to get into NDIS, especially for mental health stuff or anything that's not a recognised visible disability. And I'm talking just for the kids. Not even for the parents.

Being able to get to specialists to get the reports done and then to follow up with the planner at NDIS and put together a plan and then get the services in. And then you've got to have all of these strangers coming into your house. And it's just literally not a service for the Aboriginal community. It's very report-heavy, it's very engaging with lots of professionals and people getting involved in your business, coming into your home. And I didn't find a lot of very successful engagements with NDIS when we did actually manage to get some funding.

– Service Provider 4

For parents with disability facing child protection intervention, these delays and barriers to access could have significant consequences. A First Nations service provider said:

Waiting for NDIS could ruin their commitment towards whatever they were going to support them with. We've had some of those cases.

– First Nations Service Provider 27 (focus group)

A First Nations service provider explained how some barriers are more likely to disproportionately affect vulnerable families and those from First Nations or culturally and linguistically diverse backgrounds:

There's a lot that have been declined. And a lot of that is when you're filling out an NDIS application there's certain languaging that you need to utilise and there's a way that you need to portray what you're trying to say. There's, basically, a whole NDIS language. And people who don't know how to formulate those answers so that NDIS can see it as something they're going to fund you won't be accepted. Not having enough evidence, simply just forgetting to attach something can be the difference between you going through NDIS and not ...

And this is the thing, NDIS don't have the time or the service to sit there and go through it with families and say this is what you did wrong, if you do this, this, and this we can fund you. Because they want to fund as little people as possible, they're an insurance scheme after all. So, if you're not willing to put the right document or the right wording in well it's just too bad because unless you do that, and you can give u all the information, we'll assess it, and we'll keep rejecting it.

– First Nations Service Provider 21

This repeated rejection when seeking to access support is also likely to increase the experience and impact of stress on already vulnerable families. A service provider described other ways in

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which navigating the NDIS could create stress for both people trying to access the scheme and those supporting them:

[S]he just wanted to be a good parent. And the fight systemically to get services in place for her and to advocate for her to have support, to be a good parent more so than her individual needs like budgeting and cooking and health and literacy, which were all very important. But trying to get the system to rally around, the child protection system and the Family Services system and the NDIS system to work together for this lady. Her number one aim in her life was to have her children return to her care and for them to be nurtured and to grow healthy and strong. That's all she wanted.

The NDIS or the disability support staff weren't trained in the therapeutic approach to supporting people. So, unfortunately, they became quite judgy and were judging mum's parenting more than supporting her parenting ... So now, what we've done is we've reached out to the new NDIS support staff and we've invited them in to be part of the family's team, to be having a continuity of care. We're moving away from state government funding for the care package to an NDIS funded model for the family. So, we're transitioning to the Commonwealth funding model, which has been such a hard slog. Who's going to pay for what? There's a bit of budgeting. It was a slog.

We had a horrendous time with the coordinators of the NDIS plan to start with. Meaning well but no practice wisdom ... a waste of money and damaging, neglectful and abusive, in my opinion. Not okay. Those positions need to be really well-trained and well-supported, particularly with families with this acuity.

– Service Provider 19

Some participants raised concerns about exorbitant pricing applied to services accessed by NDIS package recipients, with services within the NDIS program attracting a significant premium. Some participants saw this as exploitative on the part of service providers when recipients may have limited choice or access to support. A First Nations service provider said:

If you look at the NDIS disability, service providers need to stop gouging the actual funding ... Just because the burden's on the NDIS package, their general cost goes from an \$80 consult to \$200. That comes out of their package.

– First Nations Service Provider 27 (focus group)

Another First Nations service provider said:

We've got a young girl who's on a NDIS package at school and it costs us \$900 for an hour's service, hour drive, say three hours for the day \$900. And if they don't turn up, if the young girl's out when they phone reception, doesn't go to school that day [they are still billed for it].

– First Nations Service Provider 27 (focus group)

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Having navigated the front-of-system challenges, ongoing support was needed to make the most out of NDIS recipients' packages. Another First Nations service provider said:

How can people with disability, with intellectual disability [or] mental health [challenges], navigate in society today when you've got ... vultures that are swooping in wanting to have their money?

- First Nations Service Provider 27 (focus group)

Not only were these processes and barriers likely to be particularly off-putting for First Nations communities, there were also few NDIS services likely to meet their specific needs, particularly in regional communities. A First Nations Service Provider said:

There is very little NDIS service available. And what we kept hearing from [First Nations organisations supporting families] was that it's too hard to navigate, we don't know how to use it, we're running our programme at a loss, there's not enough funding. So there's a lot of that happening and that's why there's not a lot of NDIS disability support across the country. So that's a massive concern in itself ...

On top of that there's a real shame, stigma for some of our mob ... So there's definitely lots of shame factors there, definitely very little support available. And there's no holistic support available that we know of, that supports whole families. And there's definitely not a First Nations one that I know of that does that holistic wrap-around support specifically for First Nations people. So I'd say yes, there's a big gap, massive gaps, considering the numbers that we have.

- First Nations Service Provider 11

Another First Nations service provider said:

I think they thought this [the implementation of the NDIS] was going to resolve the issue, but it hasn't. There's just not enough available spots in these programs for the parents to see practitioners regularly ... Up in [some communities] they have a lot more service providers, where they might be able to see them once a month. But in [another town], there is just not enough experts to be able to see them regularly.

- First Nations Service Provider 2

Even when families navigate the NDIS and receive a package, they may not be able to use the funding to meet what they see as their greatest needs. A First Nations service provider gave an example:

He [a NDIS client] had so much money that was available to him, and because he didn't fit within this certain criteria he couldn't access anything. Something as simple as air conditioning, they wouldn't put air conditioning in, or a heater ... [T]he criteria within the

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NDIS is really stringent and too hard to navigate and too hard to access the support even once you're approved.

– First Nations Service Provider 11

As a family advocate explained, the complexity of creating an efficient and effective interface across services systems nationally introduced additional challenges, including for specific populations such as First Nations and other culturally and linguistically diverse communities:

They've had to define what the NDIS will fund and what the health system will fund. So that's been ongoing and a major issue of systems interface process and determination. Now if you take child abuse that's even more complicated. Because if you've got the NDIS interfacing with seven different systems around Australia then to a certain extent there'll be local solutions and there'll be different outcomes. Can you see the effect of that? ...

The NDIS is culturally blind, completely culturally blind. Some of the early procedures that local area coordinators would run through a series of questions. For example to [ask] Aboriginal people out of the blue things like, Have you had any contact with child protection services? Now you can imagine that is the worst question you can ever ask when there's no basis for asking it, and it's just the most crashing example of culturally unsafe practice.

The NDIS abounds in really quite brutally ignorant processes and procedures that really aren't aware that Australia is made up of people with disability from multiple cultures and multiple groups of diversity.

– Parent Advocate 3

Despite these challenges and shortcomings, some participants expressed optimism that the NDIS would ultimately make a positive contribution, as it provided an important framework to empower individuals with disability and their families, including parents with disability needing support to keep their children safe. In the long-term, this shift in how services and supports for individuals with disability are thought about may contribute to a broader shift towards empowering families and recognising their agency and voice in putting forward their needs and shaping their futures.

## Dichotomising the interests of parents and children

Participants reported a tendency for the service system to focus disproportionately on the child or young person, to the exclusion of parents and other adults, undermining the goal of an integrated, intergenerational service system. While the orientation towards children makes sense and was not itself seen as an issue, participants noted that this often created circumstances where parents and families would not be eligible for much-needed supports following child protection intervention as the child was no longer in their care. This resulted

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in a narrow network of support for children and families, failing to recognise that a key way to make a positive difference for children is to support change for the adults in their lives. A service provider said:

Yes, safety is always paramount but it's in the best interest of the child that we provide that with the biological parent as much as we can, I think. And I don't think that's addressed enough ... as a first option, which traumatises children.

– Service Provider 19

It was acknowledged that there was significant complexity and skill involved in holding the needs of both parents and children, requiring knowledge and ongoing support for caseworkers. Staffing instability and inconsistency further contributed to workers losing sight of the needs of parents despite the importance of supporting parents to meet the needs of their children. A service provider said:

It's a difficult space for anyone holding a child's needs in focus as well as understanding what's happening for a parent. It's difficult in that it's the space for Child Protection who are technically completely child-focused and in that Family Services space.

– Service Provider 17

Further, the tendency of service systems to remove key services once children had been removed into an alternative care arrangement meant that parents were often under-served and neglected. A Children's Court clinician said:

Parents are no longer the responsibility of the caseworker. Parents have to go out and do the best they can to be the best they can, and that's never enough because the bar keeps changing, so that the caseworker can make a decision. They don't get much help. They might get help from someone like one of the other NGOs. But if they don't turn up, they just close the file because they're so busy. So, we got a lot of gaps in our system.

– Children's Court Clinician 5

Another service provider gave an example of patient, intensive support of a mother following the removal of her child:

My colleague's coming to terms with a parent that has a complex mental health presentation, probably a personality disorder. But also, in the process becoming aware that there probably was an [acquired brain injury] that was having a real impact on their ability to remember, think through processing things, unable to clean and organise stuff. So just needing a lot of that day-to-day kind of thing. And a young person that was living in an environment that wasn't okay, cut off from peers and community and cut off from extended family.

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But the young person would, from time to time, go to the maternal grandparents. So, part of the work was around actually increasing the connection, including the grandparents and the young person actually ended up living with the grandparents. Now, typically that would force us to close with this mum because she's no longer the predominant carer of the young person.

– Service Provider 16

## Privatisation of services

Some participants noted the shift towards the privatisation of child protection service delivery to non-government organisations had created circumstances where there was considerable risk carried within the non-government sector, while the mandate and authority remained with 'chaotic' child protection services. One service provider said:

Child protection is so overwhelmed, under-resourced, understaffed and deskilled and chaotic that the thresholds have become so high that really high levels of risk are now being handed to the community sector. So we have all the responsibility, but no power.

– Service Provider 16

It was noted that this shift towards the delivery of services by contracted non-government services has created significant instability in the service system, both in terms of service models and skilled staff to deliver them, to the detriment of families that rely on these services. One service provider said:

When 98 per cent of your funding comes from [the child protection agency] then they set the tone in the scene. The department sets agreements that you must meet KPIs whether you've got somebody in the position or not. So, it just means that existing staff take the load and do the work. It is one of the worst things I've seen in the community sector and the shift to short-term contracts and short-term funding cycles and budget rollouts that are inflexible.

What typically has been happening over the last couple of years is that they roll out a new pilot, new projects, make it 12 months, not even three years ... It takes you three months to get someone employed, it takes you another three months before they are up and running, and then they've got three months of work and then they're looking for another job.

The agencies are reliant on that funding and so just make it work. So, it just falls on frontline workers to manage higher and higher complexity and higher and higher demand. Why the heck we are going to follow in the footsteps of child protection I've got no idea ... They're starting to replicate a system as chaotic as child protection, where actually you can't function because you don't have skilled staff, can't retain staff and you're not holding any practice wisdom. And that's not good, that leads to really bad outcomes to clients.

– Service Provider 16

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Further, parents and families involved with these services often did not understand the distinction between child protection agencies and non-government service providers, with this fragmentation of the service system introducing complexity that further challenged family efforts to navigate the services they need. A service provider explained:

Sometimes if there were orders in place then typically there would be a formal handover from child protection to one of us with the parents. But parents with cognitive delays, anxieties, traumas, mistrust, poor memory, disassociation, processing issues, they would sometimes have no idea who we were or would just think that we were child protection.

– Service Provider 16

The shift to non-government services and imposition of third-party orders was also noted as having reduced transparency and accountability of services for children, parents and families who are already in very vulnerable circumstances. This can appear in terms of services provided, compliance with policies around contact and connection following removal, exacerbating challenges within the OOHC system. A parent advocate said:

If parents find their contact is not happening, they can always come back to me. And they can always, say, do a [court action to vary orders] to make contact happen. But that's about it. There's not a lot of accountability or support around making sure that contact occurs ...

However, the adoptive parents organise contact. If they decide that you're a bit smelly and your bra's hanging down here and you just had a smoke before you walked in, which I had a mum that was like that, they stop all contact. Then mum came to us and we had to start it up again. [Third-party permanent care orders], that's a tricky one. [Third-party orders] just means [the child protection agency] are out and you're case managing it as well. The parents don't have a say. So if you're child's going to be adopted and going to go to guardianship, you don't have a say. You don't have a voice.

– Parent Advocate 1

## Opportunities to strengthen systems and practice

All participants were asked how the child protection system could be improved to better support parents with disability and their families. The responses spanned training, investment, policy and practice, as well as elements beyond the child protection system like poverty and broader social services. However, there was a consistent view that change was necessary to achieve better outcomes for children and young people, their families and communities. This was outlined succinctly by one Child Protection Department participant, who said:

If we don't start to do things differently, we're never going to get a different outcome. We keep doing the same thing and, yes, we're getting the same outcomes.

– Department Practice Expert 18

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Poverty was generally considered to be a critical issue that compounded the challenges faced by some parents with disability and contributed to an increased likelihood of child protection involvement and intervention. For one service provider, addressing this underlying condition was as important as addressing other aspects of the child protection system.

Yes, I think we just need to end poverty now ... [There are] more and more people with generational hardship and poverty and it's impacting in the world. We're such a wealthy nation that would make a huge difference full stop, because accessing resources is really difficult.

I mean that we invest in what the evidence is saying. You need to have really skilled people that are ... not just trauma informed, but know how to work with trauma, that are able to engage with these vulnerable families because they don't easily manage or negotiate formal services. So, there's a place for the community sector to provide those services and I think they do it well.

But we haven't invested in supporting staff with adequate skills and experience to develop and grow and be trained up, or there's no reward in having a Masters in anything. There's a heck of a lot more research that's happening, and I actually think that's really good. So there's an opportunity to be heard and it has a certain influence, because we've got a policy direction that's moving towards 'we must purchase evidence-based services'. Grounded research becomes really important.

– Service Provider 16

Better coordination across the fragmented service system was also identified as a key area for improvement. This should centre children and families, rather than the child protection system, creating a more responsive and supportive service framework that is active in identifying risk not in order to intervene to remove children, but to provide additional supports to reduce the incidence of harm in the first place. Such supports should be provided in a way that does not create potential risks or a sense of shame for families, but as part of connecting people into networks that can support them. A Children's Court clinician said:

So, what I'm saying is we know those kids are vulnerable ... What are the areas that are a risk? We need to make sure that our system meets the needs, not that the people meet the needs of the system or the system's there to meet the needs of the people above, dare I say ...

People don't want to be seen to be in need of help. That's the other thing. People need to not feel ashamed to access help somehow. The help needs to be offered them in a way that is not going to make them feel like they're shamed.

– Children's Court Clinician 5



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A service provider noted positive efforts to do so in their area, bringing together disability, mental health, family violence, housing and homelessness services to work together for families experiencing crisis, including parents with disability.

We have some regional coordinators that come from different sectors and we hold forums to work at capacity building stuff. So, there's the NDIS, Mental Health, Family Violence, Homelessness, Housing, Mental Health. There's something in process in trying to capacity build, but also create smarter pathways and networks between the different services.

And then bring people with lived experience as well to these forums to be able to talk, as well as advocacy groups.

– Service Provider 17

For some participants, it was important that this integration of the service system worked with, but was distinct from, the child protection system, as child protection services cannot disentangle themselves from the potential for statutory intervention, which can hamper engagement and access to supports. A Child Protection Department participant said:

From my perspective, what works is partnerships. It's really understanding what the children need, first and foremost, but what parents need in order to be able to provide that safety. It's understanding the context of the family and tailoring your approach to them, and a really strong system that doesn't just come from [the child protection authority] because we carry around this huge, heavy load that parents see immediately when we walk in the door. Regardless of their cultural background or disability or mental health, it's something that we don't always recognise, that sometimes the best support doesn't come from us [the child protection authority].

– Department Practice Expert 12

First Nations participants particularly noted the importance of an integrated service system that was able to provide coordinated, specialist supports to parents and families. They argued this should include integration with disability and health services, promoting access to key supports for parents with disability. It was noted that this integration was already promoted in some communities with Aboriginal Community Controlled Organisations providing a range of services to clients. A First Nations service provider said:

I was lucky enough that I had two workers who actually worked in that disability space ... I had workers with DV [domestic violence] background, I had workers who [had a] disability background, I had a worker with [a] youth background, I [could] send them off to the most appropriate caseworker for that particular case. So that was helpful.

I would share that knowledge and a lot of our organisations had done the First Nations mental health first aid training as well. And because we had our social health team, if there was any questions they'd come up and deliver training for us as well ... So we can give

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those referrals quite quickly and push that through. Probably quicker than the department, I would say.

– First Nations Service Provider 11

In addition to improving coordination of services and building the capacity of the child protection system, participants also noted the need to invest in the establishment of a well-functioning family services program. One First Nations service provider said:

I would think the first [priority] would be, for me, a family preservation program. The packages are about keeping the kids at home, identifying issues, and then supporting the parents through the issues.

– First Nations Service Provider 2

They envisaged a service that could work intensively for longer and could include parenting centres providing a range of holistic supports of varying intensities and modalities tailored to the needs of families such as parent groups, supportive playgroups, day or residential programs. Another service provider described their ideal service:

There would be a service which you would think really is the NDIS that people can have touchpoints with. I think I would like the parenting centres but they're only nought to five [years old]. So we generally will help a family to be involved and they can do a residential stay or day stays. And when they're just hitting a different stage of development with a child they access that centre. And they'll have a five-day residential stay or a day stay and they just help them through that transition on that stage. So, if there was something like that I just think that that is just so perfect and beautiful, and it's a warm and nurturing environment.

– Service Provider 17

A Department practice expert also argued for services to be available on an ongoing basis:

I think the ability to tailor a package of services and supports to be unique to that particular family is vital and the understanding that it can't be time limited. It needs to be available at the level it needs to be available at for as long as it's needed.

– Department Practice Expert 18

A First Nations service provider suggested family supports should include peer connections to help normalise the idea of parenting support, addressing stigma and shame and providing parents and families a network of supportive relationships.

A type of mums and dads' group where Elders come and start talking to them about some of the old stories about living on the mission, and how quality of caring as parents is more important than what people think of you, if that makes sense.

– First Nations Service Provider 2

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Another service provider also supported working in groups:

Our families going to groups and supportive playgroups and all of that, yes those have been really good supports. And in the interactions with the other families there and some of the normalising.

– Service Provider 17

A Children's Court clinician made a similar point about the importance of connection for families in distress:

They also need connections with people in the community, so family, or friends, or whatever. They almost need to have a regular weekly pizza dinner where they all figure out together what's going to happen for the next week. We all have to do that for our lives. But many people don't get around to doing that. And so, they don't ever get to look like they're functioning well. I think the key is people.

– Children's Court Clinician 5

Improving the capacity, access and responsiveness of the NDIS to better support parents with disability who are involved with or at risk of coming to the attention of the child protection system was seen as a key opportunity to achieve better outcomes. This includes making access criteria more flexible, enabling parents with disability to have greater recognition of the challenges they face and to get the supports they need.

Addressing widespread under-investment in child and family supports, particularly those specialised in working with parents with disability, First Nations and culturally and linguistically diverse communities, represents a clear way to improve outcomes for parents with disability and their children. There was broad consensus about the need to build stronger relationships with First Nations communities, towards a holistic and empowering service system that hears and responds to voices of First Nations people. An advocate recommended:

So grow cultural knowledge, Aboriginal people with a disability have a voice. Build community connections, knowledge you don't get in the NDIS plan. Create cultural safety ... build respectful relationships with the Aboriginal community. Communicate for independence, choice and control ... That's the holistic practice and they're all connected.

– Parent Advocate 3

A First Nations service provider said added investment should be complemented by improved information streams regarding the availability of supports to families in need.

[People need] appropriate funding that's accessible, so easy pathways to get money or support. And I think there needs to be a whole lot more information, media, broadcasting on disability and the supports that are available for people because people just don't

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know where to go ... And they've got to make it easy for the client; the paperwork is way too difficult.

– First Nations Service Provider 11

There was also considerable focus on supporting caseworkers to improve their practice, including effective communication and engagement in ways that promote understanding and counter the confusion and fear that many saw as characterising the experiences of families within current child protection systems. Such approaches better align with the stated principles and intent outlined by child protection systems, of walking alongside families and providing tailored supports that are responsive to their needs. First Nations service providers explained how this could be done:

Participant A: Instead of talking like up here, you've basically got to live in their world to see how and to have them understand that daily routines can change the whole risk of the children being removed.

Participant B: That's where I found it difficult because we are only a three-month, 16-week programme. To have that behavioural change process within that family, to identify what they need to do, to maintain these changes [is] nearly impossible. And then to be able to have the longer period. So, I had the conversation with [the child protection authority] in regard to ... this isn't going to work. I was like, I'm happy to go and work with the family and do what I can with the family. But after our three-month period they're only going [to come] back and sit on your books for another six months, that's not going to achieve anything. I was like you need to actually make a formal decision about priority.

– First Nations Service Provider 27 (focus group)

A service provider advocated for a deeper understanding of disability:

I think if there's a better understanding of when you ask about disability, what you're asking. Just like you ask now, how do you identify your gender, how do you identify your [relationship] status ... There is no question in any of the forms about literacy. There's no, 'Do you have a hearing impairment? Do you have an eye [problem]?' There isn't an understanding why if I've sent you 15 emails and you never responded to my questions, maybe it's because I don't have the ability to read your questions. And so that's why I can't answer it. So instead of saying, 'You haven't responded to 15 of my emails and therefore Child Protection is coming to pick up little Johnny tomorrow', [ask] 'Can you read what I'm sending you?'

You can't do anything if you don't have numeracy, literacy. You can't. There's just no way to access anything, even school stuff. Everything comes through the online hub that even as a social worker working with the family I wasn't able to access any of the correspondence between the school and the family in regards to the school problems or behavioural things, because it's all confidential stuff.

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If a parent is not able to read, they're just going to avoid phone calls, they're going to feel guilty. It's about recognising that if there are issues going on, you've got to find out why. And it's not as simplistic as just family violence or substance abuse or unfit parenting. In 2022 there should be more nuance to understanding barriers.

– Service Provider 4

Consistent with the views shared above, access to a strong and independent advocate to assist families in navigating the service system was also seen a key element for improving outcomes for parents with disability. A Child Protection Department participant said:

A strong advocate, a person who believed in the ability of the parent to be able to play a significant role in that child's life and the systems and determination to make that happen, I think that's really, really important. And that strong belief in the rights of a parent who has a disability to do that. Absolutely.

– Department Practice Expert 18

A Children's Court clinician outlined a service they observed in the United States, providing high intensity supports to families identified as at risk of child protection intervention. This program included advocacy and coaching to assist families in successfully engaging with the various systems, services and support, taking an active role to supporting families rather than cold referrals and impersonal systems. They felt this approach may be a useful example for an improved support system to parents with disability and their families:

The first child had been removed, though, before the court. They actually attached a caseworker to them who was a well-qualified social worker. And these caseworkers only had two cases at any one time. They would set out a plan with them, things like if they went to a parent education course, someone delivered a meal to their place that night. Somebody looked after the children. They walked with them. They identified what are the issues that are going to get in the way of them achieving what they needed to achieve and attend to the process that they needed to do. If they had an appointment to go to court, they would get picked up and taken ... And we don't have a system for that. Until we do, people are floundering.

– Children's Court Clinician 5

## Discussion

As outlined in chapters 8 and 9, participants reflecting on the experiences of parents with disability of child protection system involvement presented a bleak picture of child protection systems and service provision that frequently breach the human rights of parents with disability. These experiences span the spectrum of child protection systems. Legislative and policy frameworks outline aspirations for flexible, responsive child and family service systems, grounded in

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principles, values and standards that aim to meet the diverse needs of families, including parents with disability, First Nations and culturally and linguistically diverse parents. These frameworks are accompanied by training and practice guidance that purport to support child protection practitioners to engage with diverse families to meet their intersecting needs. However, parents, advocates, caseworkers, lawyers and clinicians informed that this was not their experience in practice. They frequently experienced direct and indirect discrimination and a failure to provide reasonable accommodations to support parents to safely look after their children.

Consistent with findings in the literature review, participants observed that contemporary child protection systems do not have appropriate processes for the identification or the collection of data about parents with disability. The lack of data made it impossible to plan and distribute resources in accordance with need or to design and deliver services that are accessible and appropriate for parents with disability. It also prevented evaluation of the effectiveness of child protection services and undermined transparency and accountability with respect to their disproportionately adverse impact on parents with disability.

Participants expressed their view that parents with disability were significantly over-represented across child protection systems. This is consistent with existing literature. Parents with disability were seen as more likely to come to the attention of child protection systems, less likely to have access to key supports and diversionary services, and more likely to experience the removal of their children into statutory OOHC, and onto permanent third-party orders rather than restoration. Participants noted that the flaws present within child protection systems experienced by all parents were compounded for parents with disability. Parents continue to be directly and indirectly discriminated against on the basis of their disability in case planning and the provision of supports.

Child protection systems were described by child protection department participants as not having a distinct or differentiated focus on parents with disability. Rather, child protection systems were generally intended to operate on a broad framework of principles, values and standards that guided practice for all families, including parents with disability, First Nations and culturally and linguistically diverse families, and intersections thereof. These policy and practice frameworks are intended to be applied flexibly, providing a service system that is able to identify the often complex challenges that families' face that contribute to risks for children, and respond in ways that seek to address these risks, and prevent the likelihood of future harm. While a parent's disability might be included in risk assessment tools to support child protection decision-making, there was a practice intent to focus on implications for child rearing responsibilities.

However, while this may be the policy and practice intent, participants consistently and clearly informed that parents with disability face significant discrimination and barriers to support across child protection casework, including in risk assessment processes, provision of information, and referral to and availability of suitable services. Risk assessment approaches were described as often biased, with tools and assessors lacking evidence-based information with respect to parenting with disability. This included negative assumptions about the capacity of parents with

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disability to meet their children's needs, an under-estimation of their strengths and abilities, and assumptions that challenges associated with their disability were unlikely to change regardless of the supports provided, particularly with respect to intellectual disability, mental ill-health or the impacts of trauma. Participants commented that these discriminatory attitudes and systems constrained opportunities to access supports. Inadequate support, together with experiences of intense surveillance and scrutiny, compounded families' already stressful circumstances. Participants described discriminatory attitudes and practice as contributing to the serial removal of children into OOH. This included through a combination of the additional stress experienced by parents because of the ways in which child protection services engaged with them, the failure to refer parents to support or accessible support services, and the loss of financial and other supports after the removal of their children.

Child protection systems were described as complicated and difficult to navigate. This created significant challenges for families, particularly parents with disability who may benefit from having more time and patient explanation to understand their expectations and operation. Parents often received unclear or inadequate explanations regarding the reason for child protection involvement and the opportunities for family preservation, restoration and ongoing contact and connection. Significant power imbalances between child protection authorities, their delegates, and child and family services, and parents create circumstances in which parents are fearful of speaking up to clarify concerns or seek help, as doing so may be interpreted as confirming concerns regarding their ability to parent safely or demonstrate the 'insight' required to make the changes deemed necessary for restoration.

Additionally, there were a range of structural impediments identified by participants that further contributed to poor experiences and outcomes for parents with disability and their families who are engaged with child protection systems. These included child protection systems focusing on the children subject to notifications, in isolation from their parents, families and communities. Considering children independently of their important relationships and developmental context is arguably inconsistent with the principles and values outlined in legislation and policy, and creates structural barriers that inhibit efforts to preserve and restore families. These include failures to factor in harms associated with removal and, following removal, the withdrawal of supports to families that might promote ongoing connection, as well as opportunities for restoration. Some participants noted a more recent shift towards a consideration of restoration following removal, which may reflect jurisdictional, or more general, shifts towards restoration practice. However, while restoration rates are variable across jurisdictions, successful and sustained restorations remain relatively uncommon for all children, and particularly for First Nations children.<sup>891</sup> Specific statistics regarding restoration to parents with disability are not available, once again reflecting the need for improved identification and data processes.

Child and family support systems established by governments, were characterised as under-resourced, disjointed, inaccessible and poorly tailored to the needs of parents with disability and their families. Again, intersections further compounded these challenges, with First Nations and culturally and linguistically diverse families facing difficulties in accessing culturally safe and responsive services, and significant service gaps present in regional and remote areas requiring

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families to travel long distances for access, often in the absence of reliable public transport systems. Participants reported that these factors ‘conspired against parents with disability and their families’, preventing them from mobilising the supports they need to address safety and risk issues identified by child protection authorities to keep their family together, or have their children restored to their care.

Participants informed that where services were available, they were often overwhelmed by need, with long waiting times that clashed with short timeframes afforded to families to make changes as part of so-called ‘permanency’ reforms focused on establishing permanent legal orders, usually within two years. Many families faced extensive waits to access various supports – mental health services, drug and alcohol treatment services, or safe and secure housing. Further, few of the existing child and family services were disability-specific, or delivered in a manner that took into account the specific needs of parents with disability and their families. Again, where they did exist, these services tended to be well regarded but highly over-subscribed.

The introduction of the NDIS was seen as presenting an opportunity for parents with disability to obtain tailored supports that might assist with their parenting responsibilities. However, eligibility for NDIS support with respect to parenting, rather than for the parent, was inconsistent. The application process was described as opaque and requiring special expertise to navigate, with participants’ perception that parents’ needs had to be tailored and squeezed into NDIS criteria to achieve funding. This underlined the importance of experienced advocates and navigators to assist parents with disability and their families to navigate the NDIS and how it interfaces with other systems of support. However, the underlying message from participants was that not only were systems for referral to and accessing supports inaccessible, but also there were insufficient supports for all parents, and particularly for parents with disability. This resulted in parents with disability not being referred to accessible, specialised services, and in some circumstances not being effectively engaged with any services at all.

Participants also noted that the introduction of the NDIS has further contributed to the sense of a fractured service system, including their view that important community-based supports for people with disability, including parents with disability, were no longer funded as states moved to the national NDIS. Narrowing eligibility guidelines, and inconsistency in supports offered, including many providers lack of insight with respect to needs and experiences of parents with disability affected by child protection systems, further undermined the realisation of the potential of NDIS for parents with disability experiencing crisis. The lack of accessibility and cultural capacity to service First Nations and culturally and linguistically diverse families were also noted as structural barriers to necessary supports for parents with disability. Some participants also observed that the privatisation of service provision resulted in over-charging and a lack of consistency in the quality of services provided. Participants identified the importance of reforms to enable the NDIS to work in tandem with state-based community supports and other service systems to meet the holistic needs of people with disability, including parents with disability who engage with child protection systems. Significant investment is required in both preventative, early intervention and in supports for parents following the removal of their children by



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child protection authorities. NDIS guidelines do not currently but need to clearly provide for supporting parents with disability with parenting activities and responsibilities.

Further compounding this issue of an under-resourced, overwhelmed and fragmented child and family service system that fails to adequately meet the specific needs of parents with disability are the implications of these challenges for the child and family and disability support service workforce. Participants noted that many staff working with parents with disability within the child protection system are not adequately trained or supported to do this work effectively. While participants emphasised the importance of steady, long-term family support roles to build trusting relationships with parents with disability that are essential to providing tailored supports, consistent with the apparent design intent of child protection systems, participants also reported significant instability in the workforce, including crisis-driven, short-term contracting and high staff burnout and turnover that undermined this important principle. Workforce development and investment also struggled to grapple with structural challenges at the intersection of ableism, race and class, compounding the experience of intervention and systemic violence for parents with disability. Participants reported that service systems and tools lack cultural safety – particularly for First Nations families, for whom intergenerational experiences of trauma arising from past and ongoing policies of intervention and state violence (including child removals and incarceration) – as well as different understandings of disability and inclusion combine as systems that lack safety and perpetuate harms. By failing to adequately train, support and retain skilled child and family workers to provide ongoing, relationship-based services to parents with disability and their families, systems increased the likelihood of staff burnout and instability, creating a negative cycle that delivered poor outcomes for parents with disability.

Such experiences – intense scrutiny and strain for families subject to child protection system intervention, fractured services and supports to address the often complex social and therapeutic needs of parents with disability, and challenges in recruiting, upskilling and retaining child and family workers to meet the needs of parents with disability – are counter-productive to the stated intent and values of child protection systems, and undermine the likelihood of delivering positive outcomes for parents with disability, their families and their children. For example, developmental science models emphasise the importance of reducing external sources of stress, and supporting the development of core skills, within supportive relationships, as critical to achieving substantive change for families experiencing crisis.<sup>892</sup> However, the factors outlined by participants operate counter to these basic goals – increasing the experience of unmitigated stress, undermining supportive relationships, and failing to provide tailored supports to build parenting skills and address identified risks. Each of these factors will need to be transformed if child protection systems, and the broader social systems that contribute to risk and resilience (including efforts to address poverty, provide safe and secure housing, and provide timely health and therapeutic supports), are to deliver improved outcomes for parents with disability and their families.

Importantly, participants also noted key areas of positive practice within existing systems that provide guidance for the significant structural and practice reforms that are needed. Participants noted the importance of comprehensive, ongoing training for child protection workers and

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child and family support workers, with a particular focus on working with parents with disability and their families, which should be specifically tailored with First Nations and culturally and linguistically diverse communities as part of efforts to challenge ableism, systemic racism and other biases present within child protection systems. This could be complemented by reducing caseloads for child protection workers; enabling more time to engage with parents with disability and their families, to promote their understanding of and participation in child protection processes; and the active provision of tailored supports. These were all seen as key features of effective practice with parents with disability. The provision of ‘active efforts’, reflecting best practice approaches developed by Indigenous communities, was seen as a particularly useful element in challenging child protection systems to ‘actively’ support families, including parents with disability, and re-orient systems from a focus on intervention and family dismemberment, to the provision of supports for family preservation and restoration wherever possible. To be successful, these policy changes should be complemented by significantly increased investment in child and family supports, including those specifically directed to parents with disability, as well as broader supports including access to housing, healthcare (including mental health care), substance abuse treatments, social payments above the poverty line and other critical supports to address risk-related issues.

Finally, participants reiterated the importance of advocates, navigators and peer support to walk alongside parents with disability and their families, providing advice and support to parents to work with these complex and confusing systems. Advocates are critical to assisting families in understanding the risk concerns identified by child protection services, and the steps parents must take to keep their family together or achieve the restoration of their children, as well as supporting ongoing connection and contact throughout any period of OOHC.

Contemporary child protection services require significant reforms to systems and practice if they are to deliver better outcomes for parents with disability and their families. This includes reforms across legislation and policy settings, assessment and other tools, service system design and investment, and workforce development. Reforms must be supported by improved data systems to promote greater transparency and accountability, as well as directing system and practice redesign grounded on reliable data. Without these changes, the experiences of parents with disability and their families of child protection systems will continue to be characterised by significant challenges, poor outcomes and routine breaches of their human rights.

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# Chapter 10: Parents' rights to informed participation & equal access to justice

## Introduction

In this chapter and the one that follows, we present the views of parents and peer advocates, other professional specialist disability and parent advocates, lawyers and Children's Court clinicians about the experiences of parents with disability who navigate child protection legal systems. Legal systems are conceived here as including laws, legal processes, legal advice and representation, and court proceedings and outcomes.

As one lawyer who represented families reflected,

Someone once said to me that child protection law is almost administrative law in the sense that what you're doing is holding government agencies accountable for the decisions that they make.

– Lawyer 13

However, as they and several other participants noted, the capacity of the legal system to do so was undermined by an ableist legal framework and the broader child protection system, which failed to recognise the rights of people with disability to parent and be supported.

Indeed, all participants believed that ableism pervaded Australian legal systems regardless of provisions in some state legislation and policy to address various aspects of discrimination faced by parents with disability. As another lawyer put it, 'there's an assumption that, "Oh, there's disability, therefore they can't parent", so we often have to fight that perception'.

This chapter begins by presenting participants' reflections on how discriminatory and false assumptions that conflate parents with disability with risk to the welfare of their children manifest in the legal system.

It then turns to participants' observations of how these feed into failures by caseworkers to adequately inform parents of their child protection concerns or their rights so that parents can make informed decisions about their participation in their dealings with the department. This can relate to their attendance at meetings and services suggested by the department, or their rights to request timely support or for caseworkers to make reasonable accommodations that otherwise address their needs.

As several noted, these failures had serious legal ramifications. And yet, parents with disability are frequently not advised of their rights to access legal or advocacy advice prior to departments instigating court proceedings to remove their children from their care. Furthermore, parents' abilities to access legal advice or representation often turn on their eligibility for publicly funded legal services, with the costs associated with accessing private lawyers prohibitive for most.

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All lawyers recognised the need for greater professional education and training on how to safely and respectfully work with and advocate for parents with disability. Notably, identified shortfalls in legal training were at times ameliorated by collaborations with peer and other advocates who specialised in providing support to and working with parents with disability. However, collaborations between legal and advocacy services are not the norm.

As these next two chapters will demonstrate, the adversarial nature of child protection legal proceedings – coupled with systemic service deficits and legislative provisions that undermine the rights of parents – contributes to extraordinarily unjust and discriminatory outcomes for parents with disability and their children. As one parent shared, recalling her family's experience,

It broke my heart, my child getting taken off me. I didn't know what the heck was going on. People were saying, 'just keep fighting for him and he'll come home'. [But] I [knew] in my head [that] he won't come home to me 'til he's 18.

– Parent

## Legal conflation of parents with disability with risk

As discussed in the literature review and in the previous findings chapters, participants perceived that disability prominently figured in departmental and court-ordered assessments of parenting capacity and risk, resulting in the forced removal of children from their parents. In some cases, prejudicial conflation of parenting incapacity and disability were more readily apparent, and at times explicitly explained as such to parents.

I think some parents with disability are put in a position where they are not given all the information they need to understand why their child was removed. And then I think other casework teams take the polar opposite way around that and will explain very clearly to mums and dads we don't think you have the ability to look after this child because of your disability. And will, whether right or wrong, take that approach so that it cannot be said that it was not explained to a parent why their child was removed. So, I think sometimes it's not explained and then sometimes it is explained extremely clearly to avoid any possibility that it could be misconstrued.

– Lawyer 13

Other participants described how legal determinations of risk and parenting capacity were being based on a lack of appropriate services to respond to parents' needs. In these cases, disability itself was not explicitly framed as the primary reason for the removal of children from their parent's care. However, where parents were identified as experiencing challenges, the lack of services that could accommodate their needs became determinative of the department's and court's decisions as to whether they could maintain the care of their children.

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Well, the case I have at the moment, [the mother] participated in a clinic assessment as ordered by the court ... [T]he clinician formed a view that while the mother's disability didn't necessarily preclude her from parenting a child, she would need more extensive support than is available from any service. So, where does that leave us on that? Her disability doesn't preclude her from parenting a child, but that was why the child was removed from her care.

– Lawyer 13

As several lawyers argued, parents with intellectual disability faced a higher threshold than other parents in proving their parenting capacity and addressing child protection concerns. As one explained,

They're not just overcoming the risk issues ... They have to show that every facet and every possible scenario can be accounted. That's not the test that the court [generally] gives. It's an extremely high burden ... that no parent could [meet]. And the fact is that it is only because these parents have an intellectual disability that the department have put this extremely high onus on these parents to prove that they can safely provide for their children in all these different situations.

– Lawyer 14

According to another, this higher threshold was indicative of

an over-riding presumption from all aspects in the child protection legal system certainly that disability prevents child rearing, I would say. The cases that I've been involved in everyone is, without obviously saying so, operating under the assumption that the matter's a foregone conclusion in terms of the possibility of restoration or the mother or father being able to actually make any progress and address the concerns ... [I]n my experience ... [this starts] at the very first mention and will generally follow the matter through to final orders. So, in terms of the claim that parents with disability are discriminated against I'd say that's fair in circumstances where they face an additional barrier towards restoration that ... from the moment the court case starts, parents without disability don't need to overcome.

– Lawyer 13

A recurring theme across our interviews with lawyers was that the possibility of family preservation – or, in cases where children had been separated from their parents, family reunification – was often foreclosed by the failure of caseworkers to refer parents to existing services. As a parent's eligibility to access and benefit from those services, particularly services that worked towards family reunification, often rested on departmental referrals, when this did not occur parents were unable to demonstrate they had addressed child protection concerns. As a lawyer explained,

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those referrals and those assessments still need to be made for parents with disability so that they have the opportunity to participate and attempt to address the concerns ... They can't self-refer to the service. No one else, as far as I understand it, but a department caseworker can actually action that referral. So, they're completely at the mercy of the casework team in whether or not they're willing to give the parent an opportunity to demonstrate that they can participate in that program.

– Lawyer 13

A mother with intellectual disability shared her experience,

Child protection ... asked that I have 24-hour supervision so I can keep [my child]. But when I applied for support, they said, 'Oh, we're sorry to tell you we can't give you 24-hour support. Your disability is not bad enough. Your disability doesn't warrant 24/7 care' ... I'm like, 'so you're telling me because my disability is not bad enough, I'm going to lose my child?' They said, 'We can't butt in there. All we can tell you is your disability is not bad enough for 24/7 care.'

– Parent

As this mother argued,

what would have been helpful is for child protection to actually give us what they thought we needed rather than making us try and find it from disability services.

– Parent

Lawyers and parents, as discussed in the previous findings chapter, also raised examples of parents who had been referred to inappropriate services or programs that lacked the capacity or knowledge to make reasonable adjustments to respond to their needs. At times, the services to which they were referred also refused their participation due to eligibility requirements. As a mother with intellectual disability observed,

there are programs, [they] run ... for the 'normal' parents. But a parent [with intellectual disability] will have problems, like they go too fast, or I don't know what they're saying. They're talking jargon. Or [the program refuses your admission because] it's age-dependent. Or you've got to have your child at least for the same time as you would have if you were divorced. [If your child has been removed by the department], you don't have your child, you can't go. Because their method is, well, then you've got nothing to practise on. And then the mother or the parents lose the child.

– Parent

Some lawyers observed disparity in how the courts supervised the department when it came to referring parents with disability, particularly parents with intellectual disability, to services.

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Well, look I have seen the court make statements about what the department should be doing in relation to a parent. I haven't seen it so much for parents with disability. And I think that's probably related to the court getting material when an application is filed and, in my view, forming a view that there's nothing that can be done and the matter just needs to run its course, so to speak, through the court system.

– Lawyer 13

As many lawyers and advocates discussed, this was exacerbated by the timeframes imposed by legislation across Australian jurisdictions that dictate that parents demonstrate before the court that they can address child protection concerns within a two-year period following child removal. Their ability to do is determinative of whether the court will decide to restore their children to their care or make orders directing the permanent legal placement of their children with others in OOHC. Such legislative provisions are frequently referred to as 'permanency' provisions (see the literature review for an in-depth discussion of legal permanency reforms).

As one lawyer noted, the effect of the widespread introduction of such provisions across Australian child protection jurisdictions was to

[bring] back the runs on the board thing. So, it seems better, but if you look at it, [parent's] have got to be able to say I've completed this, that and the other. So, I've done rehab, or I've done this mums and bubs program, or I've done whatever. And I think that parents with disability ... [including] Aboriginal parents with disability who have every single other thing going on, don't have enough time in the space of a court case to get those runs on the board.

– Lawyer 13

Several lawyers identified that the court's timetable – dictated by legislated permanency provisions – failed to account for the reality of services that were available and accessible to support parents to address the concerns of child protection authorities. According to one lawyer,

The court's got timetables, they want matters to be finished in a certain time, and those timetables bear no relationship to the reality ... [or the fact that] New South Wales housing doesn't talk to New South Wales community services, even though they're the same department, and the NDIS doesn't give a shit about anyone.

– Lawyer 6

Lawyers, including the one quoted above, noted their experience of how the permanency provisions were particularly punitive towards parents who were homeless and/or on departmental waiting lists for appropriate social housing. As several participants observed, however, none of these factors were addressed or accommodated for in court determinations of legal permanency arrangements. Instead, parents' capacities were determined on the basis of system failures. In the words of one lawyer,

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the Department of Housing doesn't give a stuff about the court's timetable, they give you a house when it's convenient to give you a house. If they don't give you a house in time, then you're not going to get your child back.

There's a lot of stuff there where [the department] could actually do a lot more, work better internally. If [the department] wants to restore a child and a holdup is another round of [departmental processes], I just think that's a roadblock that should be cleared ...

If parents haven't got the stuff to get their act together by the time the final orders are ready, then the final orders will be, sorry, there's not enough support in place, or you're still homeless, you've got a few runs on the board but not enough, and the result will be a child that will not be restored.

– Lawyer 6

Another lawyer related their experience of how the time limitations introduced by permanency provisions also disadvantaged parents with disability in compiling evidence to contest department evidence such as assessments conducted that demonstrated parenting incapacity and/or risk. In the case they related, a child had been removed from their mother with intellectual disability two days after birth. As the lawyer explained, within the relevant jurisdiction – New South Wales – Children's Court decisions relating to the legal permanent care of children removed at or soon after birth must generally be made within six months. In their view,

If that in effect was really complied with, that gives a parent with intellectual disability no chance, no shot in ever getting restoration. There is just simply not enough time for us to have obtained an assessment with [an independent expert], for her to do the very vast amount of interviews ... It just simply could not [be] done within six months.

– Lawyer 14

While in some jurisdictions courts maintain some discretionary powers to extend mandated timeframes for decisions relating to legal permanency, in others, such as Victoria, judicial discretion has been curtailed. As well as limiting the capacity of lawyers to advocate for their clients and introducing another level of opacity into how the provisions operated, this has also introduced a degree of arbitrariness in case outcomes. As a lawyer commented,

The permanency timeframe, [it's] not well understood, how they operate. The discretion of the court [is] being restricted, but actually not the discretion of the department. We've had clients where the department has been slated to extend the timeframe. We wouldn't have been able to get that outcome in court. It just shows how [we've got] provisions where the best interest of the child is not being considered, you just have [a] default based on two years.

– Lawyer 28 (focus group)



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An advocate believed that in some cases, departmental workers exploited the removal of the court's discretion to extend timeframes.

The games that [the department] play to hold off because the court can't actually order a government department to do anything, and they know that, so they just hold off ... Some of these [law-makers] don't realise how ... [the mandated timeframes are] going to be used. How that law is going to be applied the minute that adversarial approach has kicked in, [how] then it becomes nasty, and they use all that. The parents ... get no support.

– Parent Advocate 28 (focus group)

One lawyer noted their concerns with proposed legislation that, at the time of their participation, was before the Parliament of Victoria. As they explained, this legislation contained a new provision to justify child protection intervention where it was determined that parents were 'unable to protect through no fault of their own'.

We're particularly worried about this unable to protect through no fault of their own clause. It's meant to remove blame, but we are predicting that parents with disabilities are going to have their children removed on the basis of that, because they have a disability and they're unable to protect and it's not their fault. Or largely, possibly because it's not their fault that there are no services available.

– Lawyer 28 (focus group)

It was argued that provisions such as this one piggy-backed on widespread presumptions that parents with disability required greater support than existing services could provide. Concerns were raised that if the amendments were passed, they would provide legislative justification to and effectively endorse failures by caseworkers to refer parents to services that did in fact exist to support parents with disability, particularly with respect to early intervention.

I think the really big issue is that in the early intervention space, there's really nothing happening to support women with disability when they're first brought to the attention of child protection ... We pick up the clients often at real crisis point, where the application to remove has already been made, but there would've been engagement with the family for a long time, in some cases, before that, where some support and advice to the parent would've made a huge difference.

– Lawyer 28 (focus group)

Several lawyers drew a link between failures of the department to refer parents to the support they needed and a 'risk-averse' mentality within the child protection system more generally. While often premised on the over-riding principle of the best interests of the child, these lawyers believed systemic and personal prejudices against parents with disability played an integral role in perceptions of such risk. They also observed a cultural practice within departments of casting the best interests of children as in tension with the rights of parents to be supported in continuing to care for them.

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I think part of the reason for that is the view that best interest of the child often over-rides. There's a real risk-averse mentality within child protection. It becomes difficult to get any engagement with the family that would actually promote the best interest of the child because of the immediacy of the perceived risk to the child. We just get them removed and now an assumption has been made that you can never address these protective concerns for this family because of a disability ... It's a real breakdown in support for the family [which] just doesn't happen because of that real risk-averse mentality in the department.

– Lawyer 28 (focus group)

As the lawyer quoted above argued, this perceived tension between working with the family and assessing or recognising risks to children prevented child protection agencies from

acknowledging that there's a legitimate role for other services to actually be working with the family. And, facilitating that happening is a big piece of the system that is not properly recognised or structured in a way that allows it to happen consistently.

– Lawyer 28 (focus group)

As we will discuss in the next section, it also fed into adversarial child protection proceedings, which lawyers, parents and advocates believed frequently denied parents clear information about child protection concerns as well as the purpose and nature of child protection processes and legal proceedings. Not only was this identified as exacerbating an already extraordinary power imbalance between parents and the department from the outset, but it also precluded parents from informed participation and equal access to justice.

## Information provided to parents about child protection concerns and its correlation with legal proceedings

Across our interviews with parents, lawyers and advocates, nearly all described failures to provide parents with disability with the information they needed to make decisions throughout their involvement with child protection systems. This was identified as limiting their ability to address child protection concerns and their capacity for informed participation in child protection processes and legal proceedings. In the opinion of many, such failures began at the outset of parents' involvement, with caseworkers not providing clear explanations to parents of their child protection concerns. One mother with intellectual disability related her experience.

They don't even explain it to you. They just walk in and take the kids. Last time they handcuffed me because they walked in and took the kids, and I wasn't even fighting them. I was only asking what's going on ... [A]fter they took the kids, they came back and dropped a paper off and they said to me, 'get somebody to read it for you.' Walked out.

– Parent

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Lawyers and advocates noted that the information provided to parents about child protection concerns was inaccessible and was rarely adjusted in recognition of their communication needs. As a lawyer observed,

Parents do seem confused, they don't seem clear on the reasons why community services are involved, even if the child's being removed. They get the paperwork, but most don't read or write particularly well, and the paperwork is immense. It's just very confusing for them to try and work that out. And, of course, the child protection caseworkers don't necessarily sit down [with them]. Parents aren't their client.

– Lawyer 6

When child protection caseworkers did speak with parents, it was rare that they adapted their communication to ensure their concerns or intentions were understood. Others observed, in contrast to the enormous paper files prepared for court, that it was rare for the department to put their concerns or plans in written form for parents prior to legal proceedings commencing. As one advocate observed, 'it's very difficult to persuade child protection to put things in writing'.

There is [this] massive power imbalance of a person with a disability fighting a room full of people without having received in writing, usually, anything about what the meeting is all about. Even though the processes are meant to involve that. People are meant to be given, for example, a case plan meeting.

– Advocate 28 (focus group)

The lack of information provided to parents generally – that is, parents with or without disability – was acknowledged by some as endemic to the child protection system. That said, parents with intellectual disability were believed to be particularly discriminated against in terms of the information that caseworkers provided them in the lead up to court proceedings. An advocate commented,

[the child protection system is] demonising and patronising of parents, regardless of disability or not, and it's accentuated, in my experience, when parents with [intellectual disability] are involved. That's demonstrated by the lack of communication and just thinking that they don't need to know, it's not their business.

– Advocate 28 (focus group)

Another advocate agreed,

Certainly, in every case we come across, we meet the wall of silence and a blatant lack of reasonable adjustment for the parent with intellectual disability.

– Advocate 28 (focus group)

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They argued that the failure of caseworkers to ensure parents were both informed and understood child protection concerns was attributable to ‘the assumption that parents with intellectual disability cannot parent’.

Many remarked that it was often only when court proceedings commenced when parents learnt of child protection concerns and the department’s determinations of their ability to care for their children. At this point, the information provided to parents could be overwhelming. As an advocate reflected,

If the baby is removed, they take the baby and give you a piece of paper ... And then the day before, or the day of, your first court appearance, they give you a bundle, literally a bundle. It’s called ‘stage one bundle’, and it’s all the reasons why the baby was removed. Imagine you just had your baby removed, you’ve got your hormones going everywhere, you get this phone book of stuff saying how bad of a person or how bad of a mum you are. That’s why they took the baby. We wonder why we have a lot of self-harm and suicidal tendencies during that time.

– Parent Advocate 1

The level of information parents received was identified not only as preventing parents from proactively addressing child protection concerns but also as reflecting the extent to which parents’ rights to participate and be heard in child protection decisions were recognised by caseworkers.

One lawyer shared an example of a client, a mother with intellectual disability, whose child was removed from her care two days after birth. Her lawyers had pre-emptively contacted the department requesting information about whether they would refer the mother to family services, mindful that the mother’s first child had been removed. They also sought an indication of whether the department would support the mother to maintain the care of her second child, with the understanding that the mother would have the support of family members.

It was only after court proceedings commenced that her lawyers learnt that a Risk of Significant Harm (‘ROSH’) Report had been filed during her pregnancy and a high-risk birth alert issued. At this point, it also became evident to the lawyers that there had been no ‘pre-case work’ – no attempt to work with the mother or inform her of either child protection concerns or the department’s intentions. Instead, according to this lawyer,

two caseworkers arrived the day of the birth of the child. And then [mum] was, obviously, very anxious, very fearful of the child being removed, she was very scared of that. And a lot of what was written in that application was, mother seems too concerned about having child removed and as if that was an impediment of her parenting capacity. There were reports that while she was bathing the child, she accidentally let the child’s head go too far under water. There were issues that she wasn’t able to properly support the baby’s head while holding her and there [were] also some issues with mother not being completely attentive.

– Lawyer 14

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As the lawyer saw it,

This is a parent that never had the opportunity to care for her own child ... and this is a mum that was absolutely receptive to everybody, she was so concerned about having her second child removed. She was doing the parenting courses. She was attending all the prenatal appointments and she was absolutely receptive from the get-go about what to do and how to parent this child ...

I think from the moment those ROSH reports were filed during the pregnancy stage of my client, a prenatal caseworker should have been there and been in support of that client. I think, given the concerns that department had, I think, there were multiple avenues to go through ...

[J]ust better communication with the family members, a prenatal caseworker and ... a family in-house preservation service would have been, it just could have completely changed the trajectory of this case. But what I think this case truly exposed was there was absolutely no casework prior to and during pregnancy.

– Lawyer 14

It was generally agreed that once legal proceedings commenced, there was little departmental support for parents to address child protection concerns, even if parents were legally represented.

You're lucky if you get an advocate or a lawyer who can actually work with you as a parent in what is a fundamentally different power. The power structure between child protection holding all of the information and, often, not wanting to disclose that information to the parent about exactly what's going to happen – they communicate some parts of the information that they think are going to assist the parent, but not necessarily all relevant information – that puts parents in a position where they can't make informed decisions ...

[There's] this structural problem with the system that doesn't recognise the power imbalance and doesn't create a legitimate role for someone to work directly with the parent because that dual role sitting within child protection, frankly, it doesn't work ... that's up against the best interest of the child narrative all the time.

– Advocate 28 (focus group)

Indeed, one mother with intellectual disability related her experience of learning of the department's concerns at the commencement of court proceedings. Having previously engaged with different caseworkers concerning her access to disability-appropriate parenting support, she described herself as 'mind-boggled' when she read that the department's decision to remove her daughter rested on their belief that she might 'indirectly harm' her.

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I just lost the plot at the moment ... We had a lawyer, and he was trying. And by this time, mind you, we were all sort of washed up. We didn't know what was what. And he said, 'you can fight this' ... I'm like, 'I haven't got the mickey in me anymore to fight this'. I understand what they're saying, in some respect, that we're probably not the best for her without any support.

And I said, 'I know I'm not going to get that support, so let her to go to her grandmother. But let's make these conditions that we see her and that we're told of what goes on with her and if she needs medical treatment, so that we're still involved.' But her grandmother is the primary carer. And he said, 'Wow, you're one super mum'. And I said that I don't think I'm super mum, but okay ... we still wouldn't have got the help we needed. And I think that was what I sat down with and how I came to peace with it. Well, as much as I can. I realised that there are certain things, like my anxiety would probably play on her. There are certain things that ... with the right amount of support ... we might have been able to learn ways around it.

– Parent

As we will discuss in the next section, parents' lack of access to legal representation and advice from the outset of their involvement in child protection was identified by many as contributing to the likelihood of court proceedings. It was also identified as leading to high incidences of child removal from parents with disability.

## Parents' access to legal representation and advocacy

It was universally perceived by lawyers that parents' lack of adequate and timely access to legal representation and advice violated their rights to informed participation in the child protection system. In the opinion of many, if parents were referred to legal advice at the outset of their involvement, many incidents of child removal could be averted. The impact of not having early access to legal representation often meant that parents were not informed of their rights to request reasonable adjustments or aware of the legal repercussions of their participation in certain processes. It also meant that often by the time parents did access legal advice, their options in contesting the department's determinations of risk or parenting capacity, and subsequently the removal of their children from their care, were limited.

As a lawyer explained,

Parents are told to do things before the court case has started which will then, because they've done those things, ensure that a court case is started. Parents will do things without realising the dire consequences of doing that. Participate in some neuropsychological assessment which will then be used as the only basis for the court application. Or consent to participating in a service which, without them realising it, their very participation in that service shows, in the eyes of the department or the court, why there is a need for court proceedings in relation to their child.

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I don't think that is explained to parents that when we're at the pointy end, just before removal, if you do this X, Y, Z and it doesn't work or whatever or it reflects negatively on you, your child will be removed from your care ... We as lawyers get the court application and we're going through what's happened ... and we sometimes just think, 'Oh, God, why would you do that? Why would any parent do that at this point of their engagement with the department?'

– Lawyer 13

Disturbingly, we heard anecdotal reports of parents being directly threatened with court proceedings if they did not consent to caseworker suggestions of temporarily relinquishing the care of their children to family members, without being informed that such consent could later be interpreted as an admission or evidence of lack of parenting capacity. As a lawyer put it, parents' lack of access to independent legal advice enabled such coercive practices to continue by exacerbating gross power imbalances between parents and the department, particularly in circumstances where their children had been removed.

Subsequently, the lawyers we interviewed believed parents should be referred for legal advice as soon as the department is 'doing active casework with them in whatever form that might be'. As one Legal Aid lawyer elucidated,

that casework can take many, many forms, but it can be referral to an early intervention service ... It can be a home visit. It can be a signing of a safety plan. It can be so many things, but it's that point in time when ... parents are being asked to sign things or do things, is where I think we can help because sometimes we see parents come in and go, 'I've got no idea why they're talking to me. I don't know what they're worried about. They just came in and said all these things and I don't understand.'

– Lawyer 15

Other lawyers agreed, stressing that it was particularly at the point when parents were asked to participate in assessments or attend services that legal advice was needed.

Parents [should] speak to someone who is not from the department, speak to someone independently, and say, 'the department want me to agree to my baby going into my mother's care for three months. It's been said to me that I need a break from caring for my baby ... So, my relationship isn't good at the moment, so I think I'll just let grandma look after baby for three months.' Or, 'I've just had a baby and they want me to do a neuropsychological assessment, I'll do whatever it takes to keep my baby in my care ...'

I think there probably needs to be someone intervening ... to say, 'Please do the assessment if you want to do the assessment but understand that if it comes back and says bad things about your ability to parent, I think it's likely that they'll remove the child from your care'. Or, 'if you think you need a break and you want to place baby with your mum for a

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bit, please do that if [that is] what's best for you. But please understand that if you then turn around a week later and say I'm ready to have baby back now that that's not an option.'

– Lawyer 13

Several expressed misgivings about whether and when parents were being informed by the department about their rights to access legal advice. As a lawyer who worked with Legal Aid commented:

It's a little bit unclear to me precisely what happens for parents, and this could vary from ... location to location about what parents are told about their legal rights and their ability to get legal advice. It's something that is of significant concern to me and Legal Aid more broadly about what they know. And we get clients telling us a variety of different things about what they've been told about what they can and can't do in terms of accessing legal advice and legal assistance.

– Lawyer 15

Many lawyers observed that it was only once legal proceedings commenced that parents understood their rights to legal representation or were otherwise referred to legal services by the courts.

The way I get clients is I'll get an email sent by the court liaison officer for the department ... And it will just say this application is listed on Thursday, the mother is Aboriginal and then it goes from there, basically. I get an email with mother's contact number, and I'll call her out of the blue and explain who I am.

– Lawyer 13

I think it becomes a little bit clearer to [parents] at the point in time that there's a removal, which in my view is too late because they will be told essentially that they can be assisted by a duty solicitor. And that's where we come in because we arrange that duty solicitor.

– Lawyer 15

For most lawyers we interviewed, the first time they had contact with parents was after their children had been removed.

In my role specifically I'd say 99 per cent of the time the first time I have contact with any parent is after their child has been removed and the department has filed an application initiating the care proceedings.

– Lawyer 13

While no lawyers in this study addressed the extent to which parents appeared in court with legal representation, as the literature review identified and as several non-lawyer participants noted, many parents – with and without disability – appear legally unrepresented. This places



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them at significant disadvantage in advocating for their rights to be respected and in responding to the department's case.

Non-lawyer participants discussed their involvement in court proceedings where parents appeared legally unrepresented. In some cases, lawyers who were present stepped in on the day, but this was emphasised as not the norm. As a service provider shared:

[I was involved in on case where] mum didn't have any legal advice ... But the department persisted so it took her to court without legal representation. Which was just mind-blowing. It just so happened that a lovely woman ... was the independent lawyer and she saw that mum was struggling and she stepped in and supported mum in the court space.

– Service Provider 19

This participant, who was giving evidence for the department, described apologising to the mother in court for the extent of the system's failures. But she reflected that she was only able to do so, because of the initiative taken by the independent lawyer.

She was amazing. I had such respect for her. She cross-examined me ...

I spoke from my heart and I apologised to mum that the system had let her down on so many levels and that at this point in time what she needed wasn't available in [her area] because that was the truth as well. And the prosecutors weren't helping with these kids ... It was an awful situation.

– Service Provider 19

While one of the major barriers to parents retaining legal representation is the lack of referral by child protection authorities, another is that several find themselves ineligible for publicly funded legal services such as Legal Aid. As discussed in greater detail in the literature review, parents may be ineligible due to determinations that they possess enough funds to pay for private legal representation. However, given the disproportionate numbers of parents involved in child protection systems that are living in poverty, it may be more likely that they are deemed ineligible for two other reasons. Firstly, in some jurisdictions, a legal service can refuse to take on a client if it assesses that they have no reasonable prospect of success in legal proceedings. Secondly, the legal service might cite a conflict of interest, whether because its lawyers are already representing the parent's children as Independent or Direct Legal Representatives or are otherwise representing others, such as family members or ex-partners.

Regardless, the cost of securing private lawyers is for many parents prohibitive. As an advocate shared with respect to one case in which they were involved,

[it] cost the family, who weren't entitled to Legal Aid – despite all the assumptions about all these parents having access to Legal Aid, they don't – \$55,000 to fight this case.

– Advocate 28 (focus group)

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They noted that case turned on the parents being able to prove in court through their legal representative that false allegations had been made by hospital staff in relation to a father with intellectual disability. In this advocate's experience, false allegations, or cases involving 'altered notes' based on discriminatory, ableist assumptions rather than evidence of child protection concerns, were rife. Without the resources to fund private legal representation, both parents and children were being denied access to justice, unable to provide the legal arguments or collate the necessary evidence to preserve their families or, more frequently, demonstrate their case for restoration.

As several lawyers noted, a huge component of their work was dedicated to building an evidence base to support parents' cases, particularly in situations where parents were not supported in accessing appropriate services or where assessments of their parenting capacity were identified as biased or inappropriately conducted. As one lawyer put it,

Cases can be won, but you've got to have evidence, and to get evidence, you've got to have the time to go out ... and find it.

– Lawyer 6

It was noted that a flow-on effect of not having access to legal advice 'as soon as the department is involved' is that parents are not being helped to collate this evidence – whether in relation to inappropriate conduct by caseworkers or in order to refute child protection concerns of risk. One lawyer reflected on how this filtered into the advice they gave to their clients once court proceedings commenced and an application had been filed by the department to remove their children. As they noted, often by this point,

the department could have been involved with this parent for about a year, have collated multiple Risk of Significant Harm reports, multiple assessments, safety assessments and then filed that. And we have, from the date of the first return, three ... four weeks to argue [and submit counter-evidence].

– Lawyer 14

This lawyer reflected that in the absence of documentary evidence to counter the department, lawyers would often advise parents to formally agree with the department's case that their children needed alternative care or protection at the time they were removed. Such acknowledgement is otherwise known as 'consent to establishment'.

I think that issue of establishment ... fundamentally, it's an understanding that the department or government should not intervene into a family's life and tell them what to do. And that's a serious and important question that the court needs to ask. And yet, in practice, it's really just a procedural issue, it's just a tick. It's, oh, yes, it's, matter's established, let's go, let's move forward ... [to] these things that you have to do to get to that final point where you can argue for restoration. And that could take a year and a half two years even.

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So yes, you do fall into it and, yes, you do feel kind of trapped and narrowed into making these certain decisions, yes, absolutely.

– Lawyer 14

For this lawyer at least, although there was a concession of risk in establishment – often stemming from a systemic failure to support parents from the outset, including referring parents to independent legal advice – from a procedural point of view, parents were most likely to be able to prove their parenting capacity at a later stage. As they noted, however,

it's just like this really strange thing that [parents] have to balance in their head. We're advising them [to agree] that your child is in need of care, but you're not admitting to any of these allegations as well at the same time. And so, it seems like this extremely, just complex issue that isn't really a part of their fight.

– Lawyer 14

They related an example of a case they were involved in where the department had removed a child from their mother who lived with intellectual disability a few days after they were born. In light of the evidence submitted by the department in its application before the court, they ultimately advised their client to consent to establishment.

So, for my client's case it [was], here we've got evidence of mum not being able to hold the child properly, not being able to feed properly and therefore, this is why the child should be in care. If we litigate on that issue the court has to make a finding. They have to, as its duty, go, okay, I've looked at the evidence and I can see that this is an issue and therefore, it becomes this other hurdle to overcome.

Whereas if we were to fight it at the restoration stage, we would be able to build our evidence a little bit more to say that, 'oh, well, yes, that may have been the case, but look at all this progress that my parent has made to overcome that issue ...'

I think, those legal procedural questions just throughout the matter made things a lot harder for my client to understand but again, which is why we very painstakingly had to explain the whole of the proceedings. There is this establishment phase. There is this disposition phase, and this is where we should fight it because this is where we'll be able to gather the most evidence to support your case and restoration.

– Lawyer 14

They did, however, note that

[i]t was a difficult moment for her to accept ... it was hard for my client to separate that issue between this is a legal context we've got where evidence matters. And we've got this 106a issue, this neuropsychological assessment, these hospital reports that were positive and negative, we just didn't really stand a chance.

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It was almost, I think, it was a three-to-four-hour conversation we had to have with our client, and I had to have my principal [solicitor] involved just because, again, it was a very difficult concept to explain to my client ... We did explain our strategy to her. We said, 'look, we're going to get [an independent expert] to do a further assessment ... we'll get a counter report essentially'.

She did eventually concede but it was testing for her in the sense that we're meant to be her lawyers and she really didn't feel heard and understood at the same time ... It was really trying to persuade her this was what was best for her. And in a sense, we had to somewhat strip her ability to make this decision ... We had to do our utmost best to explain it and to be persuasive, but not to be forceful, of course.

– Lawyer 14

As this lawyer ultimately argued,

Parents should get lawyers as soon as department is involved. As soon as the department is involved, they need their legal advocate to help them bring and collate that evidence so that if it does go to court, they have that chance of fighting establishment.

– Lawyer 14

One lawyer from Legal Aid discussed the need for organisations like theirs to cultivate better relationships with the department so that parents are advised of their rights to access and receive legal advice earlier. Promisingly, this lawyer indicated that their organisation was 'actively' working towards

a situation where essentially parents become aware that they can speak to us the moment that [the department] become involved with them. Whether they take that up is entirely a matter for them but [they should know] that there are people that can talk to them ... explain to them what's happening, help them understand what they're being asked to sign and why. We think we can value add, and we would like to think that that might assist more children to stay safely at home.

– Lawyer 15

While parents having access to lawyers was identified as essential to their rights to access justice, it was widely noted that a key element of providing them with *equal* access to justice is ensuring that lawyers have the appropriate knowledge, skill and experience to work effectively, respectfully and safely with parents with disability. Part of this is understanding the need for, and being flexible and open to, making adjustments to foster effective two-way communication. This includes recognising that parents with disability may need more time to process and respond to legal advice, or to receive it in different formats.

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Additionally, as some advocates and lawyers discussed, it means understanding the line between strongly advising a client to take certain courses of action in legal proceedings and failing to recognise or respect their right to refuse advice and proceed alternatively. Notably, this latter point was particularly raised as an issue that affected the rights of parents with intellectual disability to have their instructions heard and followed by their legal advisors. One lawyer noted a case they were involved in, in which child protection agencies filed affidavits suggesting that a client with intellectual disability had informed them that ‘her lawyer wasn’t listening to her’. This lawyer noted that this prompted them to reflect on ‘the fine line’ lawyers walked between giving parents legal advice and respecting their autonomy to decide how to proceed.

This experience [has] been a huge learning curve for me in understanding giving autonomy to my clients and balancing that with your knowledge and your expertise and providing what you think is the best way to go about this case. ...

I have to be absolutely conscious about not taking charge of this person’s matter and being paternalistic. But I do believe, particularly with clients that really do rely on their lawyers, really do rely on the direction that their lawyers give, you have to do your job to make sure that you give your clients a full understanding of the issues and their options. You need to give them options; I think that’s really critical ...

I had to constantly fight that paternalism and make sure to give my client autonomy and so when she did give her advice, again... I had to ask clarification. ‘Mum, do you understand the instructions you’ve given me, do you understand the options that I’ve given you?’

– Lawyer 14

As this lawyer and several of his peers and advocates emphasised, there was considerable need for greater professional education and training for lawyers on how to work safely, respectfully and effectively with parents with disability.

## Professional education and training for lawyers on advocating for parents with disability

Despite the emphasis throughout interviews with lawyers on the need for parents with disability to access legal advice from the point of initial contact with child protection systems, several discussed the general lack of training among their peers on meeting the needs of, and advocating for, parents with disability within child protection jurisdictions. As one lawyer put it,

this is the sort of law you don’t learn in law school. You have to pick it up on the job, and it’s difficult because Children’s Courts are [often] closed courts. I think there could probably be better clinical education for lawyers, because given the amount of people from disadvantaged backgrounds they’re going to be running into, they really should be prepared to meet the difficulty of the work ...

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Clinical education for lawyers, on the whole, is pretty rubbish. You go to law school; you learn a whole heap of stuff. It doesn't bear much resemblance to what you do when you get out. If you're lucky, you get Practical Legal Training ['PLT'] with someone that's going to give you some clues about the work you're going to be doing. But I did my PLT ... in crime. Here I am doing care and protection. I had to learn it from scratch.

– Lawyer 6

In the absence of formal training, this lawyer described learning how to effectively represent parents with disability as something that was accumulated on the job over several years.

I'm a lot more savvy than I was five years ago when I started doing this, but ... it's a slow accumulation of experience. I did have some mentors, but they weren't easily reached. I think for new lawyers to have experienced mentoring would be really valuable.

– Lawyer 6

Others described their organisation's attempts to address gaps in their lawyers' professional knowledge of how to work safely and accessibly with parents with disability. As one lawyer noted,

[T]here is a whole piece of work [yet to be addressed] about upskilling legal practitioners and the court and the entire system, about actually working and communicating [with parents with disability]. At [our legal practice], we've tried to work closely with [disability and parent advocates] ... An important part of the picture is actually upskilling everybody who's interacting in the system, not just the department workers because there can be lots of gaps around the place.

– Lawyer 28 (focus group)

A lawyer who worked with Legal Aid related how mandatory training on working with parents with disability had been 'rolled out' for lawyers working within their organisation. According to them, such training modules included sessions on the importance of lawyers adapting their practice to accommodate the needs of parents with disability. A particular focus appeared to be on potential adaptations for parents with intellectual disability to facilitate the ability of parents to provide instruction to their lawyers and of lawyers to receive parents' instructions. As the lawyer noted, this training was recently extended to, and made mandatory for, panel lawyers. Panel lawyers are private solicitors who receive Legal Aid funding to undertake care and protection work on behalf of Legal Aid.<sup>893</sup>

The capacity of panel lawyers to implement such training in practice – for example, by building in extra time in advice sessions – was, however, noted as being impacted by limitations in the funding they received. As a lawyer reflected,

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The first time I became involved in this work was in another job when a father came to me and said, 'oh, they gave me this paperwork and I can't read' ... His [previous] lawyer was a private lawyer on a Legal Aid grant. Nice fellow, but didn't have time to sit down and go through a small book-size [worth of documents] ... [Instead] the lawyer was relying on the client having read the paperwork and being able to give him instructions ...

Some lawyers will make more time ... But most people in the Children's Court just get a lawyer who's working on a Legal Aid grant and is doing lots of matters and probably can't spend the time. There are some good people there and I don't want to tar everyone with the same brush, but basically, Legal Aid grants are pretty meagre and these parents need more time.

– Lawyer 6

This opinion was shared by another who worked with Legal Aid:

I think [panel lawyers] would say that they're not [funded adequately] ... That's obviously not something that unfortunately we control. We can only do what we can with the funding that we're given.

– Lawyer 15

Subsequently, the translation of Legal Aid's compulsory training modules into improved practice in responding to the needs of parents was described this lawyer as 'a work in progress'.

Yet, as several lawyers noted, for some parents with psychosocial and/or intellectual disabilities to fully comprehend the legal case in which they were involved and instruct their lawyers, it was essential that adaptations were made. This was particularly in relation to the provision of extra time when they met with their lawyers. One lawyer shared an example of a recent case they were involved in. They were acting for a parent who was contesting the establishment of child protection concerns.

I think I've met the client something like six or seven times in my office, for something that would normally take one phone call. And that's because I read that was an appropriate thing to do. And having done it, I can see the benefit in terms of breaking things down and only meeting for 20 minutes and then picking back up where we left off ... It's really improved my ability to get instructions from the client ... it probably just takes a bit more planning in terms of if I've got four weeks until establishment, then I'm going to meet the client once a week, or something like that, and then we'll be ready to go by court.

– Lawyer 13

As the above quote suggests, this lawyer's knowledge of how to adapt their practice to respond to their client's needs did not necessarily reflect any formal training they received. Furthermore, when asked whether others in their organisation did so or the organisation itself had the resources to standardise this practice, they responded:

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No ... I mean those meetings they're not scheduled ... I work in the office and [to] half of them I say, 'listen you need to come in.' And then the other half [say to me], 'I'm coming in'. But it wouldn't work if you said oh no you can only come in by appointment or anything like that.

– Lawyer 13

While many lawyers and advocates described working with First Nations parents with disability and parents with disability from culturally and linguistically diverse communities, it was unclear whether legal services had turned their minds to developing particular training or protocols for addressing the intersectional needs of these client groups. A lawyer who worked with Legal Aid reflected that while there were systems in place to identify First Nations parents and train lawyers in 'cultural competency', the service had not to date put in place any specialist teams to work with First Nations parents with disability.

They're not triaged. People with a disability and First Nations families are not triaged in any specific way so that they move along a particular path, [that's] probably the bottom line at this point.

– Lawyer 15

In relation to identifying and addressing the needs of parents with disability from culturally and linguistically diverse communities, this lawyer noted that at intake,

the only question we ask is, 'do you need an interpreter?' And then we ask them, 'which language?' We ask them also, 'do you speak a language other than English at home?' And we also ask them [about] their country of birth and the year that they arrived in Australia. Those are the only questions we ask about culturally diverse and linguistically diverse clients.

– Lawyer 15

Indeed, across our interviews with lawyers from diverse social justice organisations, none mentioned any training they received to work with parents with disability from culturally and linguistically diverse communities. One lawyer from Legal Aid did believe that most lawyers who worked within the organisation understood

our client base and do receive specific training about how to work with ... 'vulnerable clients'. I would think that our solicitors are pretty well-placed to do that.

– Lawyer 15

They did nonetheless state,

Of course, if there were resources and the capacity to have particular teams to do particular work with particular vulnerable client groups, then that would be ... amazing.

– Lawyer 15



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As discussed in the section below, several participants discussed how gaps in legal training and the resources available to lawyers to respond to the specific needs of individual parents with disability could be ameliorated by greater collaboration between lawyers and advocates who specialised in working with parents with disability.

## Improving collaboration between lawyers and advocates

Several participants discussed the importance of collaborative relationships between legal and advocacy services in supporting parents with disability navigate the child protection jurisdiction. As one lawyer reflected,

bringing together legal services and non-legal services has been critical in running every successful case that we've had down at the Children's Court.

– Lawyer 28 (focus group)

Several lawyers described the role advocates played in providing their insights and guidance to their legal peers in how to facilitate rapport, trust and effective communication with their clients. As one shared,

I had a client that had [an independent advocate] that came with him to all appointments and [it was] invaluable to have him there because he's worked with this client for years and years, more than I have. He helped me work out how to best work with this client. Yes, absolutely invaluable ...

[J]ust watching how an advocate can help and how useful that is for me, I think that's a thing I would like to see more of in practice, more non-legal advocates, because they can address [a] primary effect of the disability, [which can be] communication.

– Lawyer 15

Advocates were also identified as providing an integral role in assisting parents in their interactions with services and caseworkers, something that was often described as beyond the scope or capacity of lawyers. As a lawyer explained,

What I do get a lot is, 'Can you just call the caseworker? Can you just come to this meeting? ... Can you call so and so up and tell them that is what I want?' ... And all those things, lawyers can't do. They can't be involved with the caseworkers directly. They can't come to meetings. They can't do anything like that.

– Lawyer 13

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Another lawyer who worked with a parent advocate said,

I tend to think that of the two of us, I'm the most expendable. A zillion lawyers out there. It's true, there's a lot of lawyers, and probably a lot of lawyers who've got more experience than me. But the advocate brings in that extra stuff that the lawyers can't do. The advocates can work with the caseworkers and the advocates can also assist the parents in between times to get things done that they need to get done. And that's beyond what a lawyer can do.

– Lawyer 6

By supporting parents in spaces where lawyers could not, advocates worked to address the asymmetry of power between parents and child protection authorities. By supporting, facilitating and insisting on respectful, ongoing and two-way communication between parents and caseworkers, having an advocate was identified as intervening against the adversarial nature of child protection-parent dealings. In turn, participants noted that when advocates supported parents, particularly from the outset of parents' interactions with child protection systems, there was a greater likelihood that child protection authorities would work with and listen to parents. In the words of a lawyer,

an advocate can help even the playing field, they can help the parent talk to [the department], and they can help [the department] understand the parent, and they can help things be resolved without removals. And we've seen that in our work, so I'd like to see more of that, but I'm not holding my breath.

– Lawyer 6

From the perspective of an advocate, another key function of their role within these spaces and even when working with lawyers, was to advocate for and support parents to have their autonomy respected, something that, as addressed in the previous section, was jeopardised by paternalistic attitudes held across the profession.

I think there is a gap for non-legal advocacy services. I do think they play a really important role ... in actually complying with the Convention on the Rights of Persons with Disabilities to support people to be able to make their own decisions when they need.

– Advocate 28 (focus group)

Lawyers also suggested that the greater familiarity of advocates with parents, and their specialisation in disability, could help lawyers determine whether clients with whom they had difficulty communicating had the capacity to provide legal instructions. As one explained,

[We're] really keen to work out how lawyers and disability advocates can work closely together. One of the challenges that we have in the child protection system is lots of people rely on a grant of aid from ... Legal Aid. We have to be able to be assured parents have the

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capacity to give instructions. Sometimes that can be really difficult if somebody needs to speak on their behalf.

- Lawyer 28 (focus group)

Advocates also discussed the role they assumed in referring parents to legal advice and representation and subsequently collaborating with their lawyers to support them. This helped address a gap in the system which several participants believed contributed to high incidences of avoidable child removal from parents with disability. The extent to which they were able to do so, however, appeared to hinge on existing collaborative relationships between advocacy and legal services. For example, one advocate explained that they had the capacity to refer parents ‘pre-court’ to legal services due to a ‘range of arrangements’ their organisation had with different community legal services and Legal Aid. As another noted, however, ‘it’s a real challenge for us sometimes to even get a hold of the lawyer’.

In such circumstances, this advocate described their attempts to contact independent children’s lawyers whom they understood were involved in the family’s case. Notably, while one lawyer endorsed this practice, a different advocate voiced doubt over whether independent children’s lawyers were best placed to ensure parents’ rights were recognised and supported.

As another lawyer observed, an additional effect of not having established collaborative relationships between lawyers and advocates, was that lawyers were at times having to

step out of a case because we can’t get instructions from the actual client. Which is a worst-case scenario, we absolutely don’t want to do that, but our legal rules and things like that, it’d prevent us from being able to do it well and we’ve had to actually step aside.

- Lawyer 28 (focus group)

As discussed in the section above, one consequence of parents not having access to legal advice or representation is that parents are often not informed about or supported in compiling evidence to contest departmental determinations. As several lawyers and advocates noted, however, greater collaborations between advocates and lawyers could address this. Advocates could step in to support parents in documenting, collecting and collating the evidence they needed. One explained,

I ring everybody, email everybody. I want an incident report. I want accountability. I want to know [what] the hell happened and how is this not going to happen again. I make everybody accountable. I always put it in writing ... so there’s a paper trail. This matters in court. So, everything I get from [the department] I will send to the lawyer now because these are incidents that shouldn’t be occurring.

- Advocate 1

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As a lawyer who worked closely with an advocate elucidated,

[When matters reach the courts] the only way [a parent's] story gets told is through affidavits. And getting the good story is also where the advocate helps, because in between those court dates, that's your chance to go out and get some runs on the board, turn that worrying story into a much better story. But the parents I work with will need support to do that. It's not that they're horrible people and they don't want to do it, they need assistance ... If they've got it and it works, you end up with children not going into foster care, which is a win for everyone.

– Lawyer 6

It was nearly unanimously agreed, however, that such collaborations were not the norm and that there was considerable need for legal and advocacy services to cultivate better working relationships to support the parents they worked with. As a lawyer noted,

[advocates are] not getting hold of lawyers, that's just across the board. It is a really challenging space. But I think we need to learn to work better together and look at what the roles are and how we can fit into this system of confidentiality and instructions and all these kinds of barriers, and how we can actually navigate that better.

– Lawyer 28 (focus group)

Indeed, several lawyers and advocates who had benefited from working together discussed the importance of clear delineation and understanding of roles in fostering effective collaborations. One advocate who worked closely with a legal team described how their organisation had developed a protocol in which parents who contacted their organisation were first referred to lawyers and would subsequently be put in touch with the advocate. The advocate would then work, under the lawyer's supervision, to support the parent's legal case. As the advocate explained, this process was put in place to extend the client's legal privilege, where possible, to their interactions with the advocate.

I need to be mindful of my role. They give the referrals to the lawyer. The lawyer then speaks to the parents before I even go anywhere near them because I need to have that legal privilege. I also need to have that scope where I'm not a mandatory reporter because [the lawyer's] spoken to them and I'm under [the lawyer] in that way. That's one of the best things that I say to a parent.

– Advocate 1

Among lawyers, the demarcation between the role of the lawyer and the advocate or support person was stressed as pivotal to effective collaboration, particularly in contexts of court-ordered Dispute Resolution Conferences ('DRCs') when both lawyers and advocates appeared to support parents. As several lawyers noted, the inclusion of parent advocates in DRCs was subject to the discretion of the Children's Court registrar. According to one lawyer

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who routinely worked with advocates in their legal practice, in their experience registrars 'generally agree, unless there's some reason. It has to be a pretty good reason not to agree. I've never had anybody knocked back.'

There was considerable variation in experiences of such collaboration, often reflecting the extent to which lawyers worked with advocates and relatedly whether they had established relationships with the advocates who attended the relevant DRCs. For example, the lawyer quoted above who worked closely with advocates and other support people emphasised the importance of having them present in these spaces.

[In DRCs] it's really important that a parent has a good support person, because generally they go for at least two hours [and] a lot of confronting stuff can come up ... [T]he support person might be able to help the parent stay calm and also help the parent ask for breaks and help the parent to explain and to understand if there are difficulties with understanding. A good support person is excellent.

– Lawyer 6

Others were more circumspect. For example, another lawyer reflected on their experience of a DRC which was convened between the parents' lawyers, their advocate, an Independent Children's Legal Representative and the department. According to this lawyer, the role of the advocate was to support the parent but not necessarily to advocate on their behalf within that space.

I guess, when we go to DRCs with a support person, the support person has a very clear particular role ... They generally aren't required to speak. It's the lawyer and the parent that speaks and they're there to help them process the information, be their emotional support.

– Lawyer 14

As they recollected, however, in that particular DRC,

[the advocate], after hearing what everybody had to say, stepped in and gave her view and said, 'I've worked with this family for ten years, I've seen them improve. I've seen them attend all these courses and no one's listening, no one's watching, no one's giving any second thought to what they're doing.'

In a sense it was very helpful for my client to hear that because ... we attended two DRCs with this client and on the first occasion the client broke down screaming at the caseworkers, couldn't emotionally regulate, saying that the department weren't listening ... they're stealing children. But to have an advocate, that was fiercely an advocate, that didn't have those obligations of being an officer of the court or of all those things – yes, I think my client did find somewhat peace in having someone do that for her at the Dispute Resolution Conference ... all in all, it gave my client some peace.

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But [at the same time] I don't think it was effective or conducive to any resolution in this case ... And so why I use the word inappropriate [to describe the advocate's intervention] is because she took on the role of an advocate when there are, I wouldn't say clear rules, maybe unspoken rules as to what a support worker should do in a [DRC].

– Lawyer 14

Another lawyer was more ambivalent about the appropriateness of advocates speaking on their client's behalf at DRCs, noting that 'it was at the discretion of the registrar'. According to them, the main point regarding effective collaboration between lawyers and advocates in those forums was that where possible, lawyers, advocates and parents should consult with each other prior to them commencing to ensure everyone was on the same page.

[I]f I was the lawyer, I'd be speaking to the advocate and the client beforehand about how we might want it to look and what everybody's roles are in that. I don't get to speak unless the registrar lets me speak and it would be the same for anybody else in the room. But I think good planning as to how that's going to look is important for that ...

You need to have figured out what your roles are and what the purpose of that would be. And it could be that's the client's preferred way that they would like to be heard, by way of the advocate. And I think lawyers can work alongside that as long as it's within the parameters of what the Children's Court registrar is comfortable with.

– Lawyer 15

As we will address in the next chapter, lawyers expressed mixed opinions on the effectiveness of DRCs as forums in which parents have the opportunity to have their views and concerns heard. This lends some context to the arguments made by some participants of the importance of creating space for parents to choose to have their views and experiences represented by an advocate in them. Indeed, as many lawyers observed, DRCs were often just one part of the court process – a process which most participants believed alienated, marginalised and denied parents with disability the right to participate.

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# Chapter 11: Parents' participation in Children's Court proceedings and their legal support & options in the aftermath

## Introduction

This chapter addresses participant experiences of and perspectives on parents' involvement in Children's Court proceedings and the legal support offered to parents in the aftermath of such proceedings. As in the last chapter, the participants include parents and peer advocates, other professional specialist disability and parent advocates, lawyers and Children's Court clinicians.

In the opinion of most, parents with disability frequently enter and leave Children's Court proceedings feeling unheard, marginalised, alienated and humiliated. Most proceedings are decided on the basis of affidavits and formalised assessments. For parents – with or without disability – the reams of paper submitted by departments to substantiate child protection concerns are overwhelming. Many lawyers and advocates noted parents who do not have access to professionals with the skills and resources to effectively work with them are often deprived of the opportunity to fully understand or respond to the department's concerns.

Even in cases in which parents sought the opportunity to speak in court, lawyers noted that they would generally advise them against doing so given the adversarial nature of proceedings. The court process and rules of evidence were widely believed to disadvantage parents with disability, particularly in cross-examination. Court-ordered Dispute Resolution Conferences (DRCs), while ostensibly providing parents with the opportunity to speak directly with the department's lawyers and other parties to the case, were also depicted by some participants as adversarial and marginalising of parents. Others, however, spoke favourably about the DRCs as a forum in which the department could be challenged.

While some lawyers spoke favourably of increasing the role of litigation guardians in court proceedings to represent parents who found it difficult to communicate in that setting, others expressed caution. As will be discussed, litigation guardians are uniquely appointed to stand in place of parents with disability as parties to proceedings in some child protection jurisdictions and in federal jurisdictions such as family law proceedings. They are appointed if the court decides that parents are unable to provide legal instructions and otherwise conduct litigation 'due to mental or physical disability'.

Those who urged caution perceived that the lack of knowledge or training across the legal profession in working effectively with parents with disability, particularly parents with intellectual disability, could mean that parents who were able and wished to directly participate in proceedings would be further deprived of the opportunity to do so. Others suggested alternative ways that parents might have their views and experiences directly heard by the court or placed on the legal record.

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The perspective of parents and their rights to participate in proceedings were identified as routinely subordinated to the assessments of others, particularly those referred as experts by the department and the court. Their views were usually decisive in legal determinations that child protection concerns did exist and/or parents' willingness or capacity to address them.

Most participants recognised that clinical assessments could be beneficial in some cases by providing advice on how services and professionals could respond to, and make adjustments in recognition of, individual parents' needs. But it was frequently observed that the clinical assessments conducted were more often skewed towards forensically assessing parents' capacities to respond to child protection concerns. Notably, these observations related to both clinical assessments conducted directly in response to requests by departments and those conducted by Children's Court Clinics on referral from the court. Children's Court clinicians' perspectives on their work with parents with disability and their comments and suggestions with respect to how their assessments could be improved to address concerns of ableism and bias are also addressed here.

Finally, the chapter presents participants' perspectives of parents' rights and legal options following the conclusion of Children's Court proceedings, when decisions relating to the permanent legal placement of their children have been made. Major concerns were raised regarding the absence of legal supervision or remedies when parents were denied contact with their children or there were safety concerns following decisions by the court to place children permanently in the care of others.

The chapter concludes with a discussion of concerns and themes raised with respect to engagement with legal systems discussed in this and the preceding chapter. It reflects on the extent to which parents' rights to equal access to justice and informed participation in legal proceedings are failing to be recognised across child protection legal systems. It further reiterates some suggestions for reforms that could address these failings as identified by participants in the fieldwork as well as the literature review.

## Parents' participation in court proceedings

Participants in this project affirmed a key theme which emerged in the literature review: parents often enter and leave the child protection legal process feeling disempowered, misinterpreted, bewildered, humiliated and unheard. As a lawyer put it, summing up their experience representing parents with intellectual disability in court proceedings,

[m]ost of the time, [parents] sit at the back of the room, they feel like they're being ignored. Good magistrates will actually address them, even if it's just a five-minute mention at the end of it.

– Lawyer 6



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However, as a mother with intellectual disability reflected,

I don't understand much when the judge talks about me. It's hard for me to understand. [They used] words I didn't understand because my family didn't use the words. If I speak up, they judge me, so I don't speak up around those people. I'd mess it all up.

– Parent

We heard from some participants that attempts had been made in some jurisdictions to introduce communication facilitators in Children's Courts. This was to enable some parents with disability who had difficulty communicating in that setting to participate. These participants, however, noted that to date such initiatives had not been implemented.

As several observed, child protection proceedings before the courts are largely determined on paper through affidavits and formalised assessment. The reams of documents were overwhelming for parents to navigate and understand without support. As discussed in Chapter 10, many parents do not have access to lawyers or advocates who could support them in doing so. The effect of this is that these parents can be deprived of both the opportunity to know the case against them in legally maintaining the care of their children as well as the opportunity to respond. Thus, as one lawyer stated, parents with disability involved with child protection legal proceedings generally did not participate in the affidavit process 'unless they've got a lawyer that's really willing to go through the paperwork with them, which takes heaps of time because the files are immense'. Another lawyer said,

I think affidavits for parents with disability don't allow the parent to feel as though they're participating or involved in the proceedings or that their voice is being heard, so they're deficient in that regard.

– Lawyer 13

They noted, however, that when parents have secured legal representation with the training and resources to assist them,

affidavits have the benefit of giving parents with disability some protection in that they can sit with their lawyer – whose job it is to basically act in their interest, to refine an affidavit, a piece of written evidence – to ... give that client the opportunity to read it. And read it [with them] to ensure that nothing is said that will hurt their case or that isn't true or anything along those lines.

– Lawyer 13

Most lawyers, however, expressed caution in relation to parents, with or without disability, giving in-person evidence in court proceedings, given their adversarial nature. As one noted,

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I would be hesitant to let any mum or dad provide oral evidence in a court case, regardless of whether or not they had disability, before it was absolutely necessary ... You have to balance someone's right to participate in things against, unfortunately, this real concern that it is just so hard for people to participate and actually come away from that sort of thing feeling as though they should have participated, to be honest. It's hard.

– Lawyer 13

## Cross-examination

The pervasive ableism within the court and within evidentiary rules was widely perceived as imposing an additional barrier to parents with disability. Several lawyers identified that the process and rules of cross-examination could particularly disadvantage some parents.

As one reflected:

If a matter goes to hearing, you've got to consider whether your parent is going to be able to withstand cross-examination, and that can be really difficult for parents. It's a really confronting process. They've got to get up and talk in public. The disability [can] affect your ability to communicate well. Some of my parents are articulate, a lot of them aren't, and it's not only just the verbal communication.

– Lawyer 6

When cross-examined, parents are often asked to respond or refer to written evidence.

As another lawyer observed,

I don't know that the way that we conduct cross-examination traditionally works well for [some people with disability] ... I think that's a whole of the legal profession issue. The way that we cross-examine is a fundamental part of the legal system, but we possibly need to move beyond that a little bit and think of better ways that we can do it ...

There's some of the framework there already, but we don't, as lawyers, do enough to change our approach depending upon who and how we're cross-examining. There are plenty of provisions in the *Evidence Act 1995* (NSW), even in the *Family Law Act 1975* (Cth), about how you can and can't cross-examine, but we don't necessarily utilise them as much as we should.

Even direct cross-examination, making people sit in witness boxes, not making use of other methods, whether it be AVL screens, all of those things that are there. I think we've got a way to go with that ... the *Evidence Act 1995* (NSW) provides for how cross-examination should be conducted, and it actually says that the court needs to take into consideration the particular witness and their individual vulnerabilities. But as I said, I don't know that that happens as much as it should.

– Lawyer 15

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One of the reasons relevant provisions of the *Evidence Act* or the rules of evidence more broadly are frequently not considered or referred to in child protection proceedings is that they do not apply within the child protection jurisdiction. That said, as the lawyer above and others note, their underlying principles and rationales can nevertheless be drawn on by lawyers and decision-makers to inform Children's Court proceedings. In other words, the rules of evidence can be used to inform court decisions that adjustments should be made to recognise and respond to the particular vulnerabilities of parents with disability, particularly respecting their communication needs in cross-examination.

One example of an underutilised provision within the New South Wales *Evidence Act 1995*, which could be invoked by lawyers to advocate adjustments to address the communication needs of parents when cross-examined was raised. A lawyer related a case in which they were providing legal advice to parents with intellectual disability which involved them taking the stand. Prior to the hearing, they obtained special counsel who drew their attention to a provision within the *Evidence Act*. According to counsel, section 108C could be invoked to suggest to the court that it hear evidence from an independent expert to inform how both the parents' and the department's lawyers cross-examined the parents. As this lawyer explained,

what counsel was trying to argue essentially was that there needed to be a particular way that our clients would be cross-examined in relation to their credibility. These were parents with intellectual disabilities ... There needs to be a particular way which included tone [and] the type of questioning. So, when we called [the expert] as a witness we asked ... how can we best ask questions to these parents? And it was very much it had to be open questions ... It can't be a memory test for them, and it had to be asked in a particular way.

– Lawyer 14

While the magistrate did not formally accept that the provision from the *Evidence Act* applied within that case – and, indeed, the department opposed the special counsel's argument – the magistrate 'noted' the evidence provided by the expert witness and 'said that it was something he would consider'. Thus, as this lawyer observed, while their application did not stand, 'it was imposed on the magistrate's mind that there has to be a particular way to cross-examine these parents'.

In that case, the parents – both of whom lived with intellectual disability – had previously disclosed to the department that there were two incidents of domestic violence. One of the incidents had been perpetrated by the father against the mother several years prior to the court proceedings, and the other perpetrated by the mother against the father more recently. Neither parent sought to contest that the domestic violence had occurred; rather, it was their case that their 'intellectual disability was the primary issue as to why the children were removed'. As the lawyer related, when the department cross-examined the father with respect to his history of violence, the department's lawyer had asked the father,

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So, when you get angry, do you throw your hands and just punch people? Or it was something to that effect.

– Lawyer 14

As the lawyer perceived, however,

[i]t just wasn't an issue in this case that the father was violent. He had completely reformed. He was very gentle. He walked away from these situations when [things with] the mother did get heightened ... he left the home. He went back to his parent's home when there was any sort of violence.

And yet, under cross-examination, he just simply folded and said, 'Oh, if that's what you said, if that's what's in the affidavit I must have said that. I said it then.' And then [the department] made this story of, 'Oh, okay, what do you do when you're angry?' [The father replied] 'Oh, I guess, I throw my arms up'. And it became this whole other issue that just wasn't an issue in this case ...

The pressure of the [department's] questions and just having to go through multiple different affidavits referring him to this particular paragraph and saying, 'what did you mean by when you said that?' And him having no understanding of the context, the situation ... when he said 'Oh, yes, I did that.'

– Lawyer 14

Their experience in this case led this lawyer to argue that there should be 'further analysis into that particular section of the *[Evidence] Act* and how it can apply consistently across all matters where parents have intellectual disabilities'. As they reflected, it was only through obtaining specialist legal counsel that they learnt of and were able to observe the benefits of raising that evidentiary rule within Children's Court proceedings.

I just don't think many in my position would have known that part of the Act because ... we very rarely deal with the Evidence Act as care lawyers because it doesn't apply. And so [I'm] very grateful for our counsel for raising that issue. And ... I think, the magistrate did raise, during cross-examination, that the department's lawyer was restraining himself a little bit.

– Lawyer 14

In this lawyer's opinion, another effect of raising this evidentiary rule was that the magistrate intervened where it became apparent that the line of questioning being led by the department's lawyer was resulting in the father making concessions, not based on the evidence but, rather, due to 'his awareness of his intellectual disability'.

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As noted above, across our interviews with lawyers the majority did not believe parents generally, and particularly parents with disability, fared well when they provided verbal evidence in court, particularly within cross-examinations. It appears that most parents who have legal representation are advised to defer to the norm of child protection proceedings and have their views and evidence presented in written form. Such advice is invariably followed. Subsequently, for most, the only opportunity they have to speak directly, hear and respond to the department's legal representation is in court-ordered DRCs. As a lawyer observed,

[i]t's one of the only, if not the only, opportunity for parents to speak directly with the person that's representing their children, the person that's representing [the department]. They will have spoken directly with their caseworker and the casework manager of course, but it's one of the only informal opportunities that people have to do that, so it's quite unique.

– Lawyer 15

## Court-ordered Dispute Resolution Conferences

When legal proceedings are commenced in court, the court will often order that all interested parties in the case engage in Dispute Resolution Conferences ('DRCs') which are convened by court-appointed registrars. Usually, DRCs include parents and their lawyers and occasionally their advocates, the department and their lawyers, and the Independent or Direct Children's Legal Representative. As one lawyer observed, 'the whole point of it is that everyone can come together and chat'.

Lawyers, however, expressed mixed views about the effectiveness of these forums in child protection proceedings. For example, in the opinion of one lawyer,

[g]enerally, they're really well run, but that's once you're already in court, so it's just part of the court process.

– Lawyer 6

As they observed,

[f]lexibility and a willingness to compromise, not coming with a fixed view, makes for a good [DRC] for parents with disability. Informality. The lawyers don't turn up in suits ... it's a bit more informal. The registrars are generally pretty good at speaking with parents and pretty good at making sure that everyone in the room knows that ... the registrar's the boss of the conference and here are the rules, we've all got to stick to the rules, and we're all treated the same, lawyers, parents, and everybody in the room.

– Lawyer 6

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Another lawyer agreed:

I think [DRCs] work pretty well because of the Children's Court registrars. They are a very highly skilled bunch who do an intake process with every single conference that occurs to try and understand what the issues are and set up a conference that works for a particular family. Whether that be shuttle conferences, telephone conferences, setting up breaks at certain times. They go into the detail of determining where people sit as well in particular spots around the room.

The intake assessment process is to tell them about things, like my client might need some extra time or might need it explained in a particular way ... Not everybody's going to say that they had a good experience at a DRC, but I do think people put in time and effort to make sure they're tailored to what that particular matter needs ...

It's led by the Children's Court registrar, and they have different styles, but generally everybody has an opportunity to speak ... But [parents are] also not forced to speak. Lawyers are there and can speak on their behalf if [parents] want [them] to, if they don't feel comfortable. But it is one of the only opportunities that [parents] have to [speak].

– Lawyer 15

Others, however, relayed their perceptions that DRCs, while 'essentially supposed to just be a meeting' with an emphasis on informality and enabling parents to have their views heard, did not translate into practice. As one lawyer reflected,

It just doesn't feel that way at all ... I think the pressure of that environment for anyone would just be so terrible. And I know that my colleagues have also had mixed results with DRCs for parents with disability ... Going before a registrar with three caseworkers, four lawyers – with the sole focus being your parenting deficiencies – I couldn't imagine anything more horrible for any human being.

– Lawyer 13

In this lawyer's experience,

[t]he lawyer for the department makes an opening comment and then the children's lawyer makes an opening comment and then you as the parents' lawyer make an opening comment. And really, once that happens it's like you're just sitting back in a courtroom anyway, in my view.

– Lawyer 13

As another noted, DRCs were not necessarily insulated from, and could replicate, the adversarial nature of child protection proceedings before the courts. As they observed, the effectiveness of such conferences in enabling resolution or settlement of child protection

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disputes rested on the willingness of all parties ‘to listen, possibly give ground, and negotiate. If one side goes into it in a bloody-minded way, that they’re not going to give any ground, then it’s useless.’ In that event, cases would very quickly return to court, with parents with disability feeling that the DRC was just another example of a court proceeding or process that failed to recognise, hear or respond to their views.

## Litigation guardians

We heard in our interviews and focus groups with lawyers in Victoria that there is renewed interest within that state in establishing a role for litigation guardians, otherwise known as *guardian ad litem*, to advocate for and represent parents with disability in court. Although there are different legislative requirements according to each jurisdiction, a litigation guardian is generally someone appointed by the court following a determination that a person

is unable to conduct their own litigation due to mental or physical disability. A litigation guardian stands in the place of the party, and makes all the decisions about the conduct of the proceedings.<sup>894</sup>

This determination is made if the court forms the view that the person with disability either does not ‘understand the nature of possible consequences of the proceeding, or is not capable of adequately conducting, or giving adequate instruction for the conduct of the proceedings.’<sup>895</sup> Subsequently, the decision to appoint litigation guardians in most if not all jurisdictions is something that only pertains to people with disability who are involved in legal proceedings.

While litigation guardians operate within the federal family law system, and therefore have a reference point within Victoria, they are absent from the Victorian child protection jurisdiction, in contrast to other states. For example, in New South Wales the Children’s Court can appoint a *guardian ad litem* if it forms the view an adult party cannot give instructions to their lawyer. As one Victorian lawyer observed,

[the lack of provision for litigation guardians within Victorian child protection proceedings can make it] really hard for the lawyer to go up into the court and say this is the person who’s supporting and speaking on behalf of the parent because the court may interpret that to be they don’t have capacity to communicate. Which is really challenging because litigation guardians can be really useful in Family Court to get better outcomes.

– Lawyer 28 (focus group)

Another Victorian lawyer shared that the question of appointing a litigation guardian was currently being raised in a child protection matter she was involved in, although she noted this appeared to be without precedent.

We have one [mother] that we’ve been working with, who has serious mental health issues. So much so that her [previous] lawyer had to withdraw, despite trying everything she could to get something in place to support her ... [We went to court] to discuss and explore the

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possibilities of having a litigation guardian appointed for [her]. The magistrate who was chairing the discussion ... said that it may be possible, it's a bit of a grey area of law. We had identified this as a problem, that perhaps it's a legal rule that the courts themselves can address. It hasn't been resolved yet, but the issue of litigation guardians is, I'm happy to say, now very much on the front burner. And we are actively exploring how that might be done.

– Lawyer 28 (focus group)

However, a lawyer who specialised in providing advice and representation to parents with intellectual disability involved in the New South Wales protection system raised concerns about the appointment of litigation guardians in that state. They noted that it can have the effect of further depriving parents of their rights to participate in court processes. As they related,

I was astounded when I found out that back in 2016 the court appointed a guardian ad litem for [a mother I now represent]. And she was just cut out of the process. What it seems like to me, looking at the paperwork from back then and working with her now, there just seemed to be this assumption that she didn't have any capacity to participate, which is the opposite of what I found. She's very clear on what she wants. She's still uncertain of all the reasons for why the children were removed, and then of course those reasons are in the paperwork, but it speaks to the fact that it's difficult for a parent to get their head around the reasons, and often parents just see it as, well, they're just picking on me because I've got a disability.

– Lawyer 6

This raises questions about the processes involved in such making determinations, particularly in light of the absence of specialist training or knowledge about the rights and capacities of people with disabilities across the legal system – including among magistrates and lawyers. It also raises questions about whether the appointment of litigation guardians is an appropriate 'adaptation' for parents with disability, when the system itself has yet to address or implement reforms that would enable parents' equal access to justice, including informed participation within and surrounding court proceedings.

## Alternative ways parents' voices might be included in legal proceedings

As an advocate observed, it is often argued that parents 'want their day in court'. However, as they subsequently observed, while some parents do want this, many 'just want to be heard'. Several lawyers agreed. Some described how their clients had made requests to magistrates to enable them to submit 'the equivalent of a victim impact statement' at the conclusion of court proceedings. As a lawyer explained,

I think with some of the long cases that we've run, we've certainly had a couple of women who have been successful and almost wanting to do the equivalent of a victim impact statement. Wanting to go, 'here's all the harm, both to me, but the children and the



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breakdown of that parent/child relationship that has to be rebuilt after such a significant period of time'. It's not that we would always advise that or recommend that that happen, but certainly it is something that we've come across in a couple of the cases.

– Lawyer 28 (focus group)

We also heard that some advocacy organisations were advising parents 'to send an email to the court as a letter to the judge' for this purpose. It was by no means clear whether these parents' alternative efforts to be heard within or by the courts were affecting outcomes. However, their lawyers and advocates did perceive that for many parents this was one way they could attempt to have their voices heard by child protection authorities. It was also one way they could have their experiences and perspectives included on the court's and the department's records. As an advocate explained, this was particularly pertinent for parents whose children were permanently and legally removed from their care.

In many child protection jurisdictions, when children reach the age of 18 they can apply to receive their file from child protection departments. These files can include the determinations of child protection authorities that child protection concerns were substantiated and the casework and case management that was engaged in with children and their families. At times, following court proceedings, caseworkers can develop Family Action Plans that record parents' voices, experiences and desires following the removal of their children. One advocate discussed the importance of doing so, relating her experience of a case involving a First Nations mother with disability whose child was removed.

I had one mum that I worked with, an Aboriginal mum. [After] her child [was] removed ... [t]hey did a Family Action Plan ... They did one and she said, 'I want my child back'. The stuff she said was just beautiful. The way she spoke was almost poetic, and [the caseworker] wrote [that down] word for word. I was actually grateful for the caseworker to do that because when the child grows up and gets her file, she will be able to read [what] mum said about her. What if you don't have the opportunity? What if you don't have that, 'I want my baby, mum loves you'.

Those messages go through to the child when they turn 18. You need to be able to have that sort of conversation with your baby when they get older. It's poor thinking, obviously, but you need to have that conversation to explain why baby was taken, explain that you tried your best to be a parent. That sort of stuff. And that's really important because the amount of children that self-restore is immense. It's over 80 per cent.

– Parent Advocate 1

As the quote above suggests, however, many parents are deprived of this opportunity to have their experiences and voices recorded in Family Action Plans. The extent to which they do is subject to the child protection system they are engaged with, and the individual caseworker appointed by the department to work with them. Initiatives such as those described above, including parents requesting the opportunity to submit the equivalent of a victim impact

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statement or sending letters to the court, may provide another avenue for parents to have their voices and experiences placed on the record for their children to access in the future. In the words of a mother with intellectual disability whose son who had been removed as an infant,

He didn't understand that I'm his mum. He thought the carer was his mum ... He never knew I always wanted him, he reckoned I gave him up for adoption, when I never did.

– Parent

## The role of expert reports in child protection proceedings

In the opinion of many advocates and lawyers, the extent to which court processes were skewed against parents with disability being heard and their experiences recorded reflected in the 'hierarchical gathering of evidence in court'. As an advocate observed, drawing on her experience, 'parents with disability are at the bottom of the hierarchy and they're never heard and never valued'. It was widely perceived that cases were instead regularly decided on the basis of reports written by 'experts', either submitted by the department or received by the court following their referral of parents for assessment by the Children's Court Clinic.

As most participants in this project recognised, clinical assessments of parents with disability, when conducted by professionals who have the requisite knowledge, skills and resources to work safely and appropriately with them, can help parents and those working within the child protection system to identify potential adaptations and support. In these circumstances, such assessments could assist parents to address child protection concerns and participate, on an equal basis to parents without disability, as they navigated the child protection system. Assessors' recommendations might directly relate to the types of services parents should be referred to, or the adjustments that might need to be made by those services, to safely and meaningfully support them. As one lawyer noted,

Disability is relevant in that I need to be able to show that the [system needs to support that parent's rights to equal participation]. If there are issues with the parenting that they're saying are because of disability, then we have to question, well, why isn't there disability support, why are we not looking at how we support the parent in their parenting rather than just taking the child? I need to paint a picture for the court of what the disability does for the client, how the disability affects the client, and how they overcome any barriers that they face. And that could be with formal, informal support, it could be through things they've learnt to do themselves, but it's just saying, yes, there's a disability, but there's also adaption to the disability and making up for it in other ways.

– Lawyer 6

Advocates, lawyers and service representatives provided several examples of having worked with parents with disability who had never been referred by the department for advice on what adaptations could be made or what services might be available to support them. A common

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observation was that failures by the department to seek appropriate advice early on in their involvement with parents with disability resulted in caseworkers subsequently making inappropriate determinations of parents' capacity or willingness to respond to child protection concerns. It also was identified as violating parents' rights to informed participation in child protection proceedings, as well as their and their children's rights to be supported to live together. One lawyer, for example, related her experience of representing a father with an intellectual disability.

I came into the matter quite late because ... he couldn't hang onto a legal representative. He'd cycled through quite a few, which is sometimes what you do see, and I guess there's a variety of reasons for that.

But I came into it at the point in time where we were listed for a final hearing, so it was really at the pointy end. I could tell that he didn't understand really how he'd even gotten to that point. He didn't understand the various steps of the court process or anything like that ... Eventually what we went off and did is get some information about exactly what his limitations were ...

I knew from reading [the assessor's report] that that this client needed me to be quite visual with him. I remember spending every afternoon for five days ... doing an hour with him to walk him through the different parts of the care and protection system. And we did it in diagrams as opposed to in some other way because I needed to bring him up to speed ...

But it would have been really helpful for everybody to have had that earlier on in the picture ... If caseworkers had had that at the beginning, then they could [have] pitched and done their casework in a more tailored way. And it could have been a different outcome. It might not have been, but it could have been.

– Lawyer 15

Others observed that when assessments had been carried out by departments, parents with disability – particularly, parents with intellectual disability – were not always given access to their findings and recommendations. Indeed, in one lawyer's experience of representing a parent with intellectual disability, the department refused access to the assessor's report. The lawyer ultimately had to 'issue a subpoena to get this information that was sitting on their file'. As they noted, the department 'was obstructive and it was like what's the point of all of this? What a waste of everyone's time.'

In the opinion of many lawyers and advocates, the adversarial nature of child protection proceedings lent itself to departmental caseworkers prioritising assessments that were not directed towards supporting parents with disability, but rather intended to demonstrate their lack of parenting capacity. Thus, while most, if not all, identified the demonstrable benefits of assessments carried out to determine the particular supports that might be available to respond to parents' needs, they noted that when the department did refer parents for clinical

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assessments, they tended to be forensic in nature, skewed towards substantiating the department's child protection concerns.

As such, a common criticism made by lawyers was that the assessors, and their findings, were biased. Subsequently, parents, children and child protection authorities more generally were identified as not receiving the benefit of independent advice or assessment. In turn, children were being removed from their parents care either unnecessarily or in circumstances that might have been avoided had assessments been carried out to identify individual parents' needs. One lawyer related their experience of having represented a parent with disability in a matter that was appealed to the Supreme Court. The department had submitted 'expert evidence' to substantiate child protection concerns based on

a corridor conversation that [an in-house psychologist] had had with somebody within a particular team ... [They] literally walk[ed] past this person in a corridor and [said], 'Hey, what do you think about this?'

– Lawyer 15

As they observed,

[departments] have the ability to access in-house resources, in-house psychologists ... [But] internal psychologists' consultations usually aren't about actually meeting with parents and clients. It's about ... the casework team wandering in and saying, 'I've got this client. I've got this family. What would you suggest?' And that's problematic because it's based on what they've been told, nothing else.

It's that criticism that we make of experts sometimes, which is that it's all based on self-reporting. It's also not their fault because they're just giving advice based on what they've been told. But the problem is that what they've been told is a summation or an opinion that [the department has] as opposed to perhaps what the actual situation is.

– Lawyer 15

Indeed, this lawyer and others reiterated some of the key criticisms of the use of clinical assessments in child protection proceedings discussed in the literature review. One is that far too frequently clinicians tasked with conducting parenting assessments do so without spending significant amounts of time with the parents concerned. A related criticism is that assessors' reports tend to reflect the department's view. Without established professional histories with the parents concerned, and with little time spent with the parents, assessors are reliant on information provided to them by the department. According to one advocate,

if you read some of those assessments, they wouldn't cut it if you're actually measured up against the [Australian Psychology Association] code of conduct ... because they are so superficial and they don't have enough context, and very biased.

– Advocate 28 (focus group)

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Another criticism made of assessors was that while they were often portrayed as ‘experts’ in understanding and working with parents with disability, the tools and measures they sometimes employed to determine parenting capacity were not evidence-based or aligned with contemporary best practice. As a Children’s Court Clinician noted,

I’ve come across, for example, an attitude that if the parent’s IQ is between 65 and 75 the parent can’t parent effectively independently.

– Children’s Court Clinician 9

As they noted, this ‘attitude’ betrayed the ongoing discrimination faced by parents with intellectual disability. While this Children’s Court clinician believed that most of the clinicians she worked with ‘understood’ the evidential inadequacy of IQ tests as determinative of parenting capacity,

whether [the department] does is another matter. I think, broadly, speaking there is still a lot of misunderstanding about that.

– Children’s Court Clinician 9

Indeed, as another Children’s Court clinician noted,

the biggest issue is really that sometimes [the department] want us to do intellectual functioning things like IQ tests because no one else has done it. And they think that’s going to tell them something meaningful ... They might tell you something about how people learn. They might tell you something about what kind of services this person’s going to best engage in. But I don’t think they necessarily tell you what are the parameters in which a person can function [as a parent].

– Children’s Court Clinician 5

Lawyers also queried the department’s use of neuropsychological assessments to demonstrate substantiated risk or parenting incapacity. While many argued that neuropsychological assessments were inappropriate measures of parenting, they noted that the department would often take the position that

[they]’re not going to look into any family in-home preservation service because it’s just not going to work ... once there’s these very conclusive ‘expert’ reports that say that they don’t have capacity to parent.

– Lawyer 14

Parents with disability frequently cannot access and submit independent assessments to counter those relied on by the department. While this will be discussed in greater detail later, in many cases this is due to the cost associated with doing so, which participants in this

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project described as prohibitive. It may also relate to time constraints in hearings, which can effectively preclude alternative assessments from taking place, and the department obstructing consideration of them.

In this context, some lawyers related how they would often advise parents against participating in parenting assessments. This extended beyond assessments organised directly by the department with contracted, private assessors or in-house clinicians, to those conducted by the Children's Court Clinic. One lawyer, for example, noted that

[t]he department will often put as part of the tasks to be completed, in a Summary of Proposed Plan, participation in a Children's Court Clinic assessment. So, I would normally go at length to advise any parent about some of the pitfalls about participating in [that] assessment [such as] some of the consequences that can flow for their case if there's a negative recommendation as part of that assessment. But good luck explaining to someone who's extremely distressed, experiences a disability, when they've just read in the Department Summary of Proposed Plan that in order for restoration to happen they have to participate in the assessment.

– Lawyer 13

In New South Wales, the state in which the lawyer quoted above practises, legislation explicitly directs that the Children's Court Clinic must only carry out an assessment to determine a person's parenting capacity with the consent of that parent. As a Children's Court clinician explained, while referrals to the Clinic generally followed departmental applications to the Court,

all the parties have to agree to it ... And if the other parties don't want it or the magistrate says, no, I'm not going to do that because I don't think there's a reasonable possibility of restoration or whatever, then [they] won't make the order.

– Children's Court Clinician 5

According to this clinician, the procedure outlined for referrals reflected a legislative attempt when the clinic was established to respond to concerns about the independence of assessors.

So, it is based on the section of the Act that prescribes the clinic's role. [At the time this legislation was drafted] we had quite a lot of talk about the need for independence because at that time, the only material that went before the court came from [the department] ... And so, this was an attempt for there to be an independent panel of experts who could assist the court by being arm's length from all the parties.

– Children's Court Clinician 5

Indeed, as a Victorian Children's Court Clinician put it,

I guess we're like the court's independent expert witnesses. I suppose that's one way to think about it. In the context of all that broader information and our assessment experience

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with the family and the children, what we do is give our opinion and make recommendations to the court to assist them to make their decisions about those terms of reference that they've placed around the referral.

– Children's Court Clinician 10

As discussed in the next section, however, the extent to which Children's Court Clinics were perceived as providing, or able to provide, independent assessments of parents varied.

## Children's Court Clinic assessments

As several lawyers observed, once court proceedings involving parents with disability commence, the department will invariably apply to the court for an order that parents undergo assessments through a Children's Court Clinic. Indeed, one Children's Court Clinician observed, 'most people wouldn't be with us [if] they haven't got a disability. That's the bottom line.' Another elaborated,

sometimes there's just a question that the parent may have a disability, but there's been no diagnosis. Sometimes there's just been an assumption, but then you look at the file of documents and you find that that was based on something quite misleading. Or the parent has had a diagnosis, so in that sense, we've been informed. Or we may not know, and it becomes apparent when the clinician does the assessment that there might be a disability. So, sometimes the clinician will feel that that needs to be assessed as part of the parenting capacity.

– Children's Court Clinician 9

When parents with disability are referred to Children's Court Clinics, the question that invariably follows is,

does this disability get in the way of [parents] being able to adequately and safely provide care for their child now or in the future? And basically, that's the essence of our reports.

– Children's Court Clinician 5

Another clinician stated that the referrals will include

specific terms of reference and they will often be in relation to what's in the best interests of the children involved, where the children live, the contact with their parents or their extended family, additional therapeutic supports that could be put in place both for the family as a whole but also for the children.

– Children's Court Clinician 10

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It was noted that upon receiving the referral by the Children's Court, typically the Clinic's intake officer or director will attempt to match parents with clinicians who have particular expertise in working with parents with similar disabilities.

If it looks like there is a parent with a disability then the clinic will try and find a clinician with expertise in that area. If not, you've got to also weigh it up in terms of other issues that are present in that referral as well. It might be referred to someone without specific expertise but conditional on them consulting with somebody with expertise in the area.

– Children's Court Clinician 9

Some clinicians emphasised the importance of engaging parents from the outset to facilitate parents' informed participation and thereby also improve the clinician's ability to conduct an assessment that was informed by, and adapted to, the particular needs of parents. As one explained,

[to do] a good assessment you really need to look at from the planning stages how to go about doing the assessment. So, that's looking at providing the individual with as much information as possible, essentially, to try to make the assessment as accurate as you can. Making sure that the parents have as much opportunity to be able to engage properly in the process. Because if there is a disability then that can affect engagement, and you do have to take that into consideration when you're doing the assessment, obviously, in terms of how you do the assessment.

– Children's Court Clinician 9

However, as they noted whether this translated into practice 'really depends on the individual clinician'.

As discussed in the literature review and by participants in this study, there are few legislated standards which direct how assessments are carried out. This includes the tools, measures or information utilised or considered relevant to assessing the parenting capacity of individual parents. The failure of systems to mandate clear standards or protocols for assessments, or indeed to require that clinicians had the knowledge and expertise to work safely with parents with disability was identified as introducing a very real risk that ableist frameworks, tools and assumptions could shape individual clinician's assessments. It was also identified as leading to variability in the extent to which Children's Court clinicians would avail themselves of other sources of information, beyond that provided to them by the department. Thus, while several clinicians emphasised the importance of critically reviewing the documentation provided to them by the department, as one noted,

I don't think people do look at the context in which an incident or an issue takes place ... But, again, half the problem is that the information is not there. The background information is not provided to the court or to the clinic ... They're interested in whether this is a bad



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person who's done something abusive to their child rather than looking at are there some other things that might've contributed to this action, or to this process, or to this inability to provide housing ... the bigger picture just isn't there.

– Children's Court Clinician 5

This clinician argued that policies and guidelines should be put in place to direct all assessors to examine more fully the background to child protection concerns, including the particular historical and social context of families involved in child protection systems. In their experience, however:

The only way that other information gets in, [is] if they subpoena documents ... [But clinicians] ought to be talking to the GP if there's any issues around depression, or mental health, or whatever. They ought to be talking to an agency that's been involved with them to find out about how they cooperate, how they're helpful, how they find it helpful. What are the struggles they have?

– Children's Court Clinician 5

It was noted, however, that the capacity of clinicians to take on this wider investigative role was compromised by the resources they had available to them, including the time allocated to them by the court.

I've been on a mantra that says it doesn't take 10 hours to do a Children's Court Clinic report, which they used to pay for one child and one adult or two adults. It takes anything from 30 to over 100 hours to do a Children's Court Clinic report, and particularly if people are going to the depth that I'm talking about. And when I'm talking 100 hours, I'm often talking about five adults and three children. And it's just an impossible task.

– Children's Court Clinician 5

As this clinician noted, subsequently, 'there's lots of gaps in how that information is gathered'. This results in inconsistencies in what is taken into account and provided to courts. Variations in assessments were also perceived to mirror the different policies in place across Australian Children's Court Clinics. For example, a New South Wales Children's Court clinician observed that their Victorian counterparts were guided by protocols that mandated that they address certain criteria in their written assessments. As they explained,

it's mandated ... under headings [in the assessment form that clinicians] have to gather this information about various disability, disadvantage and stuff. And that's put before the court. [That part of the written assessment is] not a big volume. It's in summary. But at least it's there. At least there's an expectation that it'll be recorded and put before the court, because I don't think that's the case [in New South Wales] ... And I think that's a problem.

– Children's Court Clinician 5

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That said, participants identified that limitations on time generally affected the capacity of all Children's Court Clinics to conduct the research needed to appropriately inform their assessments, regardless of jurisdiction. On this basis, it was suggested that all jurisdictions consider establishing and adequately funding independent research panels – sitting outside the courts, the department and the clinic – to support clinicians tasked with carrying out parenting assessments.

I think in America ... they have an independent worker who, the minute the thing gets to court or the minute it's referred to them, they go out and do the research ... The problem [across Australia] is that there's no one who does that. The only people who are looking for the information [are those] speaking to validate a thesis. And the thesis is these children are at risk of harm. And they may well be at risk of harm. But there's more to be assessed that needs to be contributed to the whole formulation.

– Children's Court Clinician 5

## Cultural bias in assessments

Concerns were also raised in relation to the extent to which assessments effectively discriminated against First Nations parents and culturally and linguistically diverse parents. These concerns were predominantly raised by Children's Court clinicians, and often in relation to the cultural bias of measures and tools utilised in assessments of parents with diagnosed or suspected intellectual disability. As one observed,

As clinicians, we need to remember that the testing was developed in a particular historical, cultural context and may be meaningless to different cultures. Particularly the whole idea of that individualised emphasis on testing which ignores or goes against a lot of cultures that have got a more collective community where more people are involved in the functioning of the family. And, therefore, the child has access to different resources to help the child develop.

That's probably the wrong way to put it, but there are different resources from different members of the family and community that can compensate. The parent can't be the be-all and end-all for the child. So, that recognition of traditional ways of testing or of assessing intellectual disability aren't always valid and we need to be really careful not to misuse these assessment methods ... That really has to be a central part of the assessment ... that it's relevant within that person's culture.

– Children's Court Clinician 9

According to another clinician,

we're not there to be investigators or detectives of [cultural bias], but we are to be aware of how that influences what we do in terms of our assessment ... Frankly, there are very few tools that are normed for use with Aboriginal people. And even fewer are normed for use with people from [culturally and linguistically diverse] backgrounds ... We are required to

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answer the questions that are asked of us. And we do our best to answer those questions, using the tools that are available and making comment about the limitations of it.

– Children’s Court Clinician 5

As this clinician observed, it was not the clinician’s role but that of the court and the parties involved in child protection legal proceedings to determine whether the tools employed by clinicians were appropriate.

[So long as] we make that comment [about cultural bias in existing measures], I don’t feel guilty about not being perfect about it. It goes to court. And then the court and all those parties figure out if they need to get someone else. And so, often they’ll find an expert and say, what do you think about what the clinician said? ... It’s part of a bigger picture. It’s not just what the clinician/clinic says. It’s ... about the triangulation, exploring all the issues of risk for the child and the issues of capacity, and competence, and willingness of the participants to be part of the assessment.

– Children’s Court Clinician 5

However, a common theme among many of the lawyers and advocates interviewed was that such ‘triangulation’ was by no means the norm. Few parents with disability, their families, legal representatives or advocates have the resources needed to access independent experts who could provide the court with an alternative view to, or critique of, Children’s Court Clinic assessments. In the opinion and experiences of most lawyers and advocates, assessments conducted by the Children’s Court Clinic were frequently decisive of the view taken by the court in relation to parent’s capacities to care for their children.

## Enabling parents’ access to independent assessments

Most advocates and lawyers observed that parents with disability generally do not have access to independent parenting assessments. As a lawyer observed,

Generally, the court will order a parenting capacity assessment, and if that’s bad, you’re stuck with that. People who have money to pay for things can pay for reports that are better, and if the reports are bad, they don’t have to tender them as evidence. People who don’t have any money just get the Children’s Court Clinic ... the Children’s Court Clinic’s pretty good but, again, there are still people there who have doubts about the ability of parents with disability to look after their kids.

– Lawyer 6

As they noted,

All of the parents I work with are generally on a disability support pension, so they’re all people that pretty much live in poverty ... If you want to get a report that would talk up a

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parent's ability and talk up their capacity, you would have to go and hire a psychologist and pay for it. None of my parents can afford that.

– Lawyer 6

While we heard that some legal and advocacy services did allocate funds to assist parents' access to independent assessments, among the lawyers and advocates interviewed few had been involved in cases where that had occurred. Furthermore, even if parents had access to funds, privately or through support services, most were not advised of their options or rights to access independent assessments by the department. As one lawyer explained,

It probably goes back to [lawyers] getting involved before the court case has ... started to say listen, there's some really serious concerns, we're at the real pointy end here. What we need is an assessment of someone independent. [Someone who] doesn't work for the department, isn't an in-house psychologist, isn't a neuropsychologist or anything like that, doesn't work for court. We need someone to sit down with you and do an independent assessment of what you might need to support this baby remaining in your care ... I don't think Children's Court Clinic assessments after the case has started really benefit parents with disabilities, unfortunately.

– Lawyer 13

As several noted, determinations of 'substantiated' abuse or risks which often hinge on 'expert' assessments, remain in the system, often prompting or biasing subsequent investigations of child protection concerns and later being included as evidence in court proceedings should they commence. As a lawyer explained,

The reports prepared by workers for court ... they're given extraordinary weight before they're properly tested as evidence. We frequently see reports that are just completely unbalanced. [They] exclude all the information about the failings of the department, exclude all of the information that would actually allow you to understand, provide some context for the mother's behaviour, and the baby ... They also remain on the court record, and they follow the client through multiple jurisdictions. You'll see a child protection report in a family law jurisdiction. And despite the fact that you've proven in an evidence hearing that that report is inaccurate, that information remains on the system, and you have to keep disproving it in different legal jurisdictions.

– Lawyer 28 (focus group)

One advocate raised an example of a case in which a mother with intellectual disability was able to access an independent neuro-psychologist assessment.

That [independent] psychologist's report, if you could ever publish that, it is the best neuropsych report I've ever seen, and that's very rare, in 30 years. It's amazing. It is the only neuropsych report I've ever seen that actually mentions bias and unconscious bias of a worker.

– Advocate 28 (focus group)

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However, as the advocate related, when the mother – through her lawyer – initially applied for leave by the court to submit the report in evidence, ‘child protection were furious’ and objected. Ultimately leave was granted, resulting in what the advocate noted as ‘an amazing turnaround with that case’. Yet, the mother’s ability to provide an independent assessment of her parenting capacity rested on her access to legal representation and on the skill of her lawyer in arguing her case. As the advocate put it,

that lawyer was quite feisty in court, [and that] made the magistrate actually [consider the evidence] because [initially it appeared that] the magistrate was going to say you have to use the neuropsych that child protection are recommending.

– Advocate 28 (focus group)

Given the constraints many parents face in accessing independent assessments, several participants noted the importance of providing parents with the option of having a support person or advocate present during Children’s Court Clinic assessments. Some advocates said that when this occurred they could assist parents’ understanding of the purpose of assessments and their informed participation in the process. They could also assist assessors to effectively communicate with parents. Furthermore, they could help parents provide assessors with greater background information, and thereby intervene against a one-sided departmental narrative of child protection concerns. An advocate related their recent experience of supporting parents within the assessment process, recalling,

I asked the client, do you want me to be present when you’re talking to the psychologist when they’re doing the assessment? She said yes, please. What happened was ... I actually stepped in and intervened in the assessment. As in, not telling her what to say, but just because I knew the client and I knew the power imbalance, I asked the client some questions. That meant that the psychologist got a completely different picture. That has actually improved how she stands in terms of the eyes of court and child protection, now.

– Advocate 28 (focus group)

Some Children’s Court clinicians supported the involvement of advocates in assessments. According to one, parents were often encouraged to bring advocates in to support them. When advocates did attend, according to this clinician, their role was to help clinicians explain ‘the process and what’s involved and what it means and what their rights are in terms of making sure [parents] can give informed consent’. They did, however, emphasise that the role of the Children’s Court Clinic was

not advocacy. It’s an independent assessment that holds the best interests of the children at the centre, and so sometimes it can appear that we’re in conflict [with advocates]. But I think we just have different areas of focus.

– Children’s Court Clinician 10

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This clinician shared a recent experience of working with an advocate during the assessment of a First Nations mother with intellectual disability. From the clinician's perspective, the advocate was

coming very much from the position of the human rights and the rights of this lady as a person with a disability who was also Indigenous, and these were her children and we should give them back, basically. And what we had to explain to them was our role is not to prioritise the human rights of parents over what is in the best interests of the children. That's the court's request and that's our focus. While we respect the position of the advocates that this mother did have a right to have contact with her children, however, if that was in the children's best interests, then that's what we would independently support.

– Children's Court Clinician 10

In this way and others, the Children's Court Clinic was not necessarily insulated from ableist structures and legislative provisions that often cast the rights of parents to be supported to care for their children in opposition to the best interests of their children. As several participants observed, this was particularly apparent in the terms of reference of court-ordered referrals to the clinic, following the introduction of expedited timeframes within which decisions relating to the permanent, legal care of children must be made (referred to as 'legal permanency reforms').

## Impact of legal permanency reforms on assessments

As several participants observed, by the time many parents with disability were referred to the Children's Court Clinic, legal proceedings had already commenced following a decision by the relevant department to remove their children from their care. Consequently, the assessments clinicians conducted often related to whether, in their view, parents demonstrated the willingness or capacity to respond to child protection concerns, with or without support, and, in turn, whether the best interests of children would be served by restoring children to their parents' care. Such assessments were conducted in accordance with the terms of reference outlined by the court. Clinicians observed that following the introduction of legal permanency reforms, the terms of reference frequently turned on whether, with support, parents could address child protection concerns within the period legislatively required for restoration (usually two years).

Frequently, such assessments also included consideration of the impact of removal on the child's 'attachment' with parents and/or the carers they had been placed with. As one clinician explained,

when you look at the referral from the court, one of the things that is almost always included, I've never come across it not being included ... is looking at the child's attachment and how is the child going to be impacted if there is a disruption to any of their attachments.

– Children's Court Clinician 9

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In situations where children had already been removed, this often turned on the extent to which parents were enabled to have ongoing contact with their children in OOHC. Another Children's Court Clinician elaborated,

If a child's been placed with a foster carer for many years ... and since birth, and that child believes that person to be their parent if you like, or their primary attachment, and the ... biological parent has had ongoing contact and is now wanting the child to reside with them, the magistrates will often ask us to consider what is the risk to this child. [So], what's in this child's best interests? How will they manage? What is the risk of removal? [The emphasis will be on this] as much as what is the risk of placement, if that makes sense.

– Children's Court Clinician 10

As several lawyers and advocates noted, and as the literature review reinforced, when children are removed from parents their visitation rights become dictated by case plans developed by the department and endorsed by court orders. They are also often influenced by the willingness of out-of-home carers to facilitate contact between parents and children. In the experience of many, such contact was often limited to once a month and often under the supervision of others, whether caseworkers, out-of-home carers, clinicians or other service providers contracted by the department. In the opinion of most lawyers and advocates, the contact regimes in place across Australian child protection jurisdictions failed to support parents to maintain relationships with their children. They also were identified as particularly disadvantaging parents with disability whose children were removed from their care shortly after birth. As one lawyer explained,

[often] children are removed within a month of being born and so their connection with their parents, it's not as strong as their foster parent ... [So, in my client's case, she's] been very consistent and engaged with her child, her first child [in OOHC]. She's not missed a single visit. She pleads for more. She does everything required of her. However, as the child is getting older, she's starting to make her views and wishes more known, and she might say I don't want to do the visit today. [But] that'll be two months without a visit.

– Lawyer 14

In their view,

the very stock standard once a month visit that the department always proposes with parents, I don't think it is adequate for parents with intellectual disabilities where they are doing everything within their power. There was no denial in this case that the parents worked at it very hard. They did everything that was required of them ... I don't know if once a month visit is sufficient for a parent that really does try and it does not pose a risk to the children.

– Lawyer 14

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There was some discrepancy between Children’s Court clinicians and lawyers and advocates about the extent to which the court and the Department facilitated contact between parents and children in OOHC. As one clinician stated,

I know the child gradually gets more attached to the carer that’s looking after their everyday needs, but I think there is a big push from the courts to try and affect that restoration.

– Children’s Court Clinician 9

This clinician further believed that it was the role of the Children’s Court clinicians to recommend frequent contact between children and parents and to put strategies in place ‘to emolliate that disruption for the child to be able to get restored’. In their experience,

that’s often what clinicians will do – we’ll look at what will be a good strategy to put in place and [the department] are pretty good at doing that as well.

– Children’s Court Clinician 9

They did note, however, that,

[o]ne thing I think might be more recognised is that partnership between the parent and the carers and trying to affect that because all those little things can help affect a smoother transition from one placement to another.

– Children’s Court Clinician 9

## The feedback clinicians receive following their assessment

One factor that might account for the variation in lawyers, advocates and clinicians accounts of whether parents with disability were being particularly disadvantaged in the contact arrangements facilitated (or not facilitated) by child protection authorities is that often following the submission of their assessment to the court, clinicians cease to have any contact with parents. Indeed, as several clinicians noted, often they receive no feedback or information about the impact of their assessment on the outcome of the case. In the words of one clinician,

We don’t really know what goes in in court unless we’re unlucky enough to get called for cross-examination or to go to a DRC. We just provide them with our piece of data. And then they get to have a fight about it.

– Children’s Court Clinician 5

However, as another clinician observed,

Even when I get called up for cross-examination, I’m not always aware of what the outcome has been for the child. And that’s been something that’s always been the case. I know there are reasons [for that], and I can’t remember exactly now what the reasons were



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why magistrates have been reluctant. But I think it would be useful for clinicians [to hear] because otherwise, you're not getting any real feedback on the work that you've done.

– Children's Court Clinician 9

It was also unclear whether parents were given the results of tests or other findings by clinicians following their participation in assessments (that is, prior to the clinicians' assessment being submitted as evidence to the court). One clinician, for example, described how they would reach out to parents following assessments.

If I've done any testing, I will do everything I can to try and meet with the person and go over the results with them ... and say this is what this has come up with.

– Children's Court Clinician 9

In their view,

it's really important that you do get their feedback. One, it helps you make more sense of it. Two, it helps engage, so you're joining with the person. I think it's horrible for somebody to find out in a report. When you get the report it's bad enough anyway because there are always going to be things that the person will find very challenging. So, to try and share as much information with them before the report is [written is] the least [you can do].

Obviously, you've got to be careful that you haven't formulated your report at the time that you're doing the assessment, but you can share some bits of information and that can become part of the assessment as well. It's like having a conversation, which I think is important because then you're showing that person you respect them, and you respect their point of view as well. Ultimately, if you can do that then the more likely it is that the person is taking a bit of control in terms of how they make changes.

– Children's Court Clinician 9

However, as another clinician noted, it was only if parents exercised their legal right to reply to their reports that 'we would know what people were thinking and what families were experiencing around the findings'. Consequently, it appears that whether parents are provided with the opportunity to discuss their assessments directly with the clinicians is very much subject to the discretion of the individual clinician involved. In the experience of most lawyers and advocates, parents were not given access to assessments prior to legal proceedings. Furthermore, the ability of most parents with disability to exercise their right of reply to Children's Court Clinician's assessments was constrained by their lack of access to independent assessors.

As several Children's Court clinicians emphasised, their role was not 'therapeutic'. It was forensic and limited by the terms of reference issued to them by the court and the resources available to them. However, as lawyers and advocates noted, it is within these limits that child

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protection concerns are ‘substantiated’, with devastating effects for parents with disability and their children. In the words of one advocate:

This whole notion of when a child is being deemed to not be safe at home or not to be able to live at home. This whole notion of substantiation ... We have to start pulling it apart and start thinking, this is not okay ... When we’re saying these cases were substantiated, we’re all assuming the that this parent is guilty of abuse or neglect or something ... we have to start challenging that. It’s a point where a system kicks in, but it should not be ... used as a claim [that] what we’re doing is the right thing.

– Advocate 28 (focus group)

## Parents’ legal options and support after final orders

All lawyers who worked with parents with disability observed that following court decisions to permanently remove children from their care, parents received little legal support and had very limited legal options. Some observed that often the court, the department and even the parents’ lawyers failed to take the time to explain the impact of the court’s decisions and legal options to parents. As one lawyer shared:

I wrote a letter to a client today [because] final orders were made in her case about two weeks ago. And I said, ‘would you like to meet to discuss this letter? Because it provides you advice with firstly, what’s happened and secondly what your options are into the future.’ And in doing all that I just thought what a gap there is in terms of all this scrutiny and attention being placed on this mother and then the gavel goes down and then I’ve got to move on to something else ... I don’t know if the [department] casework team has a policy about it ... but I imagine they also have to move on to the next thing.

– Lawyer 13

The ability of parents to receive legal support following final orders was often dictated, once again, by the lack of public funding allocated to services such as Legal Aid.

Post final orders if a child is removed there is not a lot of legal support. We don’t have grants of aid available for post final order assistance. Lawyers will give advice around what final orders mean and what the expectations are and what parents need to do, and parents can come back and see us for further advice. But there’s not the ability to keep working with a client on an ongoing basis.

– Lawyer 15

The legal system in most jurisdictions additionally failed parents with disability and their children by providing little supervision of the implementation of case or contact plans so that parents and children could maintain their relationships. Nor was there supervision to ensure additional

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arrangements relating to the safety and wellbeing of both children and parents, following the permanent removal of children, were respected.

What's actually happening post those orders being made, I don't know that we necessarily know ... [When] making those orders, the court's going to want to make sure that it's going to work obviously and that there's a transition plan. And that plan has the appropriate services set up to give it the best possible opportunity to work. That's what's happening at the point in time of final orders being made. But what happens post that we don't know, because the court proceedings end.

– Lawyer 15

One lawyer related their experience with a First Nations mother who had conceded to the permanent placement of her children with others. She had done so after receiving assurances from a service that she would continue to be supported by them to address some of the underlying issues that led to her family's involvement in the child protection system. As her lawyer noted, however, in the week following the court's final orders,

the poor service worker had to come back and say listen, I've been told that my service is only funded to support clients that are seeking restoration.

– Lawyer 13

While in that case the lawyer was still in contact with that mother and the relevant service and could therefore make an application to the court for a revision of their orders, for many parents with disability their relationship with their lawyers will cease at the point of final orders. Furthermore, their lawyers and the court will not necessarily receive reports that orders and agreements had not been implemented for many months, if at all.

As the lawyers that were involved in the matters, we will only know if we get a report, and that report might be late. It might not come. So, we might not know if it's working or if it's not working. If it's not working and we get a report, then the court has the ability to relist matters for what's called a progress review to basically say, what is going on here? ... I've gotten [reports] where it says basically nothing's happened and it's six months post final orders or 12 months final orders ... And it could have been that the wheels had fallen off three days after final orders and I don't find out about it for six months.

That's the thing and as representatives that work in the jurisdiction, that's what we're always thinking about at the time that we're consenting or not consenting to final orders. We don't know what happens often post the orders being made. Neither does the court until you get those reports, if you get them. But that's the concern ... there isn't that oversight post the making of final orders because the legislation doesn't allow it.

– Lawyer 15

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A particular concern of lawyers and advocates related to parents' abilities to enforce their rights to maintain contact with their children. As some noted, the parent–child relationship persists regardless of whether child protection authorities have decided that, legally, parenting responsibility should be removed from parents and assumed by others. Furthermore, in the absence of court and department supervision of permanent OOHC arrangements, often it is only through parents' continuing contact with their children that safety or wellbeing concerns relating to their children and their care arrangements are subsequently detected and made known. As an advocate observed,

[the department] very rarely will keep the case management of the family. [The department may] refer onto someone such as another service, and then they have to follow the care plan ... There's not a lot of accountability or support around making sure that [parent–child] contact occurs.

– Advocate 1

Participants expressed mixed views as to who was responsible for ensuring parent–child contact. For example, one service provider perceived that

the court decides what the contact's going to look like. They don't necessarily understand that child protection don't have the funding to be able to make that contact happen.

– Service Provider 17

However, as a lawyer said,

there's probably too much reliance on that last page of the care plan which says contact is going to be this. It's probably not explained to people enough that that's not an order from the court. Decisions about contact are made, in my view, by the person with parental responsibility for the child and if that's the Minister, then ultimately decisions around contact are made by the Minister. So, it's true that the court approves the plan for contact, but certainly in my view it isn't an order from the court, and I don't think there's probably enough protection for parents to make it so they get that contact.

– Lawyer 13

One advocate observed that sometimes contact plans endorsed by the courts stipulate a maximum number of contact visits parents and children can have once children are placed in OOHC. They noted, 'I've had maximum ones and I've told the lawyers that has to change to a minimum' so that parents can at least rely on those plans to argue for some contact with their children'. However, a lawyer stated that even though most plans do include provisions for minimum contact between children and parents, in their experience this would generally only translate to 'once a month contact. So really all the contact order can do is ensure 12 contacts over the space of the next 12 months.'

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As they observed, for First Nations children who had been placed with non-First Nations family members or other carers, the reality of such limited contact effectively denied them their rights, and the rights of their parents, family and communities, to remain connected with First Nations parents, family, community and culture. Within Australia, these rights are recognised in Aboriginal and Torres Strait Islander Child Placement Principles (the 'Placement Principles'), which have been included in legislation in all jurisdictions. However, as discussed in the literature review and by participants in this study, the Placement Principles are routinely breached, often without legal remedy. Furthermore, as discussed in the literature review, few jurisdictions have implemented all five elements of the Placement Principles as articulated by SNAICC, the peak First Nations children's organisation.

This lawyer, who worked in New South Wales, noted that a further problem was that

the actual mechanism to ensure ongoing contact is limited in that you can only get it for 12 months ... I suppose people are hesitant [about] locking in a contact arrangement for the next 18 years ... [However], I'm sure there's a better system than just 12 months ... only once a month. And then I've seen contact orders framed [as] subject to the discretion of [the carers] ... these caveats get put on.

– Lawyer 13

Among the lawyers and advocates we spoke to, several reflected on the implications of what they observed was an increased push by departments for guardians to be appointed to non-parent carers. As one First Nations advocate said,

[Guardianship] is the first default ... I have on several occasions, go[ne] to court when [the department] put a child up for guardianship. We will get our lawyers to actually put up a very good case against it ... Some people say, guardianship, it's good protection. We go out and talk to the carers and go, why do you want guardianship? I've had some non-Aboriginal carers that come across and want to adopt the Aboriginal kids, not related in any shape or form, almost demand of me that I support guardianship – total disregard for family, community or culture almost [as if to] de-Aboriginalise the child ...

My first gut feeling is, I will do everything I can to restore these kids back to family and community. Because once you have guardianship, it's like adoption. You can take them off Country or you can take them overseas, and I have difficulty with that. Once you have guardianship, you have legal rights to make decisions for the kids. I think birth parents and family and community have [limited] rights, especially when we've got non-Aboriginal carers saying, I want guardianship because little Stevie's a perfect little child, and he fits our little family, and we can afford to look after him.

– First Nations Service Provider 2

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In the experience of a lawyer who worked with First Nations parents and children, however,

I think, a guardianship order, it won't be made without the court being fully satisfied that the carers will maintain, where it is appropriate, a relationship between the children and the parent.

– Lawyer 14

Regardless, most lawyers noted that where carers subsequently refuse to facilitate contact between children and their parents – First Nations or non-First Nations – currently parents had limited options available to enforce court-endorsed contact plans, particularly without access to legal representation. As a lawyer said:

If someone came to [our organisation] saying I have a contact order and it's not being followed, unfortunately it would just be on the lower end of the priorities. I mean, [our organisation] would say yes, you've got an appointment right now, you've been allocated this solicitor, but ... you've got all these litigation matters that are currently in court ... Look, I just have to be brutally honest, it would not be a priority for someone like me, which is horrible ... So, you need a lawyer and then you've got to get a lawyer who's got to have the time to do all of that ... Parents with a disability they can't – I mean, they're not going to – unfortunately, access that remedy without some assistance.

– Lawyer 13

Most participants agreed. Few parents with disability have access to legal remedies in these circumstances. As stated above, it was unanimously perceived that following court decisions relating to the permanent placement of children away from their parents, the legal system was failing to support parents or children to either maintain contact or access services or alternative remedies to ensure their wellbeing.

## Discussion

As many participants noted, problems within the child protection system generally are echoed in how the legal system responds to parents with disability. The discriminatory practices and structures in child protective and legal spaces reinforce each other. This includes the false conflation of disability with parenting incapacity and risk. It is mirrored in the lack of appropriate services and information available or made accessible to support parents with disability involved in child protection legal proceedings. It also reflects, and is perpetuated by, systemic failings to ensure parents have access to legal advice or advocacy support throughout their involvement in child protection systems.

As discussed in Chapter 10, it is often only after child protection agencies have removed children from their parents and commenced legal proceedings that parents are first referred to legal services or informed of their rights to access legal representation. It is also often only at

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that point that parents become aware of the full nature of child protection concerns and the legal ramifications of the child protection processes they have already been involved in or subject to. Such child protection processes include meetings with child protection workers, parents' participation or non-participation in services, and parenting assessments. They can also include parents being asked to sign documents by caseworkers, or temporarily relinquishing the care of their children to relatives at their suggestion. As lawyers and advocates noted, all have legal ramifications and are collated by departments as evidence to support the establishment in court of child protection concerns.

The child protection system is formally or ostensibly inquisitorial. However, as several participants noted, and as reinforced in the literature review, child protection proceedings remain in practice deeply adversarial, particularly in relation to how child protection agencies and their lawyers engage – or do not engage – with parents. This adversarialism is bolstered by a pervasive assumption that the best interests of children often exist in tension with the rights of parents to be supported to preserve their families. It is further reinforced by the lack of legislative provisions mandating that child protection authorities demonstrate they have made active efforts to support parents. This can be in relation to providing them with the information they need to make informed decisions relating to the care of the children or to address child protection concerns. It also includes timely and sufficient access to lawyers, advocates or services that have the knowledge and skill to support them.

The adversarial and ableist nature of child protection proceedings is further entrenched by legislative provisions that stipulate parents must address the concerns of child protection authorities within finite periods of time – generally, two years. These provisions were enacted despite well-documented systemic failures to fund and provide parents' access to appropriate services. This includes services that are equipped to safely and effectively work with parents with disability generally, and First Nations and culturally and linguistically diverse parents with disability specifically. Some parents come to the attention of child protection authorities due to assessments of inappropriate living situations and housing. These assessments have been extensively critiqued as particularly subjective and often influenced by cultural norms and racist, class, and ableist discrimination.

It has also been well documented that there are broader failures in systems beyond child protection to provide disability-appropriate and safe emergency and longer-term social housing to parents with disability, including parents who leave their homes due to domestic and/or family violence. Furthermore, in situations where child protection authorities have removed children from their parents, parents can lose their legal rights to remain in social housing that is appropriate to and can accommodate their children. As several participants noted, current legal permanency provisions ignore these factors. They effectively punish parents who may require greater time to respond to child protection concerns due to system failures. The provisions fail to recognise the rights of parents with disability to equal opportunity and access to support as provided for in the *Convention on the Rights of Persons with Disability* (the 'CRPD'). They fail to recognise the rights of parents to reasonable adjustments to provide not just equity in terms of access to services, but also access to justice.

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Disturbingly, it appears that the inadequacies of the current child system to support parents' access to services – services that respond to their needs as well as those otherwise deemed necessary by departments – are effectively being misattributed to parents' alleged incapacities to care for their children. This feeds into and mirrors the false and discriminatory assumption that parents with disability inherently and irremediably pose risks to their children's wellbeing. Furthermore, it perversely lends itself to child protection authorities imposing higher thresholds for parents with disability, particularly parents with intellectual disability. These higher thresholds mean it is not sufficient for parents to demonstrate that they have addressed concerns of existing risks of neglect or abuse. Rather, they must demonstrate that they have the capacity to address potential risks of harm to their children that may or may not arise in the future. This is discriminatory, as the threshold of potential risk derives from them being identified as a parent with disability.

Legal 'permanency' provisions were also identified as jeopardising parents' abilities to compile the evidence needed to contest child protection concerns. As several participants discussed, this compounded broader system failures to ensure parents were aware of their rights to and could access appropriate legal advice and advocacy support prior to the initiation of court proceedings. Consequently, some lawyers shared that when they first began representing parents at the commencement of court proceedings, they felt 'cornered' into advising parents to 'consent' to child protection concerns and the removal of their children at first instance. This was due to the lack of time parents had to produce counter-evidence within the timetable imposed by the court, particularly by seeking alternative assessments by independent experts who had the appropriate knowledge, skill and time.

As discussed in literature review, international and Australian studies suggest that the vast majority of parents generally, and parents with disability specifically, consent to the establishment of child protection concerns in court. As several advocacy and legal organisations have argued, parents' legal acquiescence to child protection concerns and the removal of their children in these circumstances should not be confused with their agreement that the department's child protection concerns are substantiated. Nor should their 'consent' be interpreted as validating the department's case that removal of children from their parents was unavoidable or necessary. Indeed, as participants argued, the high numbers of 'consent orders' issued by Children's Court suggest a real need to rethink how the system operates and how researchers, policy-makers and legislators interpret statistics of 'substantiated' risk, neglect or abuse. The Victorian Public Advocate has also recommended that Children's Court magistrates make greater efforts to ensure parents are aware of the full implications of their 'consent to establishment' prior to issuing consent orders.

As several lawyers and advocates observed, most lawyers do not receive formal training on how to safely, respectfully and effectively represent parents with disability. This includes how to adjust their practice so as facilitate their client's ability to provide informed instructions, as well as their own ability to subsequently act upon them. It includes recognising the intersectional needs of First Nations parents with disability and culturally and linguistically diverse parents with disability. It also includes lawyers being alert to their own ableism when advising parents



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of the best strategies to adopt. Lawyers and advocates observed paternalistic attitudes towards people with disability across the legal profession. This was recognised by some participants as something they themselves had to address in their own practice. As they noted, unchecked paternalism could translate to lawyers crossing the line between offering legal advice and inappropriately pressuring parents into a particular course of action. Notably, all lawyers who participated in this study called for greater professional education and training on working with and representing parents with disability. Indeed, as one noted, the deficit in professional education failed to measure up against their observation that the ‘vast majority’ of parents involved in child protection legal proceedings were parents with disability.

Several lawyers described benefiting from collaborations with advocates who specialised in providing support to parents with disability. This was identified as a key means by which lawyers could educate themselves on how best to work with and meet the needs of individual clients. As lawyers and advocates observed, when such collaborations occurred advocates would often provide guidance to lawyers about how to best adapt their communication styles and resources to effectively represent parents. As several lawyers also acknowledged, often resource limitations, including funding and time, precluded their ability to assist their clients in matters that went beyond providing them with legal advice, such as supporting parents in their interactions with child protection workers and services. Advocates, although themselves often under-resourced, were regarded as providing integral support to parents in these circumstances. Relatedly, because of their role in supporting parents throughout their involvement with child protection services, advocates were identified as providing key support to parents in helping them collate the evidence they might need to challenge department assessments and demonstrate inappropriate or discriminatory conduct, including failures to provide disability-safe and responsive services, in court.

Most lawyers and advocates emphasised that greater funding should be dedicated to fostering legal and non-legal advocacy services which support parents with disability. All recognised that collaborations between advocates and lawyers were not the norm, despite several noting that many of the more successful cases in which they were involved turned on such collaboration. As some argued, system support for the involvement of advocates alongside lawyers was an integral component in ensuring the rights of parents with disability were respected in accordance with the *CRPD*. This recognition and argument echo in the international and Australian literature. As participants and several authors also discerned, there needs to be greater emphasis on supporting peer-led advocacy within the child protection space, not least within the design of professional education and training for lawyers on how best to represent parents with disability.

Few participants in this study specifically discussed their perceptions of the training of Children’s Court magistrates in engaging safely and effectively with parents with disability. However, a key theme that emerged in the literature review was that often magistrates, like lawyers, lacked training in how to recognise and respond to the needs of parents of disability. This includes how to communicate in ways or adjust court proceedings to support parents’ rights to equal and informed participation. That said, as discussed in this chapter, parents and lawyers in this

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project described how parents with disability often felt ignored, bewildered and disadvantaged in Children's Court proceedings. This was particularly in relation to having the opportunity for their perspectives and experiences to be heard.

Legal systems generally, and Children's Courts specifically, were subsequently identified as failing to recognise and respect the rights of parents with disability to informed participation in several ways. First, they failed to ensure parents' access to lawyers generally, and specifically lawyers who had the time and skill to ensure they were able to understand and respond to department allegations, particularly in the form of affidavits. As several participants observed, without such legal support, parents with disability were regularly denied their rights to equal participation in court proceedings, with many lacking understanding of the department's case, their rights to counter it, or the different stages of the legal process. Second, they failed to support parents who took the stand to provide evidence in court, particularly during cross-examination. While the rules of evidence generally do not apply in child protection jurisdictions, their underlying principles can be drawn upon, particularly when it comes to providing reasonable modifications to ensure equitable proceedings. As several lawyers argued, there is considerable room for improvement in Children's Court proceedings in this regard. Some provided concrete examples of how relevant provisions within the *Evidence Act 1995* (NSW) or the *Family Law Act 1975* (Cth) might be drawn on to inform how Children's Court proceedings can be adjusted in recognition of the communication needs of some parents with disability. Many urged that the court and lawyers representing parents with disability begin to consider how such provisions may address ableism within court processes, denying parents' the equal opportunity to provide evidence in court.

Court-ordered Dispute Resolution Conferences ('DRCs') were identified by some lawyers as providing an alternative avenue for parents to speak directly to and have their views heard by department lawyers and other lawyers involved in their cases such as Independent or Direct Children's Legal Representatives. Others noted, however, that such conferences could replicate the adversarial nature of court proceedings, with lawyers leading the discussion and parents leaving the process feeling once more that they were unheard. Alternative measures were also discussed as a means of addressing failures by the system to respond to the needs of parents with disability. One of these, particularly discussed by Victorian lawyers, was increasing the role of the litigation guardian or *guardian ad litem* in child protection proceedings. This was raised as a potential avenue for providing parents who had difficulty understanding and communicating within court proceedings with a representative who could give voice to their concerns and rights.

Notably, some lawyers in New South Wales – a state in which litigation guardians can be appointed in child protection proceedings – expressed caution. They observed that their appointment sometimes had the effect of denying the participation rights of parents who could, with or without support, participate in legal proceedings. The lack of knowledge or professional education across the legal profession – lawyers and magistrates – about how to effectively work with parents with disability was identified as increasing this risk. Furthermore, a question that might be asked is whether the appointment of litigation guardians is a reasonable modification that enables the participation of parents with disability. While not

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denying the importance of their role in some cases, it could be argued that in others the appointment of litigation guardians displaces the onus of the system to provide support and reasonable adjustments – that is, support which enables and respects the rights of parents to directly participate in legal proceedings.

As several advocates and lawyers stated, far too often the perspectives and experiences of parents are ignored, replaced by the opinions of others, whether caseworkers or ‘experts’ to whom they are referred for assessments. Most recognised that assessments can play an important role in informing parents and others involved in the child protection system of potential adjustments and services that could support parents. However, it was widely noted that most assessments to which parents were referred were forensic in nature. As such, they were not therapeutic but instead directed at establishing parenting capacity and risk. Furthermore, their terms of reference tended to be dictated by the department and thus were skewed towards substantiating the department’s child protection concerns. These criticisms were made both of assessments conducted by private assessors who were contracted directly by the department and those conducted by Children’s Court Clinics on referral from the court. They also aligned with the conclusions reached in a number of studies and inquiries conducted in Australia and internationally, discussed in the literature review.

While several clinicians noted that Children’s Court Clinics were established for the purpose of providing the courts with independent assessments – that is, assessments conducted at arms-length from departments – many recognised that limitations in time could lead to assessors within the Clinic relying heavily on the information provided by the department. Subsequently, although most Children’s Court clinicians described approaching the information before them ‘with a critical eye’, they also acknowledged variability in the extent to which they or their peers were able to access and draw on alternative sources. Most clinicians recognised they spent limited time with the parents concerned when conducting their assessments. It was typically a three-hour session conducted in one day, which might include face-to-face interviews or observations of the parents with their children. Their assessments were also often constrained by the terms of reference stipulated in Children’s Court referrals.

Notably, one recommendation that was made to address concerns of bias was the establishment of independent research groups sitting outside Children’s Court Clinics, departments and the courts to follow up alternative sources of information to those provided by the department. It was felt that this could provide the Children’s Court Clinic with much-needed context to make appropriate and informed assessments of parents and the department’s child protection concerns. Another recommendation made to reduce variability in the information relied on in assessments was that Children’s Court Clinics introduce mandatory fields in their reports, directing clinicians to address a variety of contextual variables. These could include cultural standpoints and racial or cultural discrimination, socioeconomic disadvantage, and the services and support available and offered to assist parents with disability.

Children’s Court clinicians also reflected on the limitations of the tools available to them, some of which were explicitly referenced for use by departments and, subsequently, the court.

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As several noted, some of the stipulated tools, including IQ measures or tests, provide little insight into functional parenting. They were also identified as particularly problematic when used to gauge the cognitive functioning of First Nations parents and culturally and linguistically diverse parents due to in-built cultural and linguistic bias. While most clinicians noted that they would draw the court's attention to this in their reports, it was noted that it was not the Clinic's role to determine the evidentiary weight of their assessments. Instead, it was the role of the court to do so, subject to whether relevant parties submitted alternative evidence to contest the Clinic's assessment. However, as Susan Collings and colleagues' have recently observed (see the literature review), within New South Wales 'there is no current guidance for judicial officers or assessors on when, how or what role cognitive testing plays in assessment of parenting capacity'.<sup>896</sup>

As all advocates and lawyers observed, parents with disability rarely have access to, and therefore the ability to submit, independent assessments that could counter those submitted by the Children's Court Clinic and introduce alternative guidance to the court. Most parents involved in child protection proceedings cannot afford them. Additionally, many parents who have been unable to access lawyers or advocates do not understand their rights or options to support them to do so. Furthermore, as some advocates shared, the adversarial nature of child protection proceedings can also lead to departments arguing against parents' alternative assessments being submitted as evidence before the court. Consequently, in the view of most, Children's Court Clinic assessments are often decisive in court determinations of whether child protection concerns were substantiated and further whether children who were removed from their parents' care should be restored. This affirms a key finding in several studies discussed in the literature review, namely judicial deference to expert clinical opinion, regardless of real risks of bias, including when clinicians have relied on empirically discredited measures and tools of assessing the parenting capacity of people with disability.

Some advocates argued in favour of Children's Court Clinics enabling parents to bring support workers with them. A few Children's Court clinicians suggested this was already occurring, although there was some contention regarding the role assumed by advocates or supporters during assessments. For example, some advocates believed they should be able to intervene in assessments directly or by making suggestions to clinicians about how they make adjustments to reflect the needs of parents. Some clinicians, however, believed the role of advocates was to ensure parents understood the purpose of assessments and thereby support their informed participation and consent. As one clinician particularly emphasised, the clinic's role was not to advocate the rights of parents. It was, rather, to respond to the terms of reference of the court and to make recommendations in relation to the best interests of children. As such, the Children's Court Clinic, constrained by both the court's terms of references and legislation, was not necessarily immune from dichotomising the rights of parents to be supported in legally preserving their families and the best interests of the child.

As Children's Court clinicians stressed, their role was not therapeutic. Furthermore, after the submission of their assessment to the court their involvement in the case tended to cease. Several noted that they were rarely aware of the impact of their assessment, nor were they

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provided with any feedback from the court or parties. While one clinician described their attempts to reach out to parents following assessments to inform them of their findings and hear their perspectives as a matter of best practice, this was by no means the norm. It appears that parents involved with Children's Court Clinic assessments may only become aware of their findings within court proceedings, with limited opportunity to respond.

Given the widespread failure of the legal system to support parents in having their perspectives and experiences heard, several advocates shared alternative methods that were being adopted by parents to have their views included on the legal record. These included applying to the court to submit the equivalent of a victim impact statement. They also included emailing the court with letters and supporting information that outlined the parents' experiences and concerns. It was by no means clear whether these attempts influenced the outcomes of their cases. However, it was generally believed that by doing so parents stood some chance of having their experiences imprinted on the court and departmental records for their children to read, should they access it in the future. As one mother with intellectual disability stated this was important because children removed from their parents

[m]ay not have a good bond with their mum because they thought their mum was this bad monster that people have painted her as or parents were painted as. And they find out in adulthood that their parents just have a disability.

– Parent

Several advocates agreed, arguing that all parents should have the opportunity to have their experiences and perspectives recorded.

Another suggestion for reform made by participants related to the Children's Court establishing a separate list for hearing cases involving parents with disability. As a lawyer argued, by creating a separate space for these cases the court could implement a variety of disability-safe and responsive adjustments. Examples they raised included greater timeframes for hearings as well as 'space for an advocate to be present at court for parents with disability to sit with their lawyer and explain what's happening, what's going on'. It might also include adjusting proceedings to facilitate greater support for parents' communication needs, as well as the manner and setting in which cross-examination takes place. Furthermore, it could implement measures to ensure that the final determinations of the court are effectively communicated to parents.

Indeed, a major concern raised by lawyers and advocates was that far too frequently parents with disability were not adequately informed of court orders at the conclusion of Children's Court proceedings. They were also not informed of their legal rights and options, particularly in circumstances where the court decided to permanently remove children from their care. As many observed, even in circumstances where parents were legally represented in proceedings, often Legal Aid funding was not available to ensure they were given appropriate advice in the aftermath. Consequently, in situations where court orders or case plans were ignored, parents were often left without access to legal representation to enable their pursuit of a remedy.

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The lack of court and even department supervision of permanent OOHC arrangements was widely noted as jeopardising children's and parents' rights to maintain contact and imperilling children's and parents' wellbeing. As several lawyers shared, they would often not receive reports indicating that orders or agreements involving their former clients had not been implemented for over six months, if at all. The fact that the relationship between most parents and lawyers ceases following final orders compounds the associated risk of harm to parents and children in these circumstances. This includes harm to First Nations children and parents whose rights to continuing contact, particularly with respect to ensuring ties to family, community, culture and Country are regularly breached without legal remedy. Advocates and lawyers shared a range of views in relation to whether the courts did enough at first instance to ensure that permanent out-of-home carers of First Nations children respected and were committed to fostering the rights of children, parents and community as articulated in the Aboriginal and Torres Strait Islander Child Placement Principles. However, all agreed that if carers failed to observe contact arrangements or orders afterwards, the legal system failed to support parents and children in enforcing their rights.

Participants' depictions of parents' experiences of the child protection legal system are bleak. They reinforce the findings of an amassing body of international and Australian literature that the legal system is failing parents with disability across the spectrum of their involvement in child protection system. It is important to note that all participants expressed their commitment to reforming the system to support the rights of parents with disability to preserve their families. However, as these findings demonstrate, contemporary Australian child protection laws and legal processes remain imbued with ableism and are profoundly at odds with Australia's commitments under the *CRPD* and other human rights instruments to provide parents with disability equal rights to informed participation and access to justice.

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# PART III – Synthesis of findings and recommendations





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# Chapter 12: Conclusion and recommendations

## Introduction

Deep-seated discrimination against parents with disability impacts child protection interventions in ways that are compounded by intersections of gender, race and class discrimination. In this concluding chapter we synthesise key findings from the national and international literature review, national policy overview and empirical fieldwork in New South Wales and Victoria, noting limitations and highlighting areas for future research. Recommendations are made on the basis of the research findings with the aim of aligning child protection services and related supports with minimum human rights principles and contributing to improved experiences and outcomes for parents with disability and their children.

Despite decades of research identifying discriminatory attitudes and conduct by child protection departments towards parents with disability, both nationally and internationally, little has changed. Systemic and structural factors, grounded in historic and ongoing inequalities, contribute to parents with disability being more likely to come to the attention of, and to have their children removed by, child protection authorities. Contemporary child protection systems misattribute responsibility and capacity to address ‘risks’ – both largely socially and economically driven and therefore outside individuals’ control – to individual parents. The literature and fieldwork points to poverty, housing instability, lack of social and family supports and prior involvement with child protection systems, including as children, as common underlying factors. Many parents engaged with child protection systems have experienced institutional and personal abuse and violence. These inequalities and violence are not only founded in but also compounded by ableism and intersectional biases that directly and indirectly characterise disability and cultural difference as non–normative and associated with risk.

Unless these structural and systemic factors, which are bound to and interdependent with discriminatory attitudes and values, are addressed, parents with disability will continue to experience disproportionate intervention from child protection authorities. This is not to suggest that individual and family-based support and responsibility are not also necessary. Compliance with the minimum human rights of people with disability requires recognition of and measures to support community, family and individual factors that enable parents to look after their children safely.

However, Australian child protection systems primarily focus on individual parents, with the greatest resources dedicated to surveillance, ‘crisis’ intervention and out-of-home care (‘OOHC’), rather than prevention and the timely provision of accessible support. This is despite longstanding recognition of, and policy aspirations with respect to, the need for a reorientation of child protection systems. The failure to act on the ever-growing body of significant research evidence, recommendations from reviews, national action plans and policy is reflected in the distribution of child protection funding, which is heavily weighted towards forensic intervention and OOHC.

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There are common systemic and structural factors across child protection frameworks – from the point of notification across casework and decision-making to permanent placement in OOHC or restoration – that are informed by and maintain ableist values. Although child protection policy ostensibly aspires to practice that is flexible and oriented to families’ needs, this has not, as evidenced in the literature review and fieldwork, reliably translated into practice. While child protection departments point to reform efforts, often framed in terms of prioritising family preservation and support, the substantive focus of these efforts is disproportionately directed to narrowing timeframes for child protection decisions and transferring responsibility to non-government organisations. These reductions in time to address child protection concerns in particular may adversely impact parents with disability. Considerably less effort has been directed to reorienting systems, practice and investment to address the social determinants of risk and to support families to provide safe and responsive care. Reforms such as introducing short timeframes in which final decisions must be made have a disproportionately adverse impact on parents with disability. As revealed in multiple reviews, criticism by First Nations organisations and through research presented in our literature review, cycles of child protection reforms across Australia reveal ‘busy work’ without the change required to address discriminatory systems and practices.

Ableism in child protection intervention starts with the widespread failure to adopt a disability-informed approach in casework. This contributes to failures to identify parents with disability and communication and casework that is often inappropriate and unresponsive to individual parents’ needs. It relatedly creates extra barriers to parents being informed of or addressing perceived risks. Data is also not collected with respect to the number or demographics of parents with disability. This prevents adequate planning for resource provision and services in accordance with need, as well as accountability for outcomes. Limited training of professionals across the child protection system – including caseworkers, clinicians, service providers, lawyers and judicial officers – with respect to understanding disability and communicating and working effectively with parents with disability, results in compounding discrimination and disadvantage as parents move through child protection systems from reports to more intensive interventions.

The dominant child protection paradigm narrowly assesses the best interests of children through focusing on parental culpability and incapacity, while ignoring key aspects of the social circumstances of families. Children’s needs, rights and experiences are often dealt with and treated in isolation from their family, community and cultural contexts. This approach to the best interests of children fails to grapple with the critical social and developmental importance of enduring family connections. It also deflects from the responsibilities of governments and societies in supporting all parents in their child-rearing responsibilities and rights. In our review of policy documents, most of the applicable child protection provisions centre on children, with parents sidelined despite policy guidelines that speak of children and families. The fallacy of this approach is most evident in the cycles of intergenerational removal of children from parents who have themselves experienced OOHC. The narrow focus on children deflects attention from the provision of culturally appropriate and disability-responsive social services to assist parents.

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The array of complex child protection procedures reinforces the power imbalance between child protection departments and parents with disability. Policy with respect to parents with disability, like policy about disability inclusion more generally, is largely absent. Departments' policy and practice with respect to all parents is opaque and difficult to navigate. This is telling of the degree to which current systems lack clarity and accountability to parents and to the broader community in whose name children are removed from their families.

There are limited services available to support parents to address common underlying factors associated with child protection engagement. Waiting lists can be long, creating tension with the short timeframes in which parents must demonstrate change. Parents and families in regional and remote areas may be particularly disadvantaged, having to travel long distances to access sparse family supports. Further, many services are not tailored for or accessible to parents with disability. This failing is intersectionally compounded for First Nations and culturally and linguistically diverse parents with disability who are also unable to access culturally and linguistically inclusive or specialised support, contributing to disengagement and missed opportunities for support. Parents with disability are often blamed for these system failures.

Parents with disability, already disproportionately likely to be experiencing significant social and economic stressors, face additional stress because of systems that fail to support or make reasonable accommodations for them, and the high stakes and stigma associated with child protection involvement and intervention. This system-generated stress is heightened by perceived or actual discrimination by caseworkers and other professionals. Intersectional discrimination with respect to race, class and disability compounds legacies of institutional abuse. This adds to parents' reluctance to seek help or disclose difficulties. These additional stressors, in turn, reduce parents' capacity to address risks and look after their children safely. Supports, such as peer support groups and parent advocates, are precariously under-resourced, despite being critical for more effective child protection systems and for parents with disability to have better access to justice and remedy when their rights are breached.

Legal advice is provided too late, usually at the stage when court proceedings are initiated by child protection departments. At this stage parents have often undertaken assessments, entered into consent agreements and engaged with services, which all impact findings and decisions-making with respect to whether they can safely look after their children, without the benefit of prior legal advice. The short timeframe, mode in which evidence is presented through affidavits, assessment processes and expert reports, and language and format in which care and protection decision-making takes place, are riddled with ableist assumptions. These effectively exclude or limit many parents with disability from effectively participating in child protection legal proceedings. While parent advocates assist in ameliorating some of these barriers, many parents have limited legal advice and do not have access to a parent advocate. Parent advocates and earlier, more extensive legal support and advice are essential to facilitate greater access to justice for parents with disability. However, these remedies plaster over a fundamentally ableist system, with more fundamental reforms required.

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## The human rights of parents with disability

Breaches of the *Convention on the Rights of Person's with Disability* (the 'CRPD') pervade the spectrum of child protection interventions from failure to identify or collect data with respect to parents with disability to the most severe end of intervention including permanent removal of babies and children from their families.<sup>897</sup> Rights under all human rights treaties and declarations apply to parents with disability who have contact with child protection systems in addition to those specifically under *CRPD*. Human rights are indivisible. Subsequently, the work of the various committees which monitor treaties such as the *Convention on the Rights of the Child* (the 'CRC') and *International Covenant on Civil and Political Rights* (the 'ICCPR'), and declarations such as the *United Nations Declaration on the Rights of Indigenous Peoples* are applicable to interpretations of parents and children's rights under the *CRPD*.<sup>898</sup>

Conceptual aspects of the development of the *CRPD*, notably the influence of a social rather than medical model of disability, are significant in terms of recognising the need for systemic and structural reforms in addition to individual adjustments to uphold the rights of parents with disability who engage with child protection systems. The *CRPD*'s dual focus on systemic and individual responsibility is enhanced by the increasing emphasis across human rights jurisprudence on inclusion and plurality. Disability, understood as part of human diversity and cultural difference, supports an understanding of the human rights of parents with disability as comparable to minority and gender rights. Across this report rights have been characterised as indivisible, intersectional and requiring both collective and individual recognition and remedies. There is consistency between a civil rights and plural approach to human rights which supports autonomy and self-determination.

### Core right to equality

Equality and non-discrimination are core rights which cross the spectrum of human rights instruments including *CRPD*. Importantly, as the discussion in Chapter 1 and below illustrate, the jurisprudence of a range of UN Human Rights Treaty monitoring committees, including the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Rights of Indigenous peoples have conceptualised equality as encompassing both individual and collective rights. This includes Article 1 of the *ICCPR* which provides for the right to self-determination and which is echoed in Article 3 of *UNDRIP*. First Peoples have called for self-determination in child welfare for over three decades. The literature review and fieldwork reiterated the nexus between First Peoples self-determination and respecting the rights of parents with disability who have contact with child protection systems. This includes participation and self-determination in the framing of safety and family, in the design and delivery of services and in child protection decision-making.

Both procedural and substantive reforms to child protection systems are necessary to fulfil the rights of parents with disability to equality and non-discrimination. Article 23(2) of the *CRPD* requires state parties to render appropriate assistance to persons with disabilities

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in the performance of their child-rearing responsibilities. Article 23(4) provides that 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. The *CRPD* Committee has required that measures to combat discrimination against parents with disability must be 'effective', meaning that legal rights and formal measures which do not ensure that rights are experienced in practice are insufficient. The literature review and fieldwork evidence the need for reforms to ensure effective measures to combat equality and non-discrimination for parents with disability who engage with child protection systems.

Article 4(1)(b) of the *CRPD* requires state parties to 'take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities'. Article 5(1) provides that all persons are 'equal before and under the law and are entitled without any discrimination to equal protection and equal benefits of the law'. Under Article 2 a denial of reasonable accommodation constitutes discrimination. Article 13 also identifies preconditions that states must meet in order for people with disability to have access to justice including procedural accommodations. The recommendations outlined below are founded in principles of equality and non-discrimination and are necessary to meet minimum human rights standards under the *CRPD*.

## Promising practice

While promising practices have been identified in the literature review and fieldwork it is important to acknowledge the significant absences which are a product of past and ongoing intersectional discrimination. Reforms must move beyond current practices, which are largely immersed in an individualistic and medicalised model of child protection for parents with disability, to one which is grounded in individual and collective human rights. It is particularly important that research and funding be invested in First Nations and culturally and linguistically diverse research and practice, which may not yet be tested, because of past and ongoing assumption of white and able-bodied values within child protection law, policy and practice. It is also necessary that reforms are not restricted narrowly to child protection but address the contextual factors which drive child protection issues.

The literature review and fieldwork identified four areas of current better practice: 1) statutory and policy reform; (2) inclusive and specialist service design and delivery; (3) the development and funding of culturally safe and specialised advocacy and peer support services that are available to parents before, throughout and following their formal involvement with child protection services; and (4) ongoing professional training and community education and outreach on the experiences, needs and rights of parents with disability involved in child protection systems. Across all areas of reform the literature review and fieldwork emphasised the importance of participation of people with disability in research, decision-making, policy and service design and service provision.

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## Law and policy reform

Law reforms founded and mooted in the US context, including the federally enacted *Indian Child Welfare Act* (the 'ICWA'), state-based child protection legislation in Idaho and Kansas, and more recent proposals by Powell and Rubinstein discussed in Chapter 6, are readily transferable to Australian contexts. The *ICWA* provides for a two-tiered approach with the transfer of jurisdiction to tribes and the establishment of minimum standards to be applied by both tribal and state child protection agencies with respect to Indian children. This provides a useful structure for improving services to First Nations parents with disability with the transfer or sharing of jurisdiction with First Nations children's organisations and setting minimum standards for engagement with all parents with disability who have contact with child protection systems. These reforms orient towards a more relational approach to child protection with parents supported to look after children safely. This would help to reorient the current child protection and disability services focus on children separate from rather than within families and communities. Specific aspects of the *ICWA* and their applicability to parents with disability who engage with child protection systems are discussed in the context of recommended reforms below.

## Inclusive and specialist service design and delivery

Minimum compliance with *CRPD* requires providing inclusive and specialist services for parents with disability who engage with child protection systems.<sup>899</sup> The starting point for development of such services is adopting a disability-informed approach to service provision which enables the identification of parents with disability and their individual needs and, subsequently, the collection of disaggregated data which includes information relating to cultural and geographic communities. This will enable planning and funding for adaptive and supportive services for all parents with disability including services tailored to First Nations and culturally and linguistically diverse communities.

Skilled and independent advocates, who work on a one-to-one basis helping parents with disability navigate the child protection system and access services needed to address child protection concerns, were identified in the literature and fieldwork as valuable and effective. The Intellectual Disability Rights Service (IDRS) NSW provides an exemplar of an effective service. Firstly, the advocate is independent, which is critical for building trust and relationships. Secondly, the advocate has expertise in child protection as well as associated services such as domestic or family violence and homelessness or housing insecurity. Thirdly, they have extensive experience and expertise working with parents with intellectual disability. Finally, the advocate works collaboratively with a specialist legal service for parents with disability.

A key issue across child protection systems, which effects all parents but is magnified for parents with disability, is the perceived and or experienced lack of accountability of child protection services. This is particularly experienced by parents with disability who are First Nations or come from a culturally or linguistically diverse community. The power differential

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between parents and child protection services exacerbates this, creating a context susceptible to a lack of transparency, accountability and in some circumstances abuse of power. An effective, well-funded and independent network of parent advocates and peer supports for parents with disability would improve accountability by assisting to counter this imbalance. When involved at early stages of engagement with child protection services, the evidence discussed in chapter 6 and the fieldwork suggests advocacy services improve outcomes for families and child protection agencies. Despite the success of small-scale services such as IDRS these services remain underfunded. Support to upscale and evaluate upscaled services such as the IDRS is a necessary step towards extending advocacy services to all parents with disability who engage with child protection systems. Dedicated funding should be provided for advocacy services for First Nations and culturally and linguistically diverse parents with disability who engage with child protection systems.<sup>900</sup>

## Training and community outreach

All stages of assessment and support require appropriate experience and knowledge to work respectfully with parents with disability from diverse backgrounds. The intergenerational history of widespread abuse and neglect experienced by many parents with disability who engage with child protection systems necessitates trauma informed training. For First Nations parents, the transfer or sharing of child protection authority and services, as discussed above, is an important aspect of attaining this competence. Relatedly, recruitment of culturally diverse and multilingual staff and their involvement in service design would also contribute to improved service provision. As discussed in the literature review and fieldwork, most resources, training, research and experience has been with respect to parents with intellectual disability who engage with child protection systems. While parents with intellectual disability have been and remain inadequately supported there is even less training or experience with respect to parents with other or multiply experienced disabilities who engage with child protection systems.

Specialist training needs to be supported through and with the development of resources, including those designed by, in consultation with, and made with specific provision for First Nations and culturally and linguistically diverse communities. An area of great need is with respect to strengths-based assessments which focus on functional parenting.

## Future research

As the literature review reveals, the contemporary experiences and needs of parents with disability who have contact with child protection systems in Australia are significantly under researched. This has serious implications for implementing evidence-based reforms which are necessary to give effect to parents with disability's human rights. The foremost of these is the reduction in removal of children from their parents and community and the increased safe restoration to parents when removal has occurred. The literature review provides detailed national and international evidence with respect to systemic and structural failings, promising practices and areas for reform. However, the project identified significant gaps in research with

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respect to parents with diverse and or multiple disabilities who have contact with child protection systems. Most studies undertaken are qualitative and the majority of these are with parents with intellectual disability. Further, while there is an acknowledgment of the importance of intersectionality, there is limited research, nationally or internationally, conducted with or about First Nations or culturally and linguistically diverse parents with disability who have contact with child protection systems, despite variance in how such communities understand disability.

This report has argued that a paradigm change in the way that child protection is conceptualised is necessary to attain equality and dignity for parents with disability who have contact with child protection systems. Child protection services embed an individualistic understanding of responsibility for addressing child protection concerns. For child protection to move from an individualised and medicalised model of disability, to one which addresses individual and structural problems within a human rights framework, institutional reforms are necessary. That means reforms with respect to funding, departmental and non-government organisations child protection services and dispute resolution processes, Children's Courts decision-making and accountability mechanisms in addition to more particular gaps in knowledge within the current child protection paradigm. Both these areas of future research are reflected in the summary of findings and recommendations below.

## Limitations

The project was limited by resources and time, we conducted this research in just over a year. These factors, together with the lack of accessible public information with respect to child protection departments' policy and practice, limited the policy and practice review. The lack of available quantitative data on parents with disability's engagement with child protection systems meant that while gross over-representation of parents with disability in child protection systems can be deduced from existing qualitative studies, and the limited studies that have matched data, the scale of this over-representation could not be identified. Reforms to data collection are necessary and future research should match data from a range of existing studies and data sets, such as health, NDIS and child protection data. This would provide greater insight into parents with disability's over-representation in child protection systems. However, other factors identified in this research would limit the accuracy of such data, including varied definitions of disability, eligibility and access to services, and stigma, bias and subsequently personal and political resistance impacting self-identification.

The fieldwork for this project was limited to New South Wales and Victoria. Future research with and for First Nations and culturally and linguistically diverse parents with disability is necessary to identify specific experiences and develop locally appropriate services. Likewise, the specific histories, geography and local experiences of parents with disability across Australian states and territories require particular research, responses and support.<sup>901</sup> However, there are many common factors identified in the national and international literature, and in the findings from the fieldwork, that provide persuasive evidence for the recommendations in this report, which can be implemented on the basis of current evidence.



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## Summary of findings and recommendations

The findings and recommendations presented below are based on the evidence across the literature review and fieldwork. System failings and a lack of adequate or appropriate supports prevent many parents with disability from having the opportunity to look after their children safely, and many children from living safely within their family and community. Law, policy, practice and funding reforms are necessary for parents with disability to enjoy their human rights to look after their children, and for their children to enjoy their right to grow up in the care of their parents, family, community and culture. Despite family and parental rights being fundamental common law and human rights, parents with disability experience discrimination and stigma around parental choices and rights; as this research report evidences, this is particularly the case for parents with disability who have engagement with child protection systems.

The findings and recommendations from this report, which are summarised below, are focused on meeting minimum human rights standards. A human rights approach requires support for parents with disability through individual support and reforms that address disabling social systems.

### Social determinants

Child protection systems, and governments more generally, should direct greater effort to addressing the factors that underlie child protection intervention and child removals. Many participants in this project observed that parents with disability need support with basic living expenses that are not directly related to their disability, in addition to disability specific support. This aligns with the findings of studies discussed in the literature review. A formulaic response to supporting parents who engage with child protection systems, one that does not facilitate support of basic living needs and costs, is counter-productive.

The association between poverty and engagement with child protection systems is well established and was evidenced in the literature review and fieldwork. Intergenerational discrimination against parents with disability, intersectionally compounded for First Nations and culturally and linguistically diverse parents, makes these communities more likely to experience poverty. This is driven by historical, structural and systemic factors outside their control. Poverty and the social marginalisation of people with disability create a mutually reinforcing loop, as seen in the relationship between stress, poverty and mental and physical ill health.<sup>902</sup> Parents with disability are disproportionately in receipt of social payments although many parents with disability are not eligible for, or do not receive, a disability pension due to hurdles in the application process and narrow definitions of disability.<sup>903</sup> Social payments are below the poverty line and thus contribute to the risk of child protection intervention and child removal. Social payments below the poverty line breach Article 28 of the *CRPD*, which obliges signatory states to ensure an adequate standard of living and social protection for people with disability.

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### **Recommendation 1**

All social payments be raised to above the poverty line, account for the cost of living with disability, and be indexed for inflation.

Parents who are in contact with child protection systems often experience numerous stressors in addition to, and sometimes related to, poverty, such as family and domestic violence, drug and alcohol addiction, and psychosocial or mental health issues. When children are removed, these vulnerabilities often deepen. Child removal often results in a loss of services and parental payments. This breaches Article 19 of the *CRPD*, which provides for living independently and being included in the community.<sup>904</sup>

Reduction in income and other supports and/or costs associated with addressing child protection issues, such as attending a rehabilitation service or leaving a violent partner, also contribute to homelessness. These extra financial and social stressors, which are experienced in the context of grief, loss and, for many, the shame of child removal, undermine parents' capacity to undertake the steps required to achieve the restoration of their children to their care. They also undermine parents' capacities to address the concerns of child protection authorities so as to maintain their care of other or subsequent children in the future.<sup>905</sup>

### **Recommendation 2**

Social supports for parents, including social payments and housing, continue for a minimum of 12 months after final care and protection orders are made to maximise parental stability and capacity to achieve safe restoration and to minimise serial removals of children.

### **Recommendation 3**

Access to safe, secure and accessible social housing must be urgently increased. This must include a significant increase in social housing stock targets for parents with disability, including First Nations and culturally and linguistically diverse parents. It must also include the funding and inclusive design of emergency short-term accommodation, appropriately tailored to the needs of parents with disability.

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#### **Recommendation 4**

A social justice package be established to assist parents with disability who have experienced child removal or who were themselves removed from their families when children. This is to acknowledge and provide reparations for past harms and to contribute to preventing repetition of discriminatory removals of children from parents with disability. First Nations parents with disability must be eligible for reparations in acknowledgement of the particular and compounded harms of past policies that targeted First Nations people, as well as people with disability. See **Recommendation 14**.

## Data collection and use

It is unknown how many parents with disabilities are involved in child protection systems. Both in Australia and internationally there is a lack of reliable data on both (1) the numbers of parents with disabilities within the broader community/general population,<sup>906</sup> and (2) the numbers of parents with disabilities against whom child protection allegations are made and/or who become involved with child protection systems.<sup>907</sup> Data collection systems utilised by child protection services in Australia have generally not routinely recorded either the numbers of parents with disabilities within their purview or the nature of the disabilities themselves.<sup>908</sup>

The widespread failure to collect data on parents with disabilities generally, and those in contact with child protection systems in particular, is inconsistent with the obligations of Australian jurisdictions under the *CRPD*.<sup>909</sup> Specifically, it violates Article 31, which requires state parties 'collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to' the human rights articulated within the Convention. This failure, which persists despite successive calls from human rights advocates and scholars, has been attributed to a general absence of political will to build knowledge about, and appropriate services to support, parents with disabilities across communities.<sup>910</sup>

Without this data, attempts to design policy, services and infrastructure supportive of the human rights of people with disabilities to parent with privacy, dignity and without prejudice, are inevitably compromised.<sup>911</sup> These data gaps also compromise the ability to evaluate the impact of policy reforms on parents with disability and their families.

As several studies have found, in situations where disability is not immediately apparent or disclosed, parents with disability are often not identified by child protection workers, particularly in the absence of policy, practice guidelines, training, and disability awareness and competence across the profession.<sup>912</sup> Additionally, parents with disability may choose not to identify themselves as such to professionals involved in child protection systems, due to well-founded fears and wariness of the repercussions of doing so.<sup>913</sup>

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The research suggests this might particularly be the case for parents with disability from First Nations or culturally and linguistically diverse communities, who might be reluctant to expose ‘another potentially discriminatory aspect of their life’ that could magnify their ongoing experiences of marginalisation and racial discrimination.<sup>914</sup> On top of this, many parents with disability may not be diagnosed or otherwise may choose not to identify as living with disabilities for political or cultural reasons.<sup>915</sup> Furthermore, across health and disability practice and scholarship there are multiple approaches and variations in how different disabilities are defined, screened and operationalised.<sup>916</sup>

Parents with psychosocial or mental health disabilities appear to constitute the greatest proportion of child protection cases involving parents with disability internationally. In research conducted by Ella Callow and Jean Jacob on behalf of the National Centre for Parents with Disabilities and their Families across three US child protection jurisdictions, for example, the percentage of cases involving parents with mental health disabilities was higher than the combined percentages of all other cases involving parents with disabilities.<sup>917</sup>

Australian studies in New South Wales and Western Australia also found the highest rates of engagement with child protection systems involved parents with mental health and intellectual disabilities.<sup>918</sup> Several scholars and disability advocates have asserted that the continued and increasing intervention of child protection authorities in the lives and families of parents with disabilities demonstrates the enduring legacy of the eugenics movement across Western legal, medical and social institutions.<sup>919</sup>

The purpose of identifying parents with disability within child protection systems must be to provide appropriate support and to collect data which enables planning and funding of services in accordance with needs, as well as accountability of child protection systems in their treatment of parents with disability. Explicit protections should be in place to prevent this data from being used by child protection authorities for surveillance purposes. Collection of this data would begin to align with Australian human rights obligations under the *CRPD* and the *CRC* respectively.

As discussed in the literature review, collection of data regarding parents with disability in child protection systems should be framed independently of risk assessment and should include broader contextual information as well as family strengths. It should be collected according to clear and consistent definitions, and be developed in partnership with people with disability and their representative organisations, as well as First Nations representative disability organisations. Data should also be understood holistically and enable appropriate disaggregation to promote local service design as well as accountability. Consistent with rights to Indigenous Data Sovereignty, First Nations data should be collected and governed by First Nations peoples, with formal agreements governing the collection and use of First Nations data by government.

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### **Recommendation 5**

A data plan must be developed in conjunction with representative disability, First Nations and culturally and linguistically diverse organisations to urgently develop data processes and infrastructure for the collection and use of data with respect to parents with disability who have contact with child protection systems. The data plan must address disaggregation by region, type of disability and with respect to First Nations and culturally and linguistically diverse parents. A data sovereignty agreement must be made with representative First Nations organisations regarding the collection, storage, access and use of data about First Nations children, parents, families and communities. Data must be collected for the purpose of planning service delivery and privacy and human rights protections must be embedded.

## **Risk assessment**

The literature review and fieldwork reveal a lack of relevant, available and practical tools for assessing parents with disability's parenting practice. They also reveal the importance of practitioners with relevant and contemporary knowledge about parenting with disability and, relatedly, skills in communicating effectively with parents with disability – an area that many identified as lacking. Assessment tools often do not assess functioning parenting but, rather, use proxies such as IQ measures. These tools have been demonstrated as being manifestly inappropriate for and inaccurate in assessing parenting capacity. They have also been demonstrated to be culturally biased, further entrenching discrimination against culturally and linguistically diverse and First Nations people for whom such psychometric instruments have not been validated. This gap for First Nations people in particular has been outlined in some detail through the evidence provided to the DRC by Dr Tracy Westerman.<sup>920</sup>

Concerns have also been raised that there is little to no oversight in contemporary Australian child protection jurisdictions regarding the continuing use of measures, or indeed regarding the normative use of any measure, used to determine 'good enough' parenting.<sup>921</sup> Nor does there appear to be any guideline or protocol directed towards standardising or ensuring that parenting assessments are conducted by professionals with the knowledge, experience or requisite specialisation to do so.<sup>922</sup> Ultimately, child protection systems place undue confidence in the use of limited if not inappropriate assessment tools and processes to make significant decisions that affect the lives of children, parents and families on the basis of information that may lack validity and reliability.

Several participants in this project suggested that, within this context, parents should be encouraged to have advocates or supporters present throughout assessment processes. This was identified as introducing greater accountability to assessments as well as providing an invaluable resource for assessors themselves, who may be unaware of individual contextual

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factors that are relevant to, and could influence, their assessment. Such factors can include the need to make adjustments to ensure effective two-way communication, as well as the need to account for cultural and language considerations.

There is evidence to suggest that parents who actively seek support or help from family or services can find their actions construed by child protection services as signalling their inability to care for their children.<sup>923</sup> Seeking support can result in extra surveillance and, with this, increased records, which are construed as increased risk. This in turn increases the risk of child removal.<sup>924</sup>

While legislation, policy and practice frameworks agree that children should not be removed from their parents on the basis of their parent's disability, the underlying and indirect framing of disability as risk persists. Discriminatory attitudes contribute to parents with disability resisting discrimination by choosing not to seek health treatment, parenting support or help, or even disclosing their disabilities due to well-founded fears of rendering themselves and their families vulnerable to increased surveillance and state intervention.<sup>925</sup>

#### **Recommendation 6**

Risk assessment tools and processes must be revised with disability advocates and organisations to better identify parents with disability and to address ableist frames and ensure a better orientation to functioning parenting and the provision of support. This must include the development of valid, culturally informed assessment tools by and for First Nations and culturally and linguistically diverse communities.

#### **Recommendation 7**

Policy and practice guidelines must mandate that assessments of parents with disability must be conducted by professionals with demonstrable experience, skill and knowledge in working with parents with disability. They must also mandate that assessments address and are adjusted in line with emerging best practice and relatedly, account for parents' culture and language. Parents must also be given the opportunity to have an advocate or other supporter present during assessments. To ensure confidence and that parenting assessments align with evidence and contemporary best practice, greater oversight or supervisory mechanisms must be established, including through independent statutory officers.

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## Prevention, early intervention and family support

In addition to addressing social determinants of risk such as poverty, housing instability, domestic and family violence, and mental ill health and addiction, child protection systems must improve their capabilities to identify the needs of parents with disability and to engage with and actively support them in addressing those risks. Currently, prevention, early intervention and family supports are significantly under-resourced, with few specialised staff available to work effectively with parents with disability.

Early intervention funding must be increased to levels commensurate with service needs. This requires collection of data with respect to the demographics of parents with disability who have contact with child protection systems, as discussed above. Funding to support parents with disability to look after their children should at least match that used to survey, intervene and remove children. This is not to suggest that child protection services that remove children from unsafe situations should not be adequately resourced. Rather, crisis services should not be at the expense of supports for the rights of parents with disability to look after their children safely, and investment should recognise intergenerational cycles of risk and seek to disrupt, rather than perpetuate, these cycles.

The rights of parents with disability articulated in the *CRPD* – to access services, systems and information on an equal basis to all people – are routinely breached for parents with disability. Disability services generally do not prioritise parenting support, and parenting support services lack the resources, capacity or specialist knowledge to either identify or address the specific and diverse needs of parents with disability.<sup>926</sup>

If equality and rights to family under the *CRC*, the *CRPD* and other UN human rights treaties are to be realised, law, policy and practice reforms, backed by adequate investment in implementation and impact, are needed. Child protection services need to be provided by caseworkers who understand and are competent to work with parents with disability. They should be supported by ongoing professional development, and appropriate tools and processes to enable effective and safe practice with parents with disability. There also needs to be effective networking, communication and cooperation across services and systems to address the problems such parents frequently encounter. The contribution of poverty, disability stigma, and inequality of access to culturally appropriate, disability-responsive and inclusive social, legal and service support is often ignored, downplayed or misattributed to parents' disabilities.

Research presented in the literature review has identified provisions in the United States *Indian Child Welfare Act* (the '*ICWA*') as providing models of legislative reform to support parents with disability involved in child protection systems.<sup>927</sup> One of these provisions mandates that child protection services make 'active' – as opposed to 'reasonable' – efforts to preserve and reunify Indian families. 'Active efforts' encompass proactive, engaging, thorough and timely actions intended primarily to maintain or reunite an American Indian child with his or

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her family. The National Indian Child Welfare Association illustrates the difference between reasonable and active efforts with the following example. Reasonable efforts might be only a referral for services, but active efforts would be to arrange for culturally appropriate services and help families overcome obstacles (e.g., transportation, finances, childcare etc.) in order to engage in those services.<sup>928</sup> Similar prompts were included in some policy and tool designs noted in this project; however, these were not reliably implemented in practice, with limited support and accountability for caseworkers in assisting families in overcoming obstacles to their participation and success.

To ensure accountability of child protection agencies, the *ICWA* includes a requirement that child protective services provide evidence in court of having made active efforts.<sup>929</sup> Relevant to First Nations families, the cornerstone of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions, akin to the established but poorly implemented Aboriginal and Torres Strait Islander Child Placement Principles in Australia. These principles are strongly supported by First Nations communities and organisations for integration into policy and practice in Australian jurisdictions. For example, in August 2022 Queensland passed a Bill requiring that active efforts be applied to implementation of the Aboriginal and Torres Strait Islander Placement Principles, defined as 'purposeful, thorough and timely efforts to apply the principle'. This standard should be extended to all families through legislative reform, and include in practice specialised disability supports for parents with disability. While not a legislative change, the *Aboriginal Case Management Policy (NSW)* developed by AbSec likewise draws on the *ICWA*, requiring 'proactive efforts' in the provision of supports to Aboriginal and Torres Strait Islander families in New South Wales across the child protection continuum. However, although this policy was endorsed by the NSW Department of Communities and Justice in 2019, it has not yet been implemented in practice.<sup>930</sup> While promising on paper, the impact of both examples remains to be seen in implementation. The long history of past failures in implementation, and the concerns raised with respect to the disparity between policy and practice in this project, emphasise the importance of close scrutiny of government efforts to apply these principles in practice and their impact for parents, children and families. This 'active efforts' standard should be extended to all families through legislative reform, and include in practice specialised disability supports for parents with disability.

In addition to mandating active efforts, the *ICWA* introduced the presumption that the removal of children from their families is against their best interests. The only exception to this is if child protection authorities can demonstrate a risk of imminent harm to the children concerned.<sup>931</sup> Child protection practice, services and literature dichotomise parent's and children's interests and limit their focus to children, often separated from their family and community context. This results in a comparatively narrow understanding of 'best interests' that fails to adequately respect or uphold children's rights to family and community connections, and, through them, lifelong developmental foundations of identity and culture.

This is accentuated for parents with disability, whose rights to supports and reasonable accommodations that take account of and respond to their needs are often cast in opposition to the best interests of their children. This false dichotomy and focus is not developmentally



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salient, given that child development occurs in the context of important relationships.<sup>932</sup> Furthermore, it negates established human rights jurisprudence that it is in best interests of children to recognise and support their rights to maintain these relationships, including by remaining in the care of their families where this is possible.

Like all parents, parents with disability may require additional support with their parenting. This support should be tailored to their individual circumstances. Accessing funding and supports for parents with disability who have contact with child protection systems requires complex navigation and engagement with multiple agencies. This creates unnecessary bureaucratic barriers for parents with disability and their families and contributes to breaches of rights and adverse outcomes. Parents' rights to support are often ignored once children are removed, as child protection authorities focus services and resources on children and carers.

This focus fails to account for: the harm caused to children through removal; the benefit of safe restoration if possible; the rights of children to be supported to remain safely at home; and the rights of parents with disability to be supported to safely look after their children. While children should be at the centre of decision-making, and there is consensus that their safety must not be compromised, the aims of supporting parents to safely look after their children and preserving these important relationships are consistent with this objective. Furthermore, the ongoing provision of such support takes a developmental perspective that also considers their long-term wellbeing.

The interface between the NDIS and child protection services for parents with disability is unclear. The ambiguity with respect to which agency is responsible for providing parenting support to parents with disability results in some parents not receiving the support that would enable them to look after their children safely. While the NDIS has been beneficial for some parents, definitions of disability, the assessment process and the requirement that disability be permanent have resulted in other parents not receiving either NDIS or other forms of support.

Disability advocates report that governments are withdrawing their funding for a number of mental health support programs and using this funding to offset part of their contribution to the NDIS. They have expressed concern about a perceived narrowing of access and eligibility, as well as what supports will be available for people with psychosocial disability who do not meet the NDIS eligibility criteria.<sup>933</sup> Disability advocates argue that eligibility for NDIS packages should focus on functional capacity and needs rather than medical diagnosis. It has been identified that women, First Nations peoples and other minority groups are under-represented in clients receiving support from the NDIS.<sup>934</sup>

As several participants in this project discussed, the NDIS is too bureaucratic and unwieldy for most parents with disability to navigate effectively. Many require an additional layer of support to determine their eligibility and apply for a package. Even specialist NDIS support workers found the NDIS application process subjective and difficult to navigate. Barriers to receipt of NDIS include lengthy waitlists and waiting periods to move through the various assessment processes required before parents can access and receive a service.

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Participants in this project noted that valuable critical community-based disability programs that once provided support to parents with disability had either been defunded or received reduced funding following the implementation of the NDIS. While some noted the potential of the NDIS to improve services and support for people with disability, including parents who may be involved with child protection authorities, they emphasised that navigating the packages remained a stressful process.

The literature and fieldwork conducted for this report highlighted an implicit, and at times explicit, assumption across child protection systems that parents with intellectual disabilities who come to the attention of child protection authorities will not be able to look after their children safely. This is reflected in the experience of many parents with intellectual disability who have their children removed prior to being referred to support services.

This is also demonstrated and reinforced by the lack of suitable intense family support programs for parents with intellectual disability; the limited referral of parents with intellectual disability to support programs and services generally; and the lack of disability appropriate services (such as disability appropriate rehabilitation services) for parents to address common problems which underlie safety concerns. The lack of disability tailored services is more acute in regional and remote areas. If available, parents often need to travel long distances or move house to access services. This generates further challenges and stress, particularly for First Nations parents, with loss of community support and the stress and cost of transport and/or relocating.

The supports needed to assist families in addressing the complex circumstances that contribute to the identified risks often either do not exist or are not available. Failures to refer parents to support services that do exist are often attributable to the fragmented organisation of services. Child protection caseworkers are often not aware of available services. Further, waiting periods for services prevent parents from addressing safety concerns necessary to either prevent removal or attain restoration of their children. This undermines the opportunity for parents with disability to address the concerns that contributed to their child protection involvement, and to have their children restored to their care, and creates extra stress for parents in contact with child protection systems who are required to attend such services to demonstrate within short timeframes they have addressed child protection concerns. Their ability to do so becomes determinative of decisions by child protection authorities to restore children to their care or permanently place them in OOHC or third-party 'permanent' legal care arrangements.

Women with disability disproportionately experience family and domestic violence, and for some women the experience is so pervasive that it is normalised. This is reflected in the experiences relayed by parents with disability, advocates and service providers in the fieldwork and the literature review. Service providers, including NDIS assessors, are generally not adequately trained to identify domestic and family violence experienced by parents with disability, or to effectively engage and communicate with victim-survivors.

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These failures affecting parents with disability who experience domestic and family violence go beyond the lack of referral to and/or availability of support services. The literature and fieldwork participants in this project provided examples of parents with disability being encouraged or effectively required by caseworkers to remain in violent relationships in order to retain care of their children, or having their children removed because they experienced domestic/family violence. Further, children of parents with disability are not infrequently placed with their violent ex-partner. Indeed, a recurrent theme is the intersection of experiences of domestic and family violence and child protection involvement for parents, particularly mothers, with disabilities. Many parents find themselves subject to scrutiny and intervention from child protection authorities after seeking help to deal with domestic and family violence, with the outcome being child removal – that is, being subject to state violence – rather than assistance and support to address experiences of domestic and family violence.

#### **Recommendation 8**

Child protection departments must work with representative disability and children's advocacy organisations, including First Nations and culturally and linguistically diverse organisations, to reform child protection laws, policy and services to support parents with disability to look after their children safely in family, community and culture, through all stages of child protection engagement. This means from initial reports of child protection concerns to out-of-home care and restoration if necessary. Contemporary child protection systems are deeply embedded with ableist values and must be completely overhauled. To address this, child protection authorities – governments, departments, courts and other decision-makers – must recognise, hear and respond to parents with disability, as experts in lived experiences of discrimination across child protection systems and subsequently in what reforms to policy and practice will support them.

#### **Recommendation 9**

Child protection legislation must be amended to include an active efforts requirement and a requirement that caseworkers inform courts with respect to the active measures taken to prevent child removal or enable restoration. These reforms must be implemented in consultation with disability and First Nations children's rights organisations and modelled on provisions in the *Indian Child Welfare Act 1978* (US).

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### **Recommendation 10**

Child protection services, as an element of their ‘active efforts’ requirement, referred to above, must be responsible for identifying which sources of funding are most appropriate to support parents with disability and ensure that parents are linked to appropriate navigators to assist them with funding processes. Where there are disputes with respect to agency responsibility, child protection services must provide the service consistent with active efforts standards (including timeliness) and recoup funds afterwards if appropriate.

### **Recommendation 11**

Investment in support services must be proportionate to the engagement of parents with disability with child protection agencies and distributed in accordance with the demography of clients. Particular attention must be directed to equity in funding for First Nations and culturally and linguistically diverse parents with disability. Services must be provided by organisations staffed by disability and culturally competent staff and services. First Nations-led commissioning approaches must be developed to direct investment for service provision to First Nations families and communities.

### **Recommendation 12**

Child protection services, from early intervention to intensive family-based support, must be audited and evaluated for ableism and with respect to their responsiveness and sense of safety for parents with disability from First Nations and culturally and linguistically diverse communities. The audit must include services that address the common underlying reasons for engagement with child protection system, including social and emergency housing, domestic and family violence, psychosocial or mental illness and addiction services. It must also be undertaken in partnership with disability stakeholders, including stakeholders from First Nations and culturally and linguistically diverse communities.

### **Recommendation 13**

All child protection workers must be provided with training to understand and respond to domestic and family violence in a compassionate way. This means training that equips them to identify domestic and family violence with respect to women with disability, unambiguously reject victim blaming and supports workers to make appropriate referrals. First Nations women must, wherever possible, be referred to and have the choice of being supported by First Nations services.

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## Child protection services for First Nations communities

The systemic failures of child protection systems in safeguarding the rights of First Nations families are well documented. These include failures to implement existing laws and policies enacted to keep First Nations children in families and communities, or to respect First Nations self-determination in administering systems and services that affect the lives of First Nations children, persisting with the imposition of settler-led systems. They also include failures to enable First Nations community-based services and supports, both through adequate investment and offering flexibility in approach, and to meaningfully respect First Nations participation at an individual case-based level or with respect to policy, practice and law reform. These failings compound mistrust in and disaffection with child protection systems, which are grounded in generations of discriminatory experience.

The dual and related requirements of self-determination and accountability for effective child protection services for First Nations parents, communities and organisations have been identified in research and reviews for more than two decades, and this is magnified for First Nations parents with disability.<sup>935</sup> First Nations have the right to determine the systems and services available to support their children, families and communities, and must wherever possible be enabled to design and deliver services by local First Nations-controlled children's rights organisations. The disproportionate intervention of settler child protection systems in the lives of First Nations parents generally results in disproportionately adverse impacts on First Nations parents with disability and underlines the urgency of reforms.

There is limited research literature on First Nations parents with disability who have contact with child protection systems. However, First Nations advocacy and service providers informed this project that they do not view parents through the lens of disability; rather, disability is perceived as one aspect of the parent's identity and experience. This understanding is consistent with the available literature.<sup>936</sup>

The relatively high incidence of disability within First Nations communities means that many – some research participants suggested the majority of – First Nations parents in contact with child protection systems live with some form of disability. This might include difficulties in functioning associated with the trauma of their intergenerational or institutional experiences. The recommendations below which are specific to First Nations parents are additional to the recommendations across this report which are necessary to support the human rights of all parents with disability.

The Australian government committed to respecting and promoting the right of First Nations to exercise self-determination – to determine their own political status and the social, economic and cultural development of their communities – as a signatory of the *United Nations Declaration on the Rights of Indigenous Peoples* (the 'UNDRIP').<sup>937</sup> This followed extensive advocacy by First Nations peoples and children's organisations, such as the peak First Nations children's rights organisation SNAICC – National Voice of our Children.

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In turn, many state and territory governments have committed to recognising these rights and have, in some instances, purported to enact them in legislation and policies. To date, however, governments have fundamentally failed to implement these rights in any meaningful way.<sup>938</sup> There are three components that governments must address and deliver on to implement Australia's commitments to respecting and facilitating First Nations peoples' rights to self-determination in child protection:

- The development of legal, policy and administrative frameworks to enable the transfer or sharing of jurisdiction with respect to child protection services for First Nations peoples.
- Dedicated funding, proportionate to First Nations families' engagement with child protection systems, directed through First Nations commissioning processes, to enable the design, delivery and administration of child protection services by First Nations.
- Committing resources to the research, training and development of First Nations children's welfare organisations to support the delivery and continuous improvement of child protection services by and for First Nations.

A process that enables the above transfer or sharing of responsibility on the basis of equality and respect was recommended by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families in its report, *Bringing Them Home*, more than 20 years ago (*Bringing Them Home*).<sup>939</sup> The United Nations Committee on the Rights of the Child has repeatedly recommended the implementation of the National Inquiry's contemporary child welfare recommendations.<sup>940</sup> Subsequent inquiries have also recommended reforms founded in principles of self-determination, most recently the New South Wales *Family is Culture Review*.<sup>941</sup> Implementation of these recommendations is necessary to achieve the current Closing the Gap targets with respect to reducing the number of First Nations children in OOHC.<sup>942</sup>

#### **Recommendation 14**

The recommendations of *Bringing Them Home*, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, be implemented in full, including:

Recommendation 42 – implementation of a social justice package to address underlying social and economic disadvantage

Recommendation 43 – implementation of self-determination, including transfer or sharing of child protection jurisdiction to First Nations communities.

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### **Recommendation 15**

Until such time as there are self-determining First Nations child protection systems, the five elements of the Aboriginal and Torres Strait Islander Placement Principle as articulated by SNAICC (prevention, partnership, placement, participation and connection) must be meaningfully implemented by all governments. Governments must invest in and implement policy to enable First Nations communities and their community-controlled children's rights organisations to partner in all stages of child protection engagement with First Nations families, including: the design and delivery of early intervention; support; dispute resolution; out-of-home care; and restoration services.

### **Recommendation 16**

All governments establish and adequately resource independent statutory Aboriginal and Torres Strait Islander Children's Commissioners to oversee and promote the accountability of child protection authorities in their interactions with First Nations children, families and communities, including First Nations parents with disability. These offices should be established in partnership with First Nations communities and be consistent with prevailing standards for human rights institutions.

### **Recommendation 17**

A reparation package, which includes addressing the inheritance of poverty and trauma, must be incorporated into a First Nations child protection package managed by representative First Nations community-controlled children's rights organisations. This package must include support for individual parents with disability engaged with child protection systems and community initiatives including research, education and advocacy to support First Nations child safety.

## **Casework**

The power disparity between parents and child protection services is magnified for parents with disability and compounded by historically founded distrust. These experiences are heightened for First Nations and culturally and linguistically diverse parents. Parents' feelings of distrust, fear and sometimes anger are frequently reframed as indicators of risk. They are assigned descriptors such as being 'oppositional', 'uncooperative', 'lacking insight' and 'unwilling or unable to learn or change'. Parents often perceive themselves to be 'walking on eggshells', needing to respond to caseworkers with just the right balance of concern and

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restraint. Too much concern may be characterised as anxious, oppositional or difficult; too little as passive and disinterested. In effect, the disparaging and abusive relationship many parents with disability experience in domestic or family violence relationships is often replicated and extended in their engagement with child protection services.

The literature highlights the important role parent advocates can play in promoting better communication and understanding between child protection authorities and parents, as well as ameliorating the existing power imbalance between powerful state agencies and relatively powerless parents and families. This was reiterated and reinforced by participants in this project.

Child protection casework was also critiqued as being deficit-focused. Disability, when identified, is usually responded to as a risk, attracting stigma and judgement, rather than promoting the mobilisation of supports. As discussed above, parents and children are not engaged with as a family. Rather, the response is largely focused on the children, with the implicit assumption that their interests can be understood in isolation from their relationship with their parents and family. This dichotomy and focus on children is most acutely obvious when children are removed and parents are left without support, despite policy priorities for restoration and the imposition of additional financial and social vulnerabilities resulting from child protection intervention.

The lack of training or awareness when engaging with parents with disability extends beyond departmental caseworkers to the range of service providers and professionals working with parents with disability. Intellectual disability is often conflated with risk. In situations where parents with intellectual disability require additional parenting support, there is little recognition that they, like all parents, can and do develop parenting skills, and that safety concerns are not necessarily immutable. These false assumptions, combined with the absence of tailored services or supports to assist people with intellectual disability to parent, contribute to serial removals of children.

Caseworkers frequently do not communicate safety concerns or case planning processes in ways that can be understood by parents. Parents, and particularly parents with intellectual disability, are often not informed of what the safety concerns are or how the different stages of investigation and assessment might influence their parental rights. Relatedly, parents often are not adequately informed about the implications of their engagement with child protection departments. This includes engagements that can subsequently be used as evidence in child protection proceedings such as assessments, voluntary temporary placement of their children in OOHC and entry into 'consent' agreements.

When child protection agencies bring proceedings in the Children's Court against parents, they have usually investigated the family for a period of time and therefore have developed a considerable body of evidence. Parents, on the other hand, are often only referred to lawyers shortly before, or when, court proceedings commence. Further, under-resourcing of publicly funded legal services, such as Legal Aid, Aboriginal Legal Services and community legal services, can limit or preclude parents' timely access to legal advice and advocacy.



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This results in parents not being able gather evidence to contest the removal of their children, despite the quality of evidence relied upon by child protection agencies being called into question.<sup>943</sup> In such circumstances, they are often advised that their best option is to build a case for restoration. For these reasons, and to ensure parents have equal access to justice – including their rights to be supported and have the opportunity for informed participation within the legal system – lawyers and other participants emphasised that parents should be referred to and enabled to access legal representation from the point of initial investigation.

The dual role assumed by departmental caseworkers in undertaking risk assessments and providing support to parents was identified by participants as undermining the relationship between caseworkers and parents. It was also perceived as undermining caseworkers' capacities to effectively provide support to parents.<sup>944</sup> Participants reported that caseworkers were over-worked and that the quality of casework was detrimentally impacted by a sense of 'crisis' within child protection systems.

This made it difficult for caseworkers to create the space to work in deliberate, intensive ways alongside families, despite this being identified as critical for effective practice with parents with disability, particularly parents with intellectual disability. Participants observed that this was further complicated by the strain of working in an over-burdened, under-resourced and, arguably, structurally unjust system that contributed to 'compassion fatigue' for caseworkers. Laws and policy mandating short timeframes for decision-making with respect to either restoration or permanent out-of-home placements create additional pressures not only for parents but also for caseworkers.

Participants acknowledged that there was significant complexity and skill involved in addressing the needs of both parents and children in practice, requiring knowledge and ongoing support. Staffing instability and inconsistency was identified as contributing to reduced skills and less effective support for parents. Many participants reported that child protection systems needed to address the crisis of inadequate resourcing and the sense of overwhelming demand in order for caseworkers to be in a better position to provide effective supports to families. This was particularly problematic for parents with disability, who were seen to benefit greatly from patient, longer-term support. Their observations align with the findings of many prior reviews.

Relatedly, participants noted that the shift towards the privatisation of service delivery through non-government organisations meant that the non-government sector was absorbing the challenges and risks of a child protection system in crisis, while at the same time the mandate and authority remained with 'chaotic' child protection services. The shift to non-government services was also regarded as having reduced the transparency and accountability of services for children, parents and families who are already in very vulnerable circumstances. This related to the services provided and compliance with policies around contact and connection following removal, both of which exacerbated challenges within the OOHC system.

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### **Recommendation 18**

Information regarding child protection involvement must be given in plain language and in accessible modes and formats for parents with disability, including details regarding any safety concerns and reasons for child protection intervention. This must occur from the first point of contact through to more intensive intervention, including removal, contact and measures necessary for restoration.

### **Recommendation 19**

Case files and plans must record the availability of services required to address safety concerns. They must address whether parents can access culturally and disability safe services or otherwise due to geography, existing service demand and waiting lists. They must also record the support caseworkers have provided parents to access services, and how support plans have been revised or updated in response to any emerging barriers or opportunities towards identified goals. It must be mandated that this information is considered and addressed by all child protection decision-makers in determining outcomes for children and families. This would complement legislating 'active efforts' provisions for parents with disability for whom statutory intervention is required.

### **Recommendation 20**

Disability, cultural safety and trauma-informed training must be provided to all child protection caseworkers and other professionals working with parents with disability including those engaged by child protection systems. This training must include a focus on learning to better respect, communicate with, understand and respond compassionately to, parents with disability who have contact with child protection systems. Disability advocacy groups, particularly peer or parent-led advocacy organisations, will be integral to the establishment and provision of this training. First Nations disability and children's welfare organisations must likewise be prioritised to develop and deliver training with respect to working with First Nations families.

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### **Recommendation 21**

Domestic and family violence training from a victim support perspective must be developed with disability and First Nations and culturally and linguistically diverse organisations and researchers and provided to all child protection agency caseworkers and managers. Protocols for supporting victims of domestic and family violence with compassion must also be developed with the above mentioned organisations and implemented with adequate funding to enable referral to appropriate services and provision of meaningful support.

## **Advocacy and peer support**

The literature review and participants in this research resoundingly identified the value of parent and peer advocates and peer support groups in supporting parents with disability to navigate child protection systems and address child safety concerns. Despite this, they remain under-resourced, limited geographically, restricted in the time of their involvement – for example, only providing services to parents prior to matters proceeding to court or, alternatively, only during legal proceedings – and out of reach for most parents with disabilities who become involved with child protection systems.

Advocates are beneficial for parents, child protection agencies and authorities. They can assist in directing realistic, goal-directed action towards addressing identified risks. They can support parents with disability and their families to navigate supports and have their perspectives and experiences heard across child protection decision-making, including in dispute resolution and otherwise across Children’s Court proceedings.

Effective advocates require specialised expertise in working across the child protection sector. This entails understanding laws and processes, having the skills, knowledge and relationships to navigate services and the capacity to work with and understand the needs and experiences of parents with disability. This is a role which requires a high level of expertise; excellent communication and negotiation skills; and knowledge of the intersecting issues that often underlie engagement with the child protection system, including domestic and family violence, psychosocial or mental health issues, addiction and social housing. It also requires compassion, respect and the ability to work with parents often at the most stressful points in their lives.

As participants in this project emphasised, peer advocacy and support are integral to empowering parents with disability to feel and be heard in child protection systems – spaces that continue to patronise and exclude them from both child protection decisions and policy and law reform. It was noted that greater resources and support should be dedicated to peer advocacy and peer-led support groups in recognition of parents with disability’s rights to be autonomous and to participate in child protection systems on the basis of shared and lived experience.

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### **Recommendation 22**

Funding be provided to support existing respected services such as the Intellectual Disability Rights Service and to train and develop a national network of independent disability and culturally trained parent advocates. These advocates must have a good knowledge of their care jurisdiction and parents with disability must be referred to them when child protection services commence investigations. Advocates must have an ongoing role supporting parents from the point of initial departmental investigation to beyond final orders, whether restoration or out-of-home care. First Nations advocates and services must be resourced to deliver services for First Nations families.

### **Recommendation 23**

Funding be provided to establish and support existing peer support groups and peer-led advocacy for parents with disability who have contact with child protection systems. First Nations peer support groups must be auspiced within First Nations controlled organisations.

## **Legal advice and judicial decision-making**

The literature review and participants in this project suggest that parents often enter and leave the child protection legal process feeling disempowered, misinterpreted, bewildered, humiliated and alienated.<sup>945</sup> Lawyers, magistrates, clinicians and other professionals engaged with and making decisions about parents with disability who have contact with child protection systems should, like caseworkers and other service providers, undertake training to better understand parenting with disability, in particular parenting with psychosocial or mental health and intellectual disability. See Recommendation 20 above.

The legal system – encompassing legislation, funding and support for legal representation, and legal institutions such as Children’s Courts – is embedded with ableist presumptions. These undermine parents with disability’s equal rights to legal protection against discrimination, rights to participate in legal proceedings, the right to professionals and decision-makers who have training with respect to disability and parents’ rights to be supported. This breaches Art 13 of the *CRPD*, which provides for equal access to justice. There is, however, support among legal professionals for upholding the rights of parents with disability. This is cause for some optimism, but for it to be realised significant systemic reforms are necessary.

Lawyers working in the child protection sector are generally working within public and community services that are under-staffed and under-funded. This impacts their capacity to effectively take instructions from clients with disability, which many participants noted often requires greater time. It also necessitates individual practitioners undertaking research,

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outreach and training on how to best support and adjust their practice to support individual parents on their own initiative. This lends itself to considerable variability in the nature and quality of legal support provided to parents with disability.

Participants in this project and evidence from the literature review reported the lack of any or adequate training with respect to taking instructions from clients with intellectual disability. They also noted that timeframes for child protection matters which required clients to provide information and undertake preparatory steps to respond to child protection concerns were not accommodating of the resources available. Nor did they recognise or accommodate the additional time many clients with intellectual disability need to do so.

Lawyers noted that it was often only following removal of children from their parents and the commencement of court proceedings that parents were advised of their rights or referred to legal representation. One of the noted corollaries of this was that parents were almost always advised to agree to the removal of their children and placement in OOHC. This is because by the time they receive legal advice, there is little time to compile enough evidence to successfully contest the child protection authority's case. Subsequently, lawyers worked with parents to build and adduce evidence, often in the face of obstruction from child protection authorities, to argue for restoration.

Child protection legal proceedings are largely determined on paper through affidavits and formalised assessment. These large reams of documents are generally inaccessible to parents, in particular parents with intellectual disability. Furthermore, the presentation of evidence in affidavit can orient parents and their lawyers towards answering allegations of abuse and neglect and thereby focusing on deficits rather than strengths.

Lawyers are often representing numerous clients on a list and do not have time to explain to parents the court process, what was decided, what orders were made or why, or what their options are post finalisation of the case. As discussed above, specialist independent advocates improve the experiences of parents with disability across child protection systems, including in Children's Courts; however, most parents with disability do not have the benefit of this support.

A recent study of First Nations family and community participation in child protection decision-making in New South Wales found that the combination of limited legal support and the presentation of evidence through affidavits means that many parents' voices are excluded in care cases.<sup>946</sup> The study reported that parents' affidavits largely responded to allegations rather than presenting their strengths.<sup>947</sup>

It also found that extended family members and First Nations children's organisations are usually not engaged, and therefore do not provide affidavits to provide critical context on the capacity of parents and care networks more broadly and, relatedly, the best interests of children.<sup>948</sup> Rather, narratives about risk and parenting capacity are predominantly constructed from the perspective of child protection authorities. Further, the *Family is Culture Review* noted that evidence presented by child protection authorities may be misleading or even false, emphasising the importance of adequate access to legal representation and the opportunity

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to counter this weighty but possibly unreliable ‘evidence’.<sup>949</sup> This limits decision-making with respect to how First Nations children can be looked after safely in family and community.<sup>950</sup>

Trends nationally and internationally towards short timeframes for either restoration or permanent placement in OOHC have a discriminatory impact on parents with disability, who often need longer to address child protection concerns and have less access to suitable services. While the timeframes are argued to be in the best interests of children, this narrow conceptualisation of ‘permanency’ focused on legal permanency does not equate with relational and cultural aspects that are more developmentally salient for children, and which should be considered together with safeguards for parents and children. They also fail to consider broader structural and systemic issues related to the presence of risk, or to adequately consider harms associated with removal.

The literature review and participants in this study noted that such orders often do not deliver for children and young people. Instead, they tend to perpetuate cycles of harm and intergenerational trauma that undermine lifelong wellbeing, particularly for First Nations children, parents, families and communities, who continue to suffer the long-term consequences of policies that dismember families and communities.

Despite some Children’s Courts, such as those in New South Wales, being nominally inquisitorial, they are in practice adversarial. A dispute resolution process that provides greater and real participation of parents, families and others with knowledge of parents, children and extended family is more likely to leave participants, regardless of outcome, feeling that child protection decisions are more legitimate and fairer. However, parents and families must be adequately supported prior to, during and after dispute resolution processes if significant power imbalances are to be addressed.

#### **Recommendation 24**

Legal referral and services be provided from the point of departmental investigation and be mandatory prior to parents or carers participating in formal assessments or entering into consent arrangements with the department.

#### **Recommendation 25**

Permanency law and policy move from a focus on legal permanency and short timeframes to more developmentally salient foundations that focus on preserving and promoting relational and cultural permanency, including First Nations conceptualisations of ‘permanency’ applied with respect to First Nations children. Mandatory timeframes for either restoration or permanent removal must be repealed and decision-making about realistic timeframes be made by judicial officers on the basis of the facts in individual cases and with reference to active efforts, referred to in **Recommendation 9**.

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## Accountability

Greater transparency and accountability through effective complaints and reporting are required across child protection systems. The power imbalance and vulnerability of families, and in particular families who have parents and/or children with disabilities, accentuates this need. While not a focus of this project, repeated reviews into child protection systems have found that complaints mechanisms within child protection systems, as well as regulatory agencies for OOHC service providers and ombudsmen offices, are ineffective and inadequate.

This often leaves parents who engage with child protection agencies in a context of enormous inequality, discrimination and asymmetry of power, feeling that the laws and processes are capricious, with no meaningful avenue for redress for breach of their rights. This compounds feelings of alienation, distrust, disaffection and a sense of the child protection system lacking legitimacy for parents with disability.

### **Recommendation 26**

Independent, adequately resourced and accessible oversight bodies must be established, to ensure accountability of child protection systems and build community confidence in the exercise of their powers. This must include First Nations-specific Commissioners established in partnership with First Nations communities in all jurisdictions (as noted in Recommendation 16). They must include complaints mechanisms and have the capacity to make child protection departments and non-government service providers accountable to families and communities.<sup>951</sup> Complaints mechanisms must include specialist disability support staff. Complaints by parents, extended family, service and support workers and advocates must be investigated. Complainants' confidentiality must be maintained, and complainants must be protected from reprisals.

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## Research

While this project documents and builds recommendations from promising practices, a significant limitation is the lack of investment in human rights-based approaches to addressing inequality and discrimination in child protection service provision. The scope of possible promising practice is, therefore, constrained by the same barriers that have historically undermined and continue to undermine effective inclusion. That is, the narrow scope of system design and practice limits research opportunity, and is compounded by structural limitations on research systems and investment, with questions oriented towards existing systems and government priorities, and limited investment in alternative or transformative policy and practice research. This has implications for already marginalised cohorts within child protection populations, including parents with disability and their families, and limits efforts towards transforming child protection systems and practice to better serve parents with disability.

Further, as was revealed throughout this project, the experiences of parents with disability of child protection systems extend beyond statutory child protection agencies themselves and include a range of other systems and processes that may be associated with their experiences of poverty or homelessness, experiences of violence, criminal justice system involvement, as well as interactions with health, education and family support systems, emphasising the need for a broad approach that centres the experiences and human rights of parents with disability. These broader issues emphasise the consistent theme about the need to fundamentally transform existing frameworks through a significantly broader approach to research and policy development grounded in human rights frameworks and independent of existing systems. First Nations communities have also repeatedly called for child protection system transformation, grounded in rights of self-determination and self-governance of systems and services; changes that have been embraced rhetorically, but resisted in substance<sup>952</sup>. Transforming these systems to better serve the needs of children and families, including parents with disability, as well as intersections for First Nations and culturally and linguistically diverse parents and families, requires significant research and policy development effort.

As such, we recommend significantly greater investment in child protection systems and practice, including prioritisation of research focused on the needs of parents with disability. This should include consideration of relevant intersections, such as First Nations and culturally and linguistically diverse communities. Key gaps identified through this project include but are not limited to: definitions of disability and basic data such as prevalence, as well as examinations of experiences and trajectories across child protection systems; the quality and validity of assessment tools, including the extent to which they actively explore and identify the strengths and opportunities of parents with disability and their families; the development and evaluation of family support and intensive family support services for parents with disability and their families experiencing crisis and child protection involvement; and effective practice approaches to engage with and actively support parents with disability experiencing crisis, including the provision of associated supports (housing, mental health, domestic and family



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violence, legal advocacy and representation etc); the impact, barriers and benefits of services and supports, including the NDIS, for parents with disability and their families. Importantly, parents with disability and relevant advocacy organisations should be actively involved in the development of a tailored research strategy and agenda, allowing stakeholder and lived experience input into the prioritisation of research in support of system and practice transformation and redesign. Research should similarly ensure an active leadership role for parents with disability and relevant representative and advocacy organisations, in recognition of the important role of lived experience in knowledge development and translation to policy and practice.

In addition to increased investment and prioritisation of policy and practice research, investment and improvements in data infrastructure and processes are also required to ensure visibility and accountability of child protection systems and practices with respect to engagement with, and outcomes of parents with disability and their families. First Nations communities should be empowered to develop a focused research strategy and agenda, reflecting the right to self-determination and the important role of research in effective self-governance. Community controlled organisations must play a key role in the development and implementation of First Nations research approaches and priorities, and the translation of findings to policy and practice, in accordance with their rights as Indigenous Peoples. In the absence of comprehensive research and translational efforts, reforms to improve the experiences or outcomes of parents with disability, their children, families and communities will likely falter. For foundational change to take place, a broader approach to research and policy development is necessary, one grounded in human rights frameworks and independent of existing systems. In the absence of comprehensive research and translational efforts, reforms to improve the experiences or outcomes of parents with disability, their children, families and communities will likely falter.

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### **Recommendation 27**

That priority to be given to research funding to better understand and respond to parents with disability in the context of parenting and child protection, including First Nations and culturally and linguistically diverse parents with disability. This research should be developed and undertaken with parents with disability, First Nations, culturally and linguistically diverse and disability organisations who work with and for parents with disability who have contact with child protection systems. This must include enabling First Nations led research infrastructure, strategies and priorities consistent with the rights of Indigenous peoples. Significant gaps in knowledge, identified include:

1. The prevalence, experiences and trajectories of parents with diverse disabilities with child protection agencies. This must include intersections across this cohort, such as the experiences of First Nations and culturally and linguistically diverse parents with disability, and parents with disability who live and identify across the diverse gender and sexuality spectrum.
2. The experiences of parents with disability with respect to Children's Court decision-making, outcomes and post final hearings.
3. How to assess good enough parenting using functional parenting as a measure for parents with diverse disabilities and from diverse cultural backgrounds.
4. The development and evaluation of family support and intensive family support services for parents with disability and their families, including for First Nations and culturally and linguistically diverse parents.
5. Effective practice approaches to engage with and actively support parents with disability involved with child protection systems, including the provision of associated supports (housing, mental health, domestic and family violence, etc).
6. How to design, deliver and evaluate human rights training for professionals, which enhances their knowledge of and respect for the lived experiences of parents with disability who engage with child protection systems.
7. An audit and assessment of human rights compliance of child protection agencies, with respect to parents with disability, with a focus on services and supports which enhance family preservation and restoration.
8. Child Protection institutional design to facilitate effective First Nations self-determination.
9. Child Protection institutional design to facilitate effective intersectional compliance with parents, children and families with disability's human rights

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# Appendix A: Information requested from departments

## Policy and practice

1. Specific policies that outline how the Department engages with parents with disability, including available supports
2. Practice standards for child protection workers in their work with parents with disability at various stages of the child protection process
3. Risk assessment tools that child protection workers use in their assessment of parents with disability.

## Data

1. Data disaggregating the types of disability experienced by parents
2. Information on data across the service system (notifications, substantiations, access to family support services, entry into OOHC, restoration etc.).
3. Data on key demographics, including First Nations and culturally and linguistically diverse parents with disability.
4. System data related to the experiences of parents with disability of child protection services
5. Information about the limitations of the data

## NDIS

We are also interested to understand the nature of interaction of the Department with the NDIS as it relates to parents with disability, with particular reference to how funding and support for parents with disability who have contact with child welfare systems is addressed.

## Training

Description of training offered to child protection workers on parents with disability.



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# Appendix B: Interview question guide – Parents with disability

\*\*\*These are indicative questions\*\*\*

## Parent with disability

Can you please talk about your experience with the child protection system and how this impacted on your life?

### Prompts

1. Who referred you to child protection authorities?
2. Why do you think this happened?
3. At the time you came into contact with the child protection system, were you experiencing parenting or other difficulties? Please explain these.
4. What do you think would have been the best way of resolving these difficulties?
5. What did the child protection caseworkers do?
6. Were you surprised by this?
7. Were you given sufficient information about what the caseworker was doing?
8. Were the workers supportive or otherwise?
9. After your child/children were removed or you received a court order, were you provided with support? What worked and what didn't?
10. What services or supports might have helped you to look after your child or children safely?



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# Appendix C: Interview question guide – Service providers

\*\*\*These are indicative questions\*\*\*

## Service providers

### Demographic questions

1. Type of organisation e.g. NGO, community organisation
2. Brief description of services/activities/cohorts
3. Geographic areas covered
4. Extent to which the agency is involved with disability services
5. Extent to which the agency is involved with child protection services
6. Extent to which the agency is involved with Aboriginal and Torres Strait Islander peoples. Which locations?
7. Extent to which the agency is involved with people from culturally and linguistically diverse backgrounds. Which backgrounds and which locations?

### Service and support questions

1. Are parents with disability given clear information about why child protection is intervening?
2. Are they provided with guidance on what they need to do to address concerns?
3. Do parents with disability who have contact with child protection systems get adequate support and services?
4. Who provides the support and services?
5. Have you identified gaps in services which would assist parents with disability who might be considered at risk by child welfare systems?
6. What services are successful and, in your view, why?
7. Have you found that poverty is associated with risk of removal for parents with disability? How does this manifest?
8. Is there sufficient support for poverty alleviation? What form does this take?
9. Literature suggests that parents with disability are often discriminated against? Is this claim justified?

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10. Do different kinds of disability attract different kinds of judgments e.g. mental illness, cognitive disability, physical disabilities?
  11. Peer support and mentoring are suggested as important in much of the literature. What resources and or other factors would enable peer support to be effective?
  12. What support do parents receive after children removed?
  13. How adequate is parental contact with children post removal?
  14. What hardships and or barriers do parents experience in getting their children restored?
  15. What are the 3 most significant supports that you believe would assist parents with disability who are or are at risk of contact with the child protection system to safely keep their children at home?



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# Appendix D: Interview question guide – Lawyers

\*\*\*These are indicative questions\*\*\*

## Lawyers

### Demographic questions

1. Type of organisation e.g. NGO, community organisation
2. Brief description of services/activities/cohorts
3. Geographic areas covered
4. Extent to which the agency is involved with disability services
5. Extent to which the agency is involved with child protection services
6. Extent to which the agency is involved with Aboriginal and Torres Strait Islander peoples. Which locations?
7. Extent to which the agency is involved with people from culturally and linguistically diverse backgrounds. Which backgrounds and which locations?

### Legal support questions

1. Are parents with disability given clear information about why child protection is intervening?
2. How does a parent's disability impact on risk assessment by statutory officers?
3. Do parents with disability who have contact with child protection systems get adequate legal advice and representation?
4. Is a parent's disability relevant to the way you litigate child protection cases? If so how?
5. In your experience has law reform, such as mandatory timeframes for permanency "decision-making, impacted your clients?
6. Are there other dispute resolution systems which you think could improve how child welfare disputes, involving parents with disability, could be addressed?
7. How effective are affidavits for enabling parents with disability to participate in child protection decision-making?
8. What opportunities and barriers do alternative dispute resolution forums offer for parents with disability in child protection decision-making?
9. Is the history of discrimination against parents with disability relevant to your contemporary child protection work?

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10. What challenges do you think disabled parents face in terms of participating in child protection decision-making, including when giving evidence or serving as a witness in contested hearings?
  11. Have you found that poverty is associated with risk of removal for parents with disability? How does this manifest?
  12. Literature suggests that parents with disability are often discriminated against? Is this claim justified?
  13. Do different kinds of disability attract different kinds of judgments e.g. mental illness, cognitive disability, physical disabilities?
  14. Peer support and mentoring are suggested as important in much of the literature. What resources and or other factors would enable peer support to be effective?
  15. What support do parents receive after children removed?
  16. How adequate is parental contact with children post removal?
  17. What hardships and or barriers do parents experience in getting their children restored?
  18. What are the 3 most significant supports that you believe would assist parents with disability who are or are at risk of contact with the child protection system to safely keep their children at home?

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# Appendix E: Interview question guide – Children’s Court clinicians

\*\*\*These are indicative questions\*\*\*

## Court clinicians

1. How do Children’s Court Clinicians approach assessments involving parents with disability?
  - a. Are you informed prior to commencing assessments?
  - b. How does/might this change assessment processes?
  - c. What are the key areas of inquiry for parents with disability and how are they addressed?
2. Do reports with respect to parents to the Court by contract professionals provide sufficient information for decision-making?
3. Are risk assessments taken? What is the form of these? Who undertakes risk assessments?
4. Do risk assessments include risks to the child if removal is recommended by clinicians?
5. What is required to ensure that the Children’s Court has sufficient resources and expertise in the area of parents with disability?
6. What are the 3 most significant supports that you believe would assist parents with disability to avoid having their children removed or to have them safely restored?
7. In your experience, how can the experiences of parents with disability of child protection systems be improved?



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# Endnotes

- 1 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 2 A detailed description of the methods and methodologies and discussion of the limitations of this research can be found in Chapter 1 of the full report.
- 3 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 5.
- 4 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 12.
- 5 See eg Ella Callow & Jean Jacob, 'Parental disability in child welfare systems and dependency courts: Preliminary research on the prevalence of the population', (2014), vol 93 (6), *Child Welfare*, pp 73–92, p 89; Callie Westad & David McConnell, 'Child welfare involvement of mothers with mental health issues', (2012), vol 48, *Community Mental Health Journal*, pp 29–37, p 31; Melissa O'Donnell, Miriam Maclean, Scott Sims, Vera Morgan, Helen Leonard & Fiona J Stanley, 'Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk', (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1176.
- 6 See eg National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012, pp 77–79.
- 7 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advance online), pp 1–28, p 14.
- 8 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advanced online), pp 1–28, p 14.
- 9 See Victorian Legal Aid, *Achieving safe and certain homes for children*, Report, 2020, p 14.
- 10 See eg Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189, p 179; Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 175–176.
- 11 NSW is the only jurisdiction which includes a legislative prohibition in child protection legislation on discrimination based on disability. However, as discussed on p 112 of this report it is limited by being framed in the negative.
- 12 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, pp 10–11; James Rice & Hanna Sigurjónsdóttir, 'Notifying neglect: Child protection as an application of bureaucratic power against marginalised parents', (2018), vol 77 (2), *Human Organisation*, pp 112–121.
- 13 For greater discussion of fieldwork participants' perspectives and experiences of this see Chapter 10 of the full report. See also David McConnell & Gwynnyth Llewellyn, 'Disability and discrimination in statutory child protection proceedings', (2000), vol 15 (6), *Disability & Society*, pp 883–895, p 886; Tim Booth & Wendy Booth, 'Findings from a court study of care proceedings involving parents with intellectual disabilities', (2004), vol 1 (3/4), *Journal of Policy and Practice in Intellectual Disabilities*, pp 179–181, p 181; Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2007), vol 36, *British Journal of Learning Disabilities*, pp 134–139, p 135.

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- 14 See eg Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 25; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, 7; Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 176.
- 15 See eg Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 175; David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 287; Phillip Swain & Nadine Cameron, "'Good enough parenting": Parental disability and child protection', (2003), vol 18 (2), *Disability & Society*, pp 165–177.
- 16 See Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 549; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 468.
- 17 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 2; Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic, or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 67.
- 18 See eg Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 37.
- 19 See eg Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 426; Melanie Bournsnel, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 100; Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability & Society*, pp 305–321, p 312; Elizabeth Ely, Chris Wilson & Emily Phillips, 'Issues around service provision for parents with an intellectual disability', (1998), *Interaction: The Australian Magazine on Intellectual Disability*, pp 7–14, p 11.
- 20 See e.g. Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 11.
- 21 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 16.
- 22 See eg Jacyntha Krakouer, Melissa Savaglio, Karinda Taylor & Helen Skouteris, 'Community-based models of alcohol and other drug support for First Nations peoples in Australia: A systematic review', (2022), *Drug and Alcohol Review* (online), <<https://doi.org/10.1111/dar.13477>>; Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 3; National People with Disabilities and Carer Council, *Shut out: The experience of people with disabilities and their families in Australia*, Report, 2009, p 58; Paul Mortimer & Tadgh McMahon, 'Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence', Occasional Paper 2, Settlement Services International, October 2018.
- 23 See eg David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 5 (13), *International Journal of Social Welfare*, pp 230–39, 234.

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- 24 See Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020, pp 16, 59–60; Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence. Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, p 49.
- 25 See eg Standing Committee on Social Issues, Parliament of New South Wales, *Care and support: Final report on child protection services*, Report 29, December 2002, p 145; Standing Committee on Social Issues, Parliament of New South Wales, *Making it happen: Final report on disability services*, Report 28, November 2002, p 128. ACT Government Office for Disability, *Towards disability justice for the ACT: Summary of research and consultations*, Report, 2019, 65; NSW Committee on Community Services, *Support for new parents and babies in New South Wales*, Report, 2018, pp 29–30; Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020, pp 16, 59–60; Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence. Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, p 49.
- 26 See eg ACT Government Office for Disability, *Towards disability justice for the ACT: Summary of research and consultations*, Report, 2019, p 65. Fieldwork findings relating to parents' experiences of the NDIS are discussed in Chapters 8 and 9.
- 27 See eg See Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214.
- 28 A critical overview of the literature on the introduction and impact of 'legal permanency' provisions across Australia is provided in Chapter 3. See Chapter 10 for fieldwork participants' experiences and perspectives of the discriminatory impact of these provisions.
- 29 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court-ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 42.
- 30 Heikki Hiilamo & Miia Saarikallio-Torp, 'Child custody placement outcomes for mothers', (2011), vol 33 (9), *Children and Youth Services Review*, pp 1489–1496, p 1495.
- 31 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So, tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214, p 209.
- 32 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So, tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214, pp 209.
- 33 For a discussion of current funding shortfalls for advocacy services in Australia, despite increasing recognition of their importance and service demand, see Chapter 6 of the full report.
- 34 See Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 8; Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 44.
- 35 Pooja Sawrikar & Ilan Katz, "'Normalising the novel': How is culture addressed in child protection work in ethnic minority families in Australia?", (2014), vol 40 (1), *Journal of Social Service Research*, pp 39–61, p 57.
- 36 See Pooja Sawrikar, 'Child protection, domestic violence and ethnic minorities: Narrative results from a mixed methods study in Australia', (2019), vol 14 (12) *PLOS One*, e0226031, p 9.

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- 37 See eg Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 4; David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 282; Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 308.
- 38 See eg NSW Legislative Standing Committee on Social Issues, *Care and support: Final report on child protection services*, Report 29, December 2002, p 129; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 44.
- 39 See eg Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitors' experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability & Society*, pp 284–298, p 292; Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 98.
- 40 Gloria Filax & Dena Taylor, 'Introduction' in Gloria Filax & Dena Taylor (eds), *Disabled mothers: Stories and scholarship by and about mothers with disabilities*, Demeter Press, 2014, pp 1–368 pp 3–4.
- 41 Gloria Filax & Dena Taylor, 'Introduction' in Gloria Filax & Dena Taylor (eds), *Disabled mothers: Stories and scholarship by and about mothers with disabilities*, Demeter Press, 2014, pp 1–368 pp 3–4; see also People with Disability Australia, PWDA language guide: A guide to language about disability, August 2021.
- 42 Gloria Filax & Dena Taylor, 'Introduction' in Gloria Filax & Dena Taylor (eds), *Disabled mothers: Stories and scholarship by and about mothers with disabilities*, Demeter Press, 2014, pp 1–368, pp 4–6. See also Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitors' experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal proceedings', (2015), vol 30 (2), *Disability and Society* pp 294–295.
- 43 First Peoples Disability Network (Australia), *Living our ways: Community-driven Aboriginal and Torres Strait Islander disability research program*, Report, First Peoples Disability Network Australia, April 2020, p 27.
- 44 First Peoples Disability Network (Australia), *Living our ways: Community-driven Aboriginal and Torres Strait Islander disability research program*, Report, First Peoples Disability Network Australia, April 2020, p 28; JA King, M Brough & M Knox, 'Negotiating disability and colonisation: The lived experience of Indigenous Australians with a disability', (2014), vol 29 (5), *Disability & Society*, pp 738–750, p 741; Lavonna Lovern, 'Indigenous concepts of difference: An alternative to western disability labeling', (2021), vol 41 (4), *Disability Studies Quarterly* (advance).
- 45 Gloria Filax & Dena Taylor, 'Introduction' in Gloria Filax & Dena Taylor (eds), *Disabled mothers: Stories and scholarship by and about mothers with disabilities*, Demeter Press, 2014, pp 1–368, p 6.
- 46 See Cynthia Lewiecki-Wilson & Jen Cellio, 'Introduction: On liminality and cultural embodiment', in Cynthia Lewiecki-Wilson & Jen Cellio (eds), *Disability and mothering: Liminal spaces of embodied knowledge*, Syracuse University Press, 2011, pp 1–348, p 11.
- 47 Susan Flynn, 'Critical disability studies and the affirmative non-tragedy model: Presenting a theoretical frame for disability and child protection', (2022), *Disability and Society* (advance), pp 1–22, p 9.
- 48 Susan Flynn, 'Critical disability studies and the affirmative non-tragedy model: Presenting a theoretical frame for disability and child protection', (2022), *Disability and Society* (advance), pp 1–22, p 9.



- 
- 49 Susan Flynn, 'Critical disability studies and the affirmative non-tragedy model: Presenting a theoretical frame for disability and child protection', (2022), *Disability and Society* (advance), pp 1–22 p 9.
- 50 Tom Shakespeare, 'The social model of disability', in Lennard J Davis (ed), *The disability studies reader*, Routledge, 5<sup>th</sup> ed, 2017, pp 1–570, p 195.
- 51 Tom Shakespeare, 'The social model of disability', in Lennard J Davis (ed), *The disability studies reader*, Routledge, 5<sup>th</sup> ed, 2017, pp 1–570, pp 195, 197; Helen Meekosha & Russell Shuttleworth, 'What's so "critical" about critical disability studies?', in Lennard J Davis (ed), *The disability studies reader*, Routledge, 5<sup>th</sup> ed, 2017, pp 175–194, pp 175, 177.
- 52 Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 39.
- 53 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advance online Access), pp 1–28
- 54 See People with Disability Australia, *PWDA language guide: A guide to language about disability*, August 2021, p 5; Anna Lawson & Angharad Beckett, 'The social and human rights models of disability: Towards a complementary thesis', (2021), vol 25 (2), *The International Journal of Human Rights*, pp 348–379.
- 55 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 5(2) and 12.
- 56 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 5(3).
- 57 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 23(1) and 2.
- 58 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 9.
- 59 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 23(4).
- 60 Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 30.
- 61 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 62 See Terri Libesman, *Decolonising Indigenous child welfare: Comparative perspectives*, Routledge, 2014, ch 2.
- 63 See Linda Tuhiwai Smith, *Decolonizing methodologies: Research and Indigenous peoples*, Zed Books, 2012, p ix; Linda Tuhiwai Smith (ed), *Handbook of critical and Indigenous methodologies*, Sage Publications, 2008.
- 64 Mary Allen, 'Violence and voice: Using a feminist constructivist grounded theory to explore women's resistance to abuse', (2011), vol 11 (1), *Qualitative Research*, pp 23–45.
- 65 Anselm Strauss & Juliet Corbin, *Basics of qualitative research: Techniques and procedures for developing grounded theory*, Sage, 1998.
- 66 Barney Glaser & Anselm Strauss, *Grounded theory: Sociological methods*, McGraw-Hill, 1978.

- 
- 67 Anselm Strauss & Juliet Corbin, *Basics of qualitative research: Techniques and procedures for developing grounded theory*, Sage, 1998.
- 68 Kathy Charmaz, *Constructing grounded theory*, Sage, 2006.
- 69 AIATSIS code of ethics for Aboriginal and Torres Strait Islander research, AIATSIS, 2020, pp 1–20.
- 70 Michael Patton, *Qualitative research & evaluation methods: Integrating theory and practice*, Sage, 2015.
- 71 K Charmaz, 'The power of constructivist grounded theory for critical inquiry', (2017), vol 23(1), *Qualitative Inquiry*, pp 34–45, p 35.
- 72 Kathy Charmaz, 'Grounded theory: Objectivist and constructivist methods', in N Denzin (ed), *Strategies of qualitative inquiry*, Sage, 2003, pp 1–448, p 258.
- 73 K Charmaz, 'The power of constructivist grounded theory for critical inquiry', (2017), vol 23(1), *Qualitative Inquiry*, pp 34–45, p 40.
- 74 Hanna Sigurjónsdóttir & James Rice, 'The weight of history: Child protection and parenting with a disability in 20<sup>th</sup> century Iceland', (2020), vol 25 (2), *The History of the Family*, pp 214–229.
- 75 Jaclyn Chambers & G Allen Ratcliff, 'Structural competency in child welfare: Opportunities and applications for addressing disparities and stigma', (2019), vol 46 (4), *Journal of Sociology and Social Welfare*, pp 51–75, p 54.
- 76 See eg IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities (SIRG), 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 302; David Hollinsworth, 'Decolonising Indigenous disability in Australia', (2013), vol 28 (5), *Disability & Society*, pp 601–615, p 603.
- 77 For a recent exception within Australian scholarship, see Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189.
- 78 See eg Jatinda Kaur & Nina Atkin, 'Nexus between domestic violence and child protection: Multidimensional forms of oppression impacting on migrant and refugee women in Australia', (2018), vol 71 (2), *Australian Social Work*, pp 238–248; Pooja Sawrikar, 'Child protection, domestic violence and ethnic minorities: Narrative results from a mixed methods study in Australia', (2019), vol 14 (12), *PLOS One*, e0226031, p 1; Pooja Sawrikar & Ilan Katz, "'Normalizing the novel": How is culture addressed in child protection work with ethnic-minority families in Australia?', (2014), vol 40 (1), *Journal of Social Service Research*, pp 39–61. For an exception in the Australian context, see Brian Cooper, *Tread gently: The voice of parents who have had an encounter with child protection services in Australia from CALD/NESB backgrounds with disability or have a child with disability*, National Ethnic Disability Alliance, nd, <[https://www.academia.edu/12682355/Tread\\_Gently\\_Disability\\_Ethnicity\\_and\\_Child\\_Protection\\_Parents\\_Perspective](https://www.academia.edu/12682355/Tread_Gently_Disability_Ethnicity_and_Child_Protection_Parents_Perspective)>. For an exception in Canadian scholarship, see Laura Pacheco & David McConnell, 'Love and resistance of mothers with intellectual disability from ethnocultural communities in Canada', (2017), vol 30, *Journal of Applied Research in Intellectual Disabilities*, pp 501–510.
- 79 See eg BJ Newton, 'Aboriginal parents' experiences of having their children removed by statutory child protection services', (2020), vol 25, *Child & Family Social Work*, pp 814–822, Mary Ivec, Valerie Braithwaite & Nathan Harris, "'Resetting the relationship" in Indigenous child protection: Public hope and private reality', (2012), vol 24 (1), *Law & Policy*, pp 80–103. For a recent exception, see Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189.

- 
- 80 See eg Michelle Fitts & Karen Soldatic, 'Who's caring for whom? Disabled Indigenous carers' experiences of Australia's infrastructures of social protection', (2020), *Journal of Family Studies* (advance), pp 477–492; J King, 'Negotiating disability and colonisation: The lived experience of Indigenous Australians with a disability', (2014), vol 29 (5), *Disability & Society*, pp 738–750; Paul Mortimer & Tadgh McMahon, *Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence*, Occasional Paper 2, Settlement Services International, October 2018; Qingsheng Zhou, 'Accessing disability services by people from culturally and linguistically diverse backgrounds in Australia', (2016), vol 38, *Disability and Rehabilitation*, pp 844–852.
- 81 David Hollinsworth, 'Decolonising Indigenous disability in Australia', (2013), vol 28 (5), *Disability & Society*, pp 601–615, p 602.
- 82 Julie Maybee, 'The personal is political: Mothering at the intersection of acquired disability, gender and race', in Cynthia Lewiecki-Wilson & Jen Cellio (eds), *Disability and mothering: Liminal spaces of embodied knowledge*, Syracuse University Press, 2011, pp 1–356, pp 255–56.
- 83 Paul Bywaters, Geraldine Brady, Tim Sparks & Elizabeth Bos, 'Inequalities in child welfare intervention rates at the intersection of deprivation and identity', (2016), vol 21, *Child and Family Social Work*, pp 452–463, p 453; Jaclyn Chambers & G Allen Ratcliff, 'Structural competency in child welfare: Opportunities and applications for addressing disparities and stigma', (2019), vol 46 (4), *Journal of Sociology & Social Welfare*, pp 51–75, p 54.
- 84 See Catherine Liddle, Paul Gray, John Burton, Claire Prideaux, Nicolette Solomon, Joanne Cackett, May Jones, Alex Bhathal, Tatiana Corrales, Arno Parolini, Wei Wu Tan & Clare Tilbury, *The Family Matters report 2021*, SNAICC, 2021, pp 67–68; Oranga Tamariki, *Factors associated with disparities experienced by Tamariki Maori in the care and protection system*, 2020.
- 85 Pooja Sawriker & Ilan Katz, 'Recommendations for improving cultural competency when working with ethnic minority families in child protection systems in Australia', (2014), vol 31 (5), *Child and Adolescent Social Work Journal*, pp 393–417, p 404.
- 86 See eg Catherine Liddle, Paul Gray, John Burton, Claire Prideaux, Nicolette Solomon, Joanne Cackett, May Jones, Alex Bhathal, Tatiana Corrales, Arno Parolini, Wei Wu Tan & Clare Tilbury, *The Family Matters report 2021*, SNAICC, 2021, pp 67–68; Kate Morris, Will Mason, Paul Bywaters, Brid Featherstone, Brigid Daniel, Geraldine Brady, Lisa Bunting, Jade Hooper, Nughmana Mirza, Jonathan Scourfield & Calum Webb, 'Social work, poverty and child welfare interventions', (2018), vol 23, *Child & Family Social Work*, pp 364–372; Paul Bywaters, Josephine Kwhali, Geraldine Brady, Tim Sparks & Elizabeth Bos, 'Out of sight, out of mind: Ethnic inequalities in child protection and out-of-home care intervention rates', (2017), vol 47, *British Journal of Social Work*, pp 1884–1902, p 1894.
- 87 See Emily Keddell & Gabrielle Davie, 'Inequalities and child protection system contact in Aotearoa New Zealand: Developing a framework and research agenda', (2018), vol 7, *Social Sciences*, pp 1–8.
- 88 Paul Bywaters, Geraldine Brady, Tim Sparks & Elizabeth Bos, 'Inequalities in child welfare intervention rates: The intersection of deprivation and identity', (2016), vol 21, *Child and Family Social Work*, pp 452–463, p 461; Catherine Liddle, Paul Gray, John Burton, Claire Prideaux, Nicolette Solomon, Joanne Cackett, May Jones, Alex Bhathal, Tatiana Corrales, Arno Parolini, Wei Wu Tan & Clare Tilbury, *The Family Matters report 2021*, SNAICC, 2021, p 67; Alan Dettlaff, Kristen Weber, Maya Pendleton, Reiko Boyd, Bill Bettencourt & Leonard Burton, 'It is not a broken system, it is a system that needs to be broken: The UPEND movement to abolish the child welfare system', (2020), vol 14 (5), *Journal of Public Child Welfare*, pp 500–517, p 507; Emily Keddell & Gabrielle Davie, 'Inequalities and child protection system contact in Aotearoa New Zealand: Developing a framework and research agenda', (2018), vol 7, *Social Sciences*, pp 1–8
- 89 See eg Paul Bywaters, Geraldine Brady, Tim Sparks & Elizabeth Bos, 'Inequalities in child welfare intervention rates: The intersection of deprivation and identity', (2016), vol 21, *Child and Family Social Work*, pp 452–463, pp 455–457.

- 
- 90 See Laura Pacecho, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021) *Child Maltreatment* (advance) 1, 4; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504 p 453.
- 91 See Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 453.
- 92 See Helen James, 'Promoting effective working with parents with learning disabilities', (2004), vol 13 (1), *Child Abuse Review*, pp 31–41, p 39; Sue McGaw, Tamara Scully & Colin Pritchard, 'Predicting the unpredictable? Identifying high-risk versus low-risk parents with intellectual disabilities', (2010), vol 34 (9), *Child Abuse and Neglect*, pp 699–710, p 705.
- 93 See Robin Mason, Janice Du Mont, Maeve Paterson & Ilene Hyman, 'Experiences of child protection workers in collaborating with adult mental health providers: An explanatory study from Ontario, Canada', (2018), vol 86, *Children and Youth Services Review*, pp 271–276, p 272; Callie Westad & David McConnell, 'Child welfare involvement of mothers with mental health issues', (2012), vol 48 (1), *Community Mental Health Journal*, pp 29–37, p 33.
- 94 See Rachel Mayes & Gwynnyth Llewellyn, 'Mothering differently: Narratives of mothers with intellectual disability whose children have been compulsorily removed', (2012), vol 37 (2), *Journal of Intellectual and Developmental Disability*, pp 121–130, p 125.
- 95 See Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, 'A case record review of termination of parental rights cases involving parents with a disability', (2017), vol 79, *Children and Youth Services Review*, pp 399–407, p 401.
- 96 Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 66; Cynthia Lewiecki-Wilson & Jen Cellio, 'Introduction: On liminality and cultural embodiment', in Cynthia Lewiecki-Wilson & Jen Cellio (eds), *Disability and mothering: Liminal spaces of embodied knowledge*, Syracuse University Press, 2011, pp 1–370, p 3.
- 97 Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 66.
- 98 Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 67.
- 99 Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 67.
- 100 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 20.
- 101 Jenny Morris & Michelle Wates, *Supporting disabled parents and parents with additional support needs*, Research Report, The Social Care Institute for Excellence, 2006, p 39.
- 102 Jenny Morris & Michelle Wates, *Supporting disabled parents and parents with additional support needs*, Research Report, The Social Care Institute for Excellence, 2006, p 39; Rachel Mayes & Hanna Sigurjónsdóttir, 'Becoming a mother – becoming a father', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, Wiley-Blackwell, 2010, pp 17–33, p 17.
- 103 For exceptions see Corbett Joan O'Toole & Vicky D'Aoust, 'Fit for motherhood: Towards a recognition of multiplicity in disabled lesbian mothers', (2003), vol 20 (2), *Disability Studies Quarterly*, pp 145–160; Vicky D'Aoust, 'Competency, autonomy and choice: On being a lesbian and having disabilities', (1994), vol 7, *Canadian Journal of Women and the Law*, pp 564–578.
- 104 Brian Wharf, *Toward First Nation control of child welfare: A review of emerging developments in BC*, University of Victoria, 2<sup>nd</sup> ed, 1989, p 54; Wendy Hermeston, 'Safe, protected ... connected? The best interests of Aboriginal children and permanency planning in the NSW care and protection system', PhD Thesis, University of Technology, Sydney, 2022.

- 
- 105 Paul Bywaters, Geraldine Brady, Tim Sparks & Elizabeth Bos, 'Inequalities in child welfare intervention rates: The intersection of deprivation and identity', (2016), vol 21, *Child and Family Social Work*, pp 452–463, p 457.
- 106 Paul Bywaters, Josephine Kwhali, Geraldine Brady, Tim Sparks, Elizabeth Bos, 'Out of sight, out of mind: Ethnic inequalities in child protection and out-of-home care intervention', (2017), vol 47, *British Journal of Social Work*, pp 1884–1902, pp 1887–1888.
- 107 See Nicola Wing Man, Catherine Wade & Gwynnyth Llewellyn, 'Prevalence of parents with intellectual disability in Australia', (2017), vol 42 (2), *Journal of Intellectual & Developmental Disability*, pp 173–179; National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012, p 42; Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, 'A case record review of termination of parental rights cases involving parents with a disability', (2017), vol 79, *Children and Youth Services Review*, pp 399–407, p 390; Carolyn Frohmader, *Parenting issues for women with disabilities in Australia*, Policy Paper, Women with Disabilities Australia, 2009, p 21.
- 108 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 5; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 7.
- 109 Sharyn DeZelar & Elizabeth Lightfoot, 'Who refers parents with intellectual disabilities to the child welfare system? An analysis of referral sources and substantiation', (2020), vol 119, *Children and Youth Services Review*, 105639, p 3; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 5.
- 110 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 7.
- 111 See Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 174.
- 112 See eg Ella Callow & Jean Jacob, 'Parental disability in child welfare systems and dependency courts: Preliminary research on the prevalence of the population', (2014), vol 83 (6), *Child Welfare*, pp 73–92; Sharyn DeZelar & Elizabeth Lightfoot, 'The use of parental disability as a removal reason for children in foster care in the US', (2018), vol 86, *Children and Youth Services Review*, pp 128–134.
- 113 See eg Aboriginal Disability Network of NSW, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 1; Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 174–176.
- 114 See eg Australian Bureau of Statistics 'Aboriginal and Torres Strait Islander People with Disability Australian Bureau of Statistics (website), 11 June 2021, <<https://www.abs.gov.au/articles/aboriginal-and-torres-strait-islander-people-disability>>; Australian Institute of Health and Welfare, 'Disability support for Indigenous Australians' (website), 16 September 2021, <<https://www.aihw.gov.au/reports/australias-welfare/disability-support-for-indigenous-australians>>.
- 115 See Nicola Wing Man, Catherine Wade & Gwynnyth Llewellyn, 'Prevalence of parents with intellectual disability in Australia', (2017), vol 42 (2), *Journal of Intellectual & Developmental Disability*, pp 173–179, p 175.
- 116 See Nicola Wing Man, Catherine Wade & Gwynnyth Llewellyn, 'Prevalence of parents with intellectual disability in Australia', (2017), vol 42 (2), *Journal of Intellectual & Developmental Disability*, pp 173–179, pp 175–176.
- 117 See Nicola Wing Man, Catherine Wade & Gwynnyth Llewellyn, 'Prevalence of parents with intellectual disability in Australia', (2017), vol 42 (2), *Journal of Intellectual & Developmental Disability*, pp 173–179, p 176.

- 
- 118 See Australian Bureau of Statistics, *Disability, Aging and Carers Australia: Summary of Findings Methodology* (Webpage), 24 October 2019, <<https://www.abs.gov.au/methodologies/disability-ageing-and-carers-australia-summary-findings/2018>>; First Peoples Disability Network (Australia), *Living our ways: Community-driven Aboriginal and Torres Strait Islander disability research program*, Report, April 2020, p 64.
- 119 See Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers (SDAC 18): Household Survey Questionnaire*, <<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/2018/4430.0%20-%20Household%20Questionnaire.xlsx>>.
- 120 Productivity Commission, *Report on government services 2020–2021*, (2022), Part F, Section 16, <<https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>>.
- 121 Productivity Commission, *Report on government services 2020–2021*, (2022), Part F, Section 16, <<https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>>.
- 122 Productivity Commission, *Report on government services 2020–2021*, (2022), Part F, Section 16, <<https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>>.
- 123 First Peoples Disability Network (Australia), *Living our ways: Community-driven Aboriginal and Torres Strait Islander disability research program*, April 2020, pp 27, 117.
- 124 Terri Libesman & Kylie Cripps, 'Aboriginal and Torres Strait Islander children's welfare and well-being', in Lisa Young & Geoffrey Monahan (eds), *Children and the law in Australia*, LexisNexis, 2016, pp 307–336.
- 125 See SNAICC, *The Aboriginal and Torres Strait Islander Placement Principle: A guide to support and implementation*, SNAICC, 2019, p 3.
- 126 See Catherine Liddle, Paul Gray, John Burton, Claire Prideaux, Nicolette Solomon, Joanne Cackett, May Jones, Alex Bhathal, Tatiana Corrales, Arno Parolini, Wei Wu Tan & Clare Tilbury, *The Family Matters report 2021*, Report, SNAICC, 2021, p 17.
- 127 See Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189.
- 128 See generally Fiona Arney, Marie Iannos, Alwin Chong, Stewart McDougall & Samantha Parkinson, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations', CFCA Paper No 34, Australian Institute of Family Studies, August 2015.
- 129 Paul Gray, 'Beyond placement: Realising the promise of the Aboriginal and Torres Strait Islander Child Placement Principle', (2021), vol 33 (10), *Judicial Officers' Bulletin*, pp 99–106, p 100; Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p xiii.
- 130 See eg *National Framework for Protecting Australia's Children – Fourth Three Year Action Plan 2018–2020*, Department of Social Services, 2018; Australian Institute of Health and Welfare, *The Aboriginal and Torres Strait Islander Child Placement Principle indicators* (Web Report), 2021, <<https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/contents/about>>.
- 131 Sharon Burke & Marina Paxman, *Children and young people from non-English-speaking backgrounds in out of home care in New South Wales*, Report, NSW Department of Community Services, 2008, p 2.
- 132 Manjula Waniganayake, Fay Hadley, Matt Johnson, Jacqueline Hayden, Katey De Gioia, Tadgh McMahon, Kathy Karatasas & Paul Mortimer, *Cultural matching in out of home care: Maintaining and supporting cultural identity among children from culturally and linguistically diverse backgrounds in foster care*, Final Report, Macquarie University, 2017, p 9.

- 
- 133 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 134 National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012.
- 135 See eg Carolyn Frohmader, *Parenting issues for women with disabilities in Australia*, Policy Paper, Women with Disabilities Australia, 2009, p 13.
- 136 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 12.
- 137 Ella Callow & Jean Jacob, 'Parental disability in child welfare systems and dependency courts: Preliminary research on the prevalence of the population', (2014), vol 93 (6), *Child Welfare*, pp 73–92, p 89.
- 138 Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, 'A case record review of termination of parental rights cases involving parents with a disability', (2017), vol 79, *Children and Youth Services Review*, pp 399–407; Sandra Azar & Kristen Read, 'Parental cognitive disabilities and child protection services: The need for human capacity building', (2009), vol 36 (4), *Journal of Sociology and Social Welfare*, pp 127–151, p 140.
- 139 Melanie Bournsnel, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 98.
- 140 Aboriginal Disability Network of NSW, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 11. See also Karen Soldatic, 'Postcolonial reproductions: Disability, indigeneity and the formation of the white masculine settler state of Australia' (2015), vol 21 (1), *Social Identities*, pp 53–68, p 57.
- 141 Sandra Azar & Kristen Read, 'Parental cognitive disabilities and child protection services: The need for human capacity building', (2009), vol 36 (4), *Journal of Sociology and Social Welfare*, pp 127–151, p 140.
- 142 Rebecca Barton, Angela Dew, Lee Ryall, Heather Jensen, Kerry Taylor, Michelle Lincoln, John Gilroy, Vicki Flood & Kim McRae, 'Working with Anangu (Aboriginal people) with disabilities from remote central Australia. Navigating multiple expectations: "Sandpaper and polyfilla"', (2022), *Research and Practice in Intellectual and Developmental Disabilities* (advance), pp 1–16, p 7.
- 143 See eg Carlo Schuengel, Sabina Kef, Marja W Hodes & Marieke Meppelder, 'Parents with intellectual disability', (2017), vol 15, *Current Opinion in Psychology*, pp 50–54, p 50; Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 545; IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 297.
- 144 James Rice & Hanna Sigurjónsdóttir, 'Notifying neglect: Child protection as an application of bureaucratic power against marginalized parents', (2018), vol 77 (2), *Human Organization*, pp 112–121, p 114.
- 145 See eg National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012, pp 77–79.
- 146 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advance online), pp 1–28, p 14.
- 147 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advanced online), pp 1–28, p 14.

- 
- 148 Sharyn DeZelar & Elizabeth Lightfoot, 'Use of parental disability as a removal reason for children in foster care in the US', (2018), vol 86, *Children and Youth Services Review*, pp 128–134, p 133.
- 149 Sharyn DeZelar & Elizabeth Lightfoot, 'Use of parental disability as a removal reason for children in foster care in the US', (2018), vol 86, *Children and Youth Services Review*, pp 128–134, p 133.
- 150 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 23.
- 151 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 37; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 435, 471, 502.
- 152 Eleanor Murphy & Anna Fairlough, 'The successful reunification of abused and neglected looked after children and their families: A case file audit', (2015), vol 25 (8) *British Journal of Social Work*, pp 2261–2280, pp 2270–2272.
- 153 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 27.
- 154 See Victorian Legal Aid, *Achieving safe and certain homes for children*, Report, 2020, p 14.
- 155 See eg Daphne Glaun & Patricia Brown, 'Motherhood, intellectual disability and child protection: Characteristics of a court sample', (1999), vol 24 (1), *Journal of Intellectual & Developmental Disability*, pp 95–105; David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299; Gwynnyth Llewellyn, David McConnell & Luisa Ferronato, 'Prevalence and outcomes for parents with disabilities and their children in an Australian court sample', (2003), vol 27 (3), *Child Abuse and Neglect*, pp 235–251; Rosemary Sheehan & Greg Levine, 'Parents with mental illness: Decision-making in Australian Children's Court cases involving parents with mental health problems' (2005), vol 27 (1), *Journal of Social Welfare and Family Law*, pp 17–30; Phillip Swain & Nadine Cameron, "'Good enough parenting": Parental disability and child protection', (2003), vol 18 (2), *Disability & Society*, pp 165–177.
- 156 Gwynnyth Llewellyn, David McConnell & Luisa Ferronato, 'Prevalence and outcomes for parents with disabilities and their children in an Australian court sample', (2003), vol 27 (3), *Child Abuse and Neglect*, pp 235–251, p 239.
- 157 Gwynnyth Llewellyn, David McConnell & Luisa Ferronato, 'Prevalence and outcomes for parents with disabilities and their children in an Australian court sample', (2003), vol 27 (3), *Child Abuse and Neglect*, pp 235–251, p 239.
- 158 Gwynnyth Llewellyn, David McConnell & Luisa Ferronato, 'Prevalence and outcomes for parents with disabilities and their children in an Australian court sample', (2003), vol 27 (3), *Child Abuse and Neglect*, p 235–251, p 239.
- 159 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Report, University of New South Wales, 2014.
- 160 Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189.
- 161 Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189, p 179.
- 162 Susan Collings, Angela Dew, T Gordon, Margaret Spencer & Leanne Dowse, 'Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system', (2018), vol 12 (2), *Journal of Public Child Welfare*, pp 170–189, p 182.



- 
- 163 Phillip Swain & Nadine Cameron, “Good enough parenting”: Parental disability and child protection’, (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 168.
- 164 Phillip Swain & Nadine Cameron, “Good enough parenting”: Parental disability and child protection’, (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 168.
- 165 Phillip Swain & Nadine Cameron, “Good enough parenting”: Parental disability and child protection’, (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 169.
- 166 Phillip Swain & Nadine Cameron, “Good enough parenting”: Parental disability and child protection’, (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 169.
- 167 Rosemary Sheehan & Greg Levine, ‘Parents with mental illness: Decision-making in Australian Children’s Court cases involving parents with mental health problems’, (2005), vol 27 (1), *Journal of Social Welfare and Family Law*, pp 17–30, p 20.
- 168 Ella Callow & Jean Jacob, ‘Parental disability in child welfare systems and dependency courts: Preliminary research on the prevalence of the population’, (2014), vol 93 (6), *Child Welfare*, pp 73–92, p 89.
- 169 Callie Westad & David McConnell, ‘Child welfare involvement of mothers with mental health issues’, (2012), vol 48, *Community Mental Health Journal*, pp 29–37, p 31; Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1176.
- 170 Melissa Green, Maina Kariuki, Marilyn Chilvers, Merran Butler, Ilan Katz, Sharon Burke, Stacy Tzoumakis, Kristin R Laurens, Felicity Harris, Vaughan J Carr, ‘Inter-agency indicators of out of home care placement by age 13–14 years: A population record linkage study’, (2019), vol 93, *Child Abuse & Neglect*, pp 91–1–2, pp 95–96.
- 171 Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1176.
- 172 Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1176.
- 173 Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1179.
- 174 Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1178.
- 175 Melissa O’Donnell, Miriam J Maclean, Scott Sims, Vera A Morgan, Helen Leonard & Fiona J Stanley, ‘Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk’, (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1179.
- 176 See eg David McConnell, Marjorie Aunos, Laura Pacheco & Maurice Feldman ‘Child maltreatment investigations in Canada: Main and moderating effects of primary caregiver cognitive impairment’, (2021), vol 26 (1), *Child Maltreatment*, pp 115–125, p 120; Robyn Powell, ‘Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science with law’, (2016), vol 20 (1), *CUNY Law Review*, pp 127–148, p 134; Fernando Lima, Melissa O’Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, ‘Child protection involvement of children of mothers with intellectual disability’, (2022), vol 126, *Child Abuse & Neglect*, 105515, p 7.

- 
- 177 See eg Tim Booth & Wendy Booth, 'Findings from a court study of care proceedings involving parents with intellectual disabilities', (2004), vol 1 (3/4), *Journal of Policy and Practice in Intellectual Disabilities*, pp 179–181, p 180.
- 178 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 1.
- 179 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 4.
- 180 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 7.
- 181 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 7.
- 182 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 8.
- 183 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, pp 7–8.
- 184 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 8.
- 185 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 8.
- 186 Fernando Lima, Melissa O'Donnell, Jenny Bourke, Brittany Wolff, Alison Gibberd, Gwynnyth Llewellyn & Helen Leonard, 'Child protection involvement of children of mothers with intellectual disability', (2022), vol 126, *Child Abuse & Neglect*, 105515, p 8.
- 187 Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 67.
- 188 See eg Robyn Powell, 'Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science and law' (2016), vol 20 (1), *CUNY Law Review*, pp 127–148; Hanna Sigurjónsdóttir & James Rice, 'The weight of history: Child protection and parenting with a disability in 20<sup>th</sup> century Iceland', (2020), vol 25 (2), *The History of the Family*, pp 214–229.
- 189 Robyn Powell, 'Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science and law', (2016), vol 20 (1), *CUNY Law Review*, pp 127–148, p 132. See also Elizabeth Lightfoot & Sharyn DeZelar, 'Social work with parents with disabilities: Historical interactions and contemporary innovations', [2019] (2) *Revista de Asistencia Sociala*, pp 19–30.
- 190 Robyn Powell, 'Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science and law', (2016), vol 20 (1), *CUNY Law Review*, pp 127–148, p 133. See also Elizabeth Lightfoot & Sharyn DeZelar, 'Social work with parents with disabilities: Historical interactions and contemporary innovations', [2019] (2) *Revista de Asistencia Sociala*, pp 19–30.
- 191 Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93,

- 
- p 90; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability*, Report, The Parents with Disability Community Network, 2010, p 16.
- 192 Elizabeth Lightfoot, Katherine Hill & Traci LaLiberte, 'The inclusion of disability as a condition for the termination of parental rights', (2010), vol 34 (12), *Child Abuse and Neglect*, pp 927–934, p 931.
- 193 Elizabeth Lightfoot, Katherine Hill & Traci LaLiberte, 'The inclusion of disability as a condition for the termination of parental rights', (2010), vol 34 (12), *Child Abuse and Neglect*, pp 927–934, p 933.
- 194 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 461.
- 195 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 11; Kevin Cocks, 'Human rights of parents with intellectual disability', speech, The Bold Network and QUT Symposium, 19 November 2012.
- 196 See eg NSW Family & Community Services, *The structured decision making system: Safety, risk and risk assessment*, National Council on Crime and Delinquency, 2012, p 19.
- 197 Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advance), pp 1–29, p 8.
- 198 Robyn Powell & Joanne Nicholson, 'Disparities in child protective services: Commentary on Kaplan et al (2019)', (2019), vol 70 (3), *Psychiatric Services*, pp 209–210, p 209.
- 199 Sarah Wise & Tatiana Corrales, 'Discussion of the knowns and unknowns of child protection during pregnancy in Australia', (2021), *Australian Social Work* (advance online), pp 1–13, p 4.
- 200 Sarah Wise & Tatiana Corrales, 'Discussion of the knowns and unknowns of child protection during pregnancy in Australia', (2021), *Australian Social Work* (advance online), pp 1–13, p 4.
- 201 Sarah Wise & Tatiana Corrales, 'Discussion of the knowns and unknowns of child protection during pregnancy in Australia', (2021), *Australian Social Work* (advance online), pp 1–13, p 2.
- 202 Sarah Wise & Tatiana Corrales, 'Discussion of the knowns and unknowns of child protection during pregnancy in Australia', (2021), *Australian Social Work* (advance online), pp 1–13, p 2.
- 203 See eg Coralie Mercerat & Thomas Saias, 'Parents with physical disabilities and perinatal services: Defining parent's needs and their access to services', (2021), vol 36 (8), *Disability and Society*, pp 1261–1284, p 1278; James Rice, Helga Bjargardóttir & Hanna Sigurjónsdóttir, 'Child protection, disability and obstetric violence: Three case studies from Iceland', (2020), vol 18 (1), *International Journal of Environmental Research and Public Health*, pp 1–14.
- 204 Department of Health and Human Services, *Reports regarding unborn children*, Advice No. 1144, 23 April 2013, as cited in Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 13.
- 205 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 13.
- 206 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 13.
- 207 See *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 23(4).
- 208 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 17.
- 209 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 176.

- 
- 210 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 175.
- 211 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 176.
- 212 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 176.
- 213 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 25.
- 214 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, 7.
- 215 Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (5), *Disability & Society*, pp 413–434, p 417.
- 216 Coralie Mercerat and Thomas Saias, 'Parents with physical disabilities and perinatal services: Defining parent's needs and their access to services', (2021), vol 36 (8), *Disability and Society*, pp 1261–1284, p 1277.
- 217 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, 465.
- 218 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 466.
- 219 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 465–466. See also Judith Mosoff, 'Motherhood, madness and the law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 113.
- 220 See Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, pp 294–95; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 470–471.
- 221 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 465–468.
- 222 See eg David McConnell, Gwynnyth Llewellyn, Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 15, *International Journal of Social Welfare*, pp 230–239, pp 231, 233.
- 223 Tim Booth & Wendy Booth, 'Findings from a court study of care proceedings involving parents with intellectual disabilities', (2004), vol 1 (3/4), *Journal of Policy and Practice in Intellectual Disabilities*, pp 179–181, p 181; IASSID Special Interest Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 301.
- 224 See eg Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 37.
- 225 See David McConnell & Gwynnyth Llewellyn, 'Disability and discrimination in statutory child protection proceedings', (2000), vol 15 (6), *Disability & Society*, pp 883–895, p 886; Tim Booth & Wendy Booth, 'Findings from a court study of care proceedings involving parents with intellectual disabilities', (2004), vol 1 (3/4), *Journal of Policy and Practice in Intellectual Disabilities*, pp 179–181, p 181; Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2007), vol 36, *British Journal of Learning Disabilities*, pp 134–139, p 135.

- 
- 226 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, “‘She was there if I needed to talk or to try and get my point across’”: Specialist advocacy for parents with intellectual disability in the Australian child protection system’, (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 177.
- 227 See Beth Tarleton, ‘Specialist advocacy services for parents with learning disabilities involved in child protection proceedings’, (2007), vol 36, *British Journal of Learning Disabilities*, pp 134–139, p 135; David McConnell & Hanna Sigurjónsdóttir, ‘Caught in the child protection net’, in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, John Wiley & Sons, 2010, pp 171–192, p 171.
- 228 See eg IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, ‘Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities’, (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 301.
- 229 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 23.
- 230 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, pp 10–11; James Rice & Hanna Sigurjónsdóttir, ‘Notifying neglect: Child protection as an application of bureaucratic power against marginalised parents’, (2018), vol 77 (2), *Human Organisation*, pp 112–121.
- 231 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, ‘Intersecting challenges: Mothers and child protection law in BC’, (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 439; see also, Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 14.
- 232 China Scherz, ‘Protecting children, preserving families: Moral conflict and actuarial science in a problem of contemporary governance’, (2011), vol 34 (1), *PoLAR: Political and Legal Anthropological Review*, pp 33–50, p 35.
- 233 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 19.
- 234 Rosemary Sheehan & Greg Levine, ‘Parents with mental illness: Decision-making in Australian Children’s Court cases involving parents with mental health problems’, (2005), vol 27 (1), *Journal of Social Welfare and Family Law*, pp 17–30, pp 22–23.
- 235 Judith Mosoff, ‘Motherhood, madness and law’, (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 110.
- 236 Judith Mosoff, ‘Motherhood, madness and law’, (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 133.
- 237 Rachel Patterson, ‘The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings’, (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 576.
- 238 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, ‘Intersecting challenges: Mothers and child protection law in BC’, (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 463.
- 239 James Rice & Hanna Sigurjónsdóttir, ‘Notifying neglect: Child protection as an application of bureaucratic power against marginalised parents’, (2018), vol 77 (2), *Human Organisation*, pp 112–121, p 118.
- 240 See James Rice & Hanna Sigurjónsdóttir, ‘Notifying neglect: Child protection as an application of bureaucratic power against marginalised parents’, (2018), vol 77 (2), *Human Organisation*, pp 112–121, p 117.
- 241 Karen Broadhurst & Clair Mason, ‘Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework’, (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 51; Lisa Morriss, ‘Haunted futures: The stigma of being a mother living apart from her children as a result of state-ordered court removal’, (2018), vol 66 (4), *The Sociological Review Monographs*, pp 816–831, p 823.

- 
- 242 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 27.
- 243 Lisa Morriss, 'Haunted futures: The stigma of being a mother living apart from her children as a result of state-ordered court removal', (2018), vol 66 (4), *The Sociological Review Monographs*, pp 816–831, p 823.
- 244 Joseph Roscoe, Bridgette Leary & Jaclyn Chambers, 'Understanding child protection decisions involving parents with mental illness and substance abuse', (2018), vol 81, *Child Abuse and Neglect*, pp 235–248, p 236.
- 245 See eg Tyson Whitten, Kimberlie Dean, Rebecca Li, Kristin R Laurens, Felicity Harris, Vaughan J Carr & Melissa J Green, 'Earlier contact with child protection services among children of parents with criminal convictions and mental disorders', (2021), vol 26 (1), *Child Maltreatment*, pp 63–73; Melissa Green, Maina Kariuki, Marilyn Chilvers, Merran Butler, Ilan Katz, Sharon Burke, Stacy Tzoumakis, Kristin R Laurens, Felicity Harris & Vaughan J Carr, 'Inter-agency indicators of out of home care placement by age 13–14 years: A population record linkage study', (2019), vol 93, *Child Abuse and Neglect*, pp 91–102, p 100.
- 246 See eg Tyson Whitten, Kimberlie Dean, Rebecca Li, Kristin R Laurens, Felicity Harris, Vaughan J Carr & Melissa J Green, 'Earlier contact with child protection services among children of parents with criminal convictions and mental disorders', (2021), vol 26 (1), *Child Maltreatment*, pp 63–73. While the authors acknowledge 'the potentially stigmatising and discriminatory effects that may accompany prospective identification of vulnerable families, they nonetheless state that 'children at risk of maltreatment at an earlier age may be prospectively identified by using administrative records owned by other government agencies (i.e. the criminal justice system and the health department) who are privy to maternal and paternal court appearances and/or contact with mental health services: p 6.
- 247 See eg Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 426; Melanie Bournnell, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 100; Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability & Society*, pp 305–321, p 312; Elizabeth Ely, Chris Wilson & Emily Phillips, 'Issues around service provision for parents with an intellectual disability', (1998), *Interaction: The Australian Magazine on Intellectual Disability*, pp 7–14, p 11.
- 248 Melanie Bournnell, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 100.
- 249 Melanie Bournnell, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 100.
- 250 Melanie Bournnell, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 101.
- 251 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 440.
- 252 See eg Delanie Woodlock, Deborah Western, Philippa Bailey, *Voices against violence: Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, pp 45–46; Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 425.
- 253 Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, p 46.

- 
- 254 See eg Jude McCulloch, JaneMaree Maher, Sandra Walklate, Jasmine McGowan & Kate Fitz-Gibbon, 'Justice perspectives of women with disability: An Australian story', (2021), vol 27 (2), *International Review of Victimology*, pp 196–210, p 204; Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 422.
- 255 Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, pp 44, 45, 49.
- 256 See eg Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability and Society*, pp 305–321, p 312; Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, pp 41–42.
- 257 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 486.
- 258 Laura Pacheco & David McConnell, 'Love and resistance of mothers with intellectual disability from ethnocultural communities in Canada', (2017), vol 30, *Journal of Applied Research on Intellectual Disability*, pp 501–510, p 505.
- 259 See eg Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability & Society*, pp 305–321, p 313.
- 260 Women's Health West, *Family violence & women with disabilities: An intensive case management approach*, Report, January 2013, 29.
- 261 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 36; see also Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, p 31.
- 262 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 176. See also Jude McCulloch, JaneMaree Maher, Sandra Walklate, Jasmine McGowan & Kate Fitz-Gibbon, 'Justice perspectives of women with disability: An Australian story', (2021), vol 27 (2), *International Review of Victimology*, pp 196–210, p 204.
- 263 Daphne Glaun & Patricia Brown, 'Motherhood, intellectual disability and child protection: Characteristics of a court sample', (1999), vol 24 (1), *Journal of Intellectual & Developmental Disability*, pp 95–105, p 98.
- 264 Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 422.
- 265 See David McConnell & Hanna Sigurjónsdóttir, 'Caught in the child protection net', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, John Wiley & Sons, 2010, pp 171–192, p 175.
- 266 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 14.
- 267 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 2; Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic, or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80, p 67.

- 
- 268 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 490.
- 269 Sharyn DeZelar & Elizabeth Lightfoot, 'Who refers parents with intellectual disabilities to the child welfare system? An analysis of referral sources and substantiation', (2020), vol 119, *Children and Youth Services Review*, 105639, p 5.
- 270 Pooja Sawriker & Ilan Barry Katz, 'Recommendations for improving cultural competency when working with ethnic minority families in child protection systems in Australia', (2014), vol 31 (5), *Child and Adolescent Social Work Journal*, pp 393–417, pp 403–04.
- 271 See eg Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504; Tony Newman, "'Young carers" and disabled parents: Time for a change in direction?', (2002), vol 17 (6), *Disability and Society*, pp 613–625.
- 272 Sharynn Hamilton & Sarah Maslen, 'Redressing "unwinnable battles": Toward institutional justice capital in Australian child protection', (2021) *Journal of Sociology* (advance), pp 1–19, 13; Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, pp 15–16.
- 273 James Rice, Helga Bjargardóttir & Hanna Sigurjónsdóttir, 'Child protection, disability and obstetric violence: Three case studies from Iceland', (2020), vol 18 (1), *International Journal of Environmental Research and Public Health*, pp 1–14, p 12.
- 274 See eg Tim Booth, David McConnell & Wendy Booth, 'Temporal discrimination and parents with learning difficulties in the child protection system', (2006), vol 36 (6), *British Journal of Social Work*, pp 997–1015.
- 275 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 110.
- 276 Working Together with Parents Network (WTPN), *2021 update of the 2016 good practice guidance on working with parents with a learning disability*, University of Bristol, 2021, p iii.
- 277 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 110.
- 278 David McConnell & Hanna Sigurjónsdóttir, 'Caught in the child protection net', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, John Wiley & Sons, 2010, pp 171–192, p 181.
- 279 Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 90.
- 280 Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities' (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 90.
- 281 Robyn Powell & Sasha Albert, 'Barriers and facilitators to compliance with the Americans with Disabilities Act by the child welfare system: Insights from interviews with disabled parents, child welfare workers, and attorneys', (2021), vol 32 (1), *Stanford Law & Policy Review*, pp 119–178, p 164.
- 282 Tim Booth, David McConnell & Wendy Booth, 'Temporal discrimination and parents with learning difficulties in the child protection system', (2006), vol 36 (6), *British Journal of Social Work*, pp 997–2015; Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 299; Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitor's experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability and Society*, pp 284–298, p 293.



- 
- 283 Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 567; National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, September 2012, pp 87–89.
- 284 See eg Rachel Mayes & Gwynnyth Llewellyn, 'What happens to parents with intellectual disability following removal of their child in child protection proceedings?', (2009 vol 34 (1), *Journal of Intellectual & Developmental Disability*, pp 92–95; Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 299; Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitor's experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability and Society*, pp 284–298, p 293.
- 285 Wendy Hermeston, James McDougall, John Burton, Fleur Smith & Emma Sydenham, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, July 2016, p 6.
- 286 Wendy Hermeston, James McDougall, John Burton, Fleur Smith & Emma Sydenham, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, July 2016, p 6.
- 287 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020, p 5.
- 288 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020, p 5.
- 289 Terri Libesman, 'Indigenous child welfare post Bringing Them Home: From aspirations for self-determination to neoliberal assimilation', (2016), vol 19 (1), *Australian Indigenous Law Review*, pp 46–61.
- 290 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, vol 12, 2017, pp 9, 284.
- 291 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, vol 12, 2017, pp 263–71, 296–99, 304.
- 292 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020.
- 293 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 44.
- 294 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 30.
- 295 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 23.
- 296 See eg National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, September 2012, pp 87–89; Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020.
- 297 Jacyntha Krakouer, Sarah Wise & Marie Connolly, "We live and breathe through culture": Conceptualising cultural connection for Indigenous Australian children in out-of-home care', (2018), vol 71 (3), *Australian Social Work*, pp 265–276.

- 
- 298 Vanessa Turnbull-Roberts, Michael Salter & BJ Newton, 'Trauma then and now: Implications of adoption reform for First Nations children', (2021), *Child and Family Social Work* (advance), pp 163–172; Laura Dunstan, Belinda Hewitt & Sana Nakata, 'Indigenous family life in Australia: A history of difference and deficit', (2019), vol 55 (3), *Australian Journal of Social Issues*, pp 323–338.
- 299 Karen Menzies, 'A new paradigm: Bringing a historical and sociopolitical trauma lens to the training for welfare practitioners working with Aboriginal families', (2020), vol 34 (5), *Children & Society*, pp 408–423.
- 300 Paul Gray, 'First Nations reimagining of child welfare key to addressing ongoing disparities', (2021), vol 50 (3), *Australian Bar Review*, pp 466–475.
- 301 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020, p 14.
- 302 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020, pp 15–16.
- 303 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 45.
- 304 Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 34.
- 305 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 502. See also New South Wales Legislative Council General Purpose Select Committee No 2, *Child protection*, Report 46, March 2017, pp 79–80; Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whittier Journal of Child and Family Advocacy*, pp 3–39, p 20.
- 306 See Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 230–32; Fernando Lima, Miriam Maclean & Melissa O'Donnell, *Exploring outcomes for children who have experienced out-of-home care*, Report, Telethon Kids Institute, 2018; Emma Galvan, Renée O'Donnell, Helen Skouteris, Nick Halfpenny & Aya Mousa, 'Interventions and practice models for improving health and psychosocial outcomes of children and young people in out-of-home care: Protocol for a systematic review', (2019), vol 9, *BMJ Open*, e031362.
- 307 See generally Wendy Hermeston, James McDougall, John Burton, Fleur Smith & Emma Sydenham, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, July 2016; Laura Dunstan, Belinda Hewitt & Sana Nakata 'Indigenous family life in Australia: A history of difference and deficit', (2019), vol 55 (3), *Australian Journal of Social Issues*, pp 323–38.
- 308 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 221; Muriel Bamblett & Peter Lewis, 'Detoxifying the child and family welfare system for Australian Indigenous peoples: Self-determination, rights and culture as critical tools', (2007), vol 3 (3), *First Peoples Child and Family Review*, pp 4–56.
- 309 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 456.
- 310 See eg NSW Family & Community Services, *The structured decision making system: Safety, risk and risk assessment*, National Council on Crime and Delinquency, 2012, p 36.
- 311 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 230.

- 
- 312 Penny Wright, *A Perfect Storm? Dual status children and young people in South Australia's child protection and youth justice systems – Report 1*, Guardian for Children and Young People and Training Centre Visitor, Government of South Australia, 2019
- 313 James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in New South Wales: Volume 2*, State of NSW, November 2008, p 556.
- 314 Kath McFarlane, 'Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system', (2018) vol 51(3), *Australian and New Zealand Journal of Criminology*, pp 412-433
- 315 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 20. See also Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whittier Journal of Child and Family Advocacy*, pp 3–39, pp 22–23.
- 316 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 29.
- 317 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 29.
- 318 See generally Rachel Mayes & Gwynnyth Llewellyn, 'Mothering differently: Narratives of mothers with intellectual disability whose children have been compulsorily removed', (2012), vol 37 (2), *Journal of Intellectual & Developmental Disability*, pp 121–130; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 18.
- 319 Terri Libesman, 'Indigenous child welfare post Bringing them Home: From aspirations for self-determination to neoliberal assimilation', (2016), vol 19 (1), *Australian Indigenous Law Review*, pp 46–61.
- 320 Wendy Hermeston, 'Safe, protected ... connected? The best interests of Aboriginal children and permanency planning in the NSW care and protection system' PhD Thesis, University of Technology, Sydney, 2002.
- 321 Terri Libesman, *Decolonising Indigenous child welfare: Comparative perspectives*, Routledge, 2014, ch 7.
- 322 See generally Terri Libesman, 'Indigenous child welfare post Bringing Them Home: From aspirations for self-determination to neoliberal assimilation', (2016), vol 19 (1), *Australian Indigenous Law Review*, pp 46–61.
- 323 See Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 628.
- 324 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 16.
- 325 Carolyn Frohmader, *Parenting issues for women with disabilities in Australia, Policy Paper*, Women with Disabilities Australia, 2009, p 14.
- 326 Carolyn Frohmader, *Parenting issues for women with disabilities in Australia, Policy Paper*, Women with Disabilities Australia, 2009, p 14.
- 327 See eg Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 25; Carolyn Frohmader, *Parenting issues for women with disabilities in Australia, Policy Paper*, Women with Disabilities Australia, 2009, pp 12–14.
- 328 See eg Jacyнта Krakouer, Melissa Savaglio, Karinda Taylor & Helen Skouteris, 'Community-based models of alcohol and other drug support for First Nations peoples in Australia: A systematic review', (2022), *Drug and Alcohol Review* (online), <<https://doi.org/10.1111/dar.13477>>

- 
- 329 See eg Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005, Report, 2007*, p 3.
- 330 First Peoples Disability Network (Australia), *Living our ways: Community-driven Aboriginal and Torres Strait Islander disability research program*, Report, April 2020, p 140.
- 331 National People with Disabilities and Carer Council, *Shut out: The experience of people with disabilities and their families in Australia*, Report, 2009, p 58; see also Paul Mortimer & Tadgh McMahon, 'Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence', Occasional Paper 2, Settlement Services International, October 2018.
- 332 See Pooja Sawrikar, 'Child protection, domestic violence and ethnic minorities: Narrative results from a mixed methods study in Australia', (2019), vol 14 (12) *PLOS One*, e0226031, p 9.
- 333 Pooja Sawrikar & Ilan Katz, "'Normalising the novel': How is culture addressed in child protection work in ethnic minority families in Australia?", (2014), vol 40 (1), *Journal of Social Service Research*, pp 39–61, p 57.
- 334 See eg David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 5 (13), *International Journal of Social Welfare*, pp 230–39, 234.
- 335 Angeline Ferdinand, Libby Massey, Jennifer Cullen, Jeromey Temple, Daniel Chamravi, Kristy Meiselbach, Yin Paradies, Gareth Baynam, Ravi Savarirayan & Margaret Kelaher, *Understanding disability through the lens of Aboriginal and Torres Strait Islander people – Challenges and opportunities*, Report, The University of Melbourne Centre for Health Policy, May 2019, pp 14–15; Angela Dew, Priya Vaughan, Elizabeth McEntyre & Leanne Dowse, "'Our ways to planning": Preparing organisations to plan with Aboriginal and Torres Strait Islander people with disability', (2019), vol 2, *Australian Aboriginal Studies*, pp 3–18, p 15.
- 336 Victoria Legal Aid, *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, Report, 2020, p 24.
- 337 Theresa Glennon, 'Walking with them: Advocating for parents with mental illnesses in the Child Welfare System Symposium: Lawyering for the mentally ill', (2002), vol 12 (2), *Temple Political & Civil Rights Law Review*, pp 273–320, p 274.
- 338 See General Purpose Standing Committee No. 2, Parliament of New South Wales, *Child protection*, Report No. 46, March 2017, p 35.
- 339 Standing Committee on Social Issues, Parliament of New South Wales, *Care and support: Final report on child protection services*, Report 29, December 2002, p 145; Standing Committee on Social Issues, Parliament of New South Wales, *Making it happen: Final report on disability services*, Report 28, November 2002, p 128.
- 340 See eg ACT Government Office for Disability, *Towards disability justice for the ACT: Summary of research and consultations*, Report, 2019, 65; NSW Committee on Community Services, *Support for new parents and babies in New South Wales*, Report, 2018, pp 29–30; Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 65.
- 341 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 16.
- 342 ACT Government Office for Disability, *Towards disability justice for the ACT: Summary of research and consultations*, Report, 2019, p 65.
- 343 See eg Carmel Alakus, Rebecca Conwell, Monica Gilbert, Anne Buist & David Castle, 'The needs of parents with a mental illness who have young children: An Australian perspective on service delivery options', (2007), vol 53 (4), *International Journal of Social Psychiatry*, pp 333–339, p 336; Melanie Bournsnel, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 98; Theresa Glennon,

- 
- 'Walking with them: Advocating for parents with mental illness in the child welfare system', (2002), vol 12 (2), *Temple Political & Civil Rights Law Review*, pp 273–320, p 293.
- 344 See eg Phillip Tschernegovski, Andrea Reupert & Darryl Maybery, 'How do Australian adult mental health clinicians manage the challenges of working with parental mental illness? A phenomenological study', (2018), vol 23 (3), *Child & Family Social Work*, pp 381–389, p 384.
- 345 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 25; Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whitter Journal of Child and Family Advocacy*, pp 3–39, p 26.
- 346 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 22.
- 347 Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, 'A case record review of termination of parental rights cases involving parents with a disability', (2017), vol 79, *Children and Youth Services Review*, pp 399–407, p 400.
- 348 Jenny Morris & Michele Wates, *Supporting disabled parents and parents with additional support needs*, Report, Social Care Institute for Excellence, 2006, p 51; Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 38.
- 349 Coralie Mercerat & Thomas Saias, 'Parents with physical disabilities and perinatal services: Defining parent's needs and their access to services', (2021), vol 36 (8), *Disability and Society*, pp 1261–1284, p 1280.
- 350 Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, 'A case record review of termination of parental rights cases involving parents with a disability', (2017), vol 79, *Children and Youth Services Review*, pp 399–407, pp 403–06.
- 351 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 6.
- 352 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 6.
- 353 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 8.
- 354 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 287.
- 355 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 291.
- 356 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, pp 291–92.
- 357 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 291–92.
- 358 Phillip Swain & Nadine Cameron, "'Good enough parenting": Parental disability and child protection', (2003), vol 18 (2), *Disability & Society*, pp 165–177.
- 359 Phillip Swain & Nadine Cameron, "'Good enough parenting": Parental disability and child protection', (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 170.

- 
- 360 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 13
- 361 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 13
- 362 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 4.
- 363 Emily Keddell & Gabrielle Davie, 'Inequalities and child protection contact in Aotearoa New Zealand: Developing a conceptual framework and research agenda', (2018), vol 7 (6), *Social Sciences*, pp 1–8, p 2; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 30.
- 364 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with Disability Community Network, 2010, p 26; see also Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Report, Monash University, 2022, p 31.
- 365 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 30.
- 366 Jenny Morris & Michele Wates, *Supporting disabled parents and parents with additional support needs*, Report, Social Care Institute for Excellence, 2006, p 54.
- 367 Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 36.
- 368 Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 37.
- 369 Standing Committee on Social Issues, Parliament of New South Wales, *Care and support: Final report on child protection services*, Report, 2002, p 149.
- 370 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020, pp 59–60.
- 371 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020.
- 372 See eg Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence: Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, pp 45–46; Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 413–434, p 425; Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability and Society*, pp 305–321; Jude McCulloch, JaneMaree Maher, Sandra Walklate, Jasmine McGowan & Kate Fitz-Gibbon, 'Justice perspectives of women with disability: An Australian story', (2021), vol 27 (2), *International Review of Victimology*, pp 196–210, p 204.
- 373 See eg Pooja Sawrikar, 'Child protection, domestic violence and ethnic minorities: Narrative results from a mixed methods study in Australia', (2019), vol 14 (12), *PLOS One*, e0226031, p 10; Jatinda Kaur & Nina Atkin, 'Nexus between domestic violence and child protection: Multidimensional forms of oppression impacting on migrant and refugee women in Australia', (2018), vol 71 (2), *Australian Social Work*, pp 238–248, p 241.
- 374 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 485.
- 375 See Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214, p 209; Menka Tsantefski, Tracy Wilde, Amy Young & Patrick O'Leary,

- 
- 'Inclusivity in interagency responses to domestic violence and child protection', (2018), vol 71 (2), *Australian Social Work*, pp 202–214, p 208; Kathleen Flanagan, Hazel Blunden, Kylie Valentine & Jane Henriette, *Housing outcomes after domestic and family violence*, AHURI Final Report No 311, Australian Housing and Urban Research Institute, 2019, pp 43–44.
- 376 See eg Women's Health West, *Family violence & women with disabilities: An intensive case management approach*, Report, 2013, p 31; People with Disability Australia, *We have a right to choose our homes without violence*, Submission to the Disability Royal Commission's 'Violence and Abuse of People with Disability at Home Issues Paper', Sydney, 2021, pp 22–23.
- 377 People with Disability Australia, *We have a right to choose our homes without violence*, Submission to the Disability Royal Commission's 'Violence and Abuse of People with Disability at Home Issues Paper', Sydney, 2021, p 22.
- 378 People with Disability Australia, *We have a right to choose our homes without violence*, Submission to the Disability Royal Commission's 'Violence and Abuse of People with Disability at Home Issues Paper', Sydney, 2021, p 23.
- 379 People with Disability Australia, *We have a right to choose our homes without violence*, Submission to the Disability Royal Commission's 'Violence and Abuse of People with Disability at Home Issues Paper', Sydney, 2021, p 22.
- 380 See Jude McCulloch, JaneMaree Maher, Sandra Walklate, Jasmine McGowan & Kate Fitz-Gibbon, 'Justice perspectives of women with disability: An Australian story', (2021), vol 27 (2), *International Review of Victimology*, pp 196–210, p 204.
- 381 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020, p 16.
- 382 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report 16/2020, ANROWS, 2020.
- 383 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report, 16/2020, ANROWS, 2020, p 5.
- 384 Delanie Woodlock, Deborah Western & Philippa Bailey, *Voices against violence. Paper 6: Raising our voices – Hearing from women with disabilities*, Report, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014, p 49.
- 385 Sally Robinson, kylie valentine, BJ Newton, Ciara Smyth & Natalie Parmenter, *Violence prevention and early intervention for mothers and children with disability: Building promising practice*, Research Report, 16/2020, ANROWS, 2020, p 5.
- 386 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court-ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 42.
- 387 Heikki Hiilamo & Miia Saarikallio-Torp, 'Child custody placement outcomes for mothers', (2011), vol 33 (9), *Children and Youth Services Review*, pp 1489–1496, p 1495.
- 388 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So, tell me, child protection worker, how can you help?' (2020), vol 45 (4), *Children Australia*, pp 207–214, p 209.
- 389 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So, tell me, child protection worker, how can you help?' (2020), vol 45 (4), *Children Australia*, pp 207–214, p 209.
- 390 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 17.

- 
- 391 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So, tell me, child protection worker, how can you help?' (2020), vol 45 (4), *Children Australia*, pp 207–214, p 211.
- 392 Karen Healy, 'Recognising the caring capabilities of birth families of removed children: Towards a critical policy agenda', (2020), vol 40 (4), *Critical Social Policy*, pp 546–565, p 553; Alison MacLeod, Cordet Smart, Peter Keohane, Rudi Dallos & Kathy J Cox, "'We're entitled to be parents just like normal people": A multiperspective interpretative phenomenological analysis of a mother with a learning disability's experience of parenting following the removal of her older children', (2022), *British Journal of Learning Disabilities* (advance online), p 2; Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 42.
- 393 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 46; Alison MacLeod, Cordet Smart, Peter Keohane, Rudi Dallos & Kathy J Cox, "'We're entitled to be parents just like normal people": A multiperspective interpretative phenomenological analysis of a mother with a learning disability's experience of parenting following the removal of her older children', (2022), *British Journal of Learning Disabilities* (advance online), p 2.
- 394 Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 46.
- 395 Heikki Hiilamo & Miia Saarikallio-Torp, 'Child custody placement outcomes for mothers', (2011), vol 33 (9), *Children and Youth Services Review*, pp 1489–1496, p 1495. See also Anne Honey, Melissa Micelli & Rachel Mayes, 'Living with mental illness and child removal', (2021), vol 19 (2), *Advances in Mental Health*, pp 164–175, p 168.
- 396 Rachel Mayes & Gwynnyth Llewellyn, 'What happens to parents with intellectual disability following removal of their child in child protection proceedings?', (2009), vol 34 (1), *Journal of Intellectual & Developmental Disability*, pp 92–95, p 94.
- 397 Lisa Morriss, 'Haunted futures: The stigma of being a mother living apart from her child(ren) as a result of state-ordered court removal', (2018), vol 66 (4), *The Sociological Review Monographs*, pp 816–831, p 818.
- 398 Anne Honey, Melissa Micelli & Rachel Mayes, 'Living with mental illness and child removal', (2021), vol 19 (2), *Advances in Mental Health*, pp 164–175, pp 170–71.
- 399 Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021), *Child Maltreatment* (advance).
- 400 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 19.
- 401 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 19.
- 402 See Yvonne Darlington, Judith Feeney & Kylie Rixon, 'Complexity, conflict and uncertainty: Issues in collaboration between child protection and mental health services', (2004), vol 26 (2), *Children and Youth Services Review*, pp 1175–1192; Yvonne Darlington, Judith Feeney & Kylie Rixon, 'Practice challenges at the intersection of child protection and mental health', (2005), vol 10 (3), *Child & Family Social Work*, pp 239–247.
- 403 See eg Yvonne Darlington, Judith Feeney & Kylie Rixon, 'Practice challenges at the intersection of child protection and mental health', (2005), vol 10 (3), *Child & Family Social Work*, pp 239–247, p 245; Robin Mason, Janice Du Mont, Maeve Paterson & Ilene Hyman, 'Experiences of child protection workers in collaborating with adult mental health providers: An exploratory study from Ontario, Canada', (2018), vol 86, *Children and Youth Services Review*, pp 271–276, p 274.



- 
- 404 See eg Carmel Alakus, Rebecca Conwell, Monica Gilbert, Anne Buist & David Castle, 'The needs of parents with a mental illness who have young children: An Australian perspective on service delivery options', (2007), vol 53 (4), *International Journal of Social Psychiatry*, pp 333–339, p 336; Dominiek Coates, 'Working with families with parental mental health and/or drug and alcohol issues where there are child protection concerns: Inter-agency collaboration', (2017), vol 22 (S4), *Child & Family Social Work*, pp 1–10.
- 405 Dominiek Coates, 'Working with families with parental mental health and/or drug and alcohol issues where there are child protection concerns: Inter-agency collaboration', (2017), vol 22 (S4), *Child & Family Social Work*, pp 1–10.
- 406 Dominiek Coates, 'Working with families with parental mental health and/or drug and alcohol issues where there are child protection concerns: Inter-agency collaboration', (2017), vol 22 (S4), *Child & Family Social Work*, pp 1–10.
- 407 Dominiek Coates, 'Working with families with parental mental health and/or drug and alcohol issues where there are child protection concerns: Inter-agency collaboration', (2017), vol 22 (S4), *Child & Family Social Work*, pp 1–10, p 6.
- 408 See eg Yvonne Darlington, Judith Feeney & Kylie Rixon, 'Complexity, conflict and uncertainty: Issues in collaboration between child protection and mental health services', (2004), vol 26 (12), *Children and Youth Services Review*, pp 1175–1192, p 1188.
- 409 See eg Yvonne Darlington, Judith Feeney & Kylie Rixon, 'Complexity, conflict and uncertainty: Issues in collaboration between child protection and mental health services', (2004), vol 26 (12), *Children and Youth Services Review*, pp 1175–1192, p 1178.
- 410 See eg Marjorie Aunos & Laura Pacheco, 'Changing perspective: Worker's perceptions of inter-agency collaboration with parents with an intellectual disability', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 658–674, p 671.
- 411 See eg Marjorie Aunos & Laura Pacheco, 'Changing perspective: Worker's perceptions of inter-agency collaboration with parents with an intellectual disability', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 658–674, p 671.
- 412 See eg the Intellectual Disability Rights Service, *Annual Report 2020–2021*, p 22; Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Final Report, December 2021, p 2.
- 413 See eg Sharynn Hamilton & Sarah Maslen, 'Redressing "unwinnable battles": Towards institutional justice capital in Australian child protection', (2021), *Journal of Sociology* (advance), pp 1–19, p 16; Mary Ivec, Valerie Braithwaite & Nathan Harris, "'Resetting the relationship" in Indigenous child protection: Public hope and private reality', (2012), vol 34 (1), *Law and Policy*, pp 80–103, p 91; Maria Harries, *The experiences of parents and families of children and young people in care*, Report, Anglicare WA, August 2008, p 18; Rachel Cox, Biza Kroese & Roger Evans, 'Solicitor's experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability and Society*, pp 284–298, p 288.
- 414 See eg Nicola Ross, Lou Johnston, Jessica Cocks & Lynette Stocker, 'Evidence-based law and practice with disadvantaged populations: Perspectives of parents involved in child proceedings', (2017), vol 12, *Newcastle Law Review*, pp 23–42.
- 415 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Research Report, University of New South Wales, 2014, p 24.
- 416 See eg Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability and Society*, pp 305–321, p 315.

- 
- 417 See Judith Mosoff, 'Motherhood, madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 109; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 17.
- 418 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 623.
- 419 See Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents with learning disabilities in child protection proceedings', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 675–690, p 681.
- 420 Sharynn Hamilton & Sarah Maslen, 'Redressing "unwinnable battles": Towards institutional justice capital in Australian child protection', (2021) *Journal of Sociology* (advance), pp 1–19, p 3.
- 421 Sharynn Hamilton & Sarah Maslen, 'Redressing "unwinnable battles": Towards institutional justice capital in Australian child protection', (2021) *Journal of Sociology* (advance), pp 1–19, p 3.
- 422 New South Wales Legislative Council General Purpose Select Committee No 2, *Child protection*, Report 46, March 2017, 69.
- 423 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 623.
- 424 New South Wales Legislative Council General Purpose Select Committee No 2, *Child protection*, Report 46, March 2017, p 71.
- 425 See generally Terri Libesman, *Decolonising Indigenous child welfare: Comparative perspectives*, Routledge, 2014; Laura Dunstan, Belinda Hewitt, Sana Nakata, 'Indigenous family life in Australia: A history of difference and deficit', (2020), vol 55, *Australian Journal of Social Issues*, pp 323–338; Mary Ivec, Valerie Braithwaite & Nathan Harris, "'Resetting the relationship" in Indigenous child protection: Public hope and private reality', (2012), vol 34 (1), *Law and Policy*, pp 80–103, p 91.
- 426 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal and Torres Strait Islander voices in child protection decision-making in New South Wales*, The Law and Justice Foundation, forthcoming.
- 427 See eg Karen Broadhurst & Clair Mason, 'Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework', (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 48; Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Anglicare Tasmania, 2020, p 27.
- 428 See eg Maria Harries, *The experiences of parents and families of children and young people in care*, Anglicare WA, August 2008, pp 18–19.
- 429 In Swain and Cameron's study of child protection proceedings involving parents with disabilities before a Victorian Children's Court, for example, most parents with disabilities were legally unrepresented: Phillip Swain & Nadine Cameron, "'Good enough parenting": Parental disability and child protection', (2003), vol 18 (2), *Disability & Society*, pp 165–177, p 172.
- 430 See eg Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Anglicare Tasmania, 2020, pp 39–40.
- 431 See eg Maria Harries, *The experiences of parents and families of children and young people in care*, Anglicare WA, August 2008, p 18.
- 432 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, University of New South Wales, 2014, p 23.
- 433 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 623.
- 434 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 623.
- 435 Sharynn Hamilton & Sarah Maslen, 'Redressing "unwinnable battles": Towards institutional justice capital in Australian child protection', (2021), *Journal of Sociology* (advance), pp 1–19, 10.

- 
- 436 See eg Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, 'Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews', (2020), vol 38 (1), *Law & Inequality*, pp 69–116.
- 437 See eg Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, 2020, p 40; Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650.
- 438 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 644
- 439 See Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, 2020, p 42.
- 440 See eg David McConnell & Gwynnyth Llewellyn, 'Parental disability and the threat of child removal', (1998), vol 51, *Family Matters*, pp 33–36, p 34; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 164; ACT Disability Aged & Carer Advocacy Service, *Submission to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system*, October 2019, p 10.
- 441 Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, 2020, p 42.
- 442 See eg ACT Disability Aged & Carer Advocacy Service, *Submission to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system*, October 2019, p 10; Maria Harries, *The experiences of parents and families of children and young people in care*, Report, Anglicare WA, August 2008, p 18.
- 443 ACT Disability Aged & Carer Advocacy Service, *Submission to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system*, October 2019, p 10.
- 444 ACT Disability Aged & Carer Advocacy Service, *Submission to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system*, October 2019, p 11; Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, 2020, p 27.
- 445 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, 'Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews', (2020), vol 38 (1), *Law and Inequality*, pp 69–116, 83.
- 446 See Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, 2020, p 27; ACT Disability Aged & Carer Advocacy Service, *Submission to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system*, October 2019, p 10.
- 447 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 35 (2), *Melbourne University Law Review*, pp 621–650, p 644.
- 448 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 164.
- 449 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse,

- 
- “She was there if I needed to talk or try and get my point across”: Specialist advocacy for parents with intellectual disability in the Australian child protection system’, (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, pp 164–65; Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116, p 98.
- 450 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116, p 96.
- 451 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116, p 96.
- 452 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.
- 453 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, “She was there if I needed to talk or try and get my point across”: Specialist advocacy for parents with intellectual disability in the Australian child protection system’, (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 164; see also David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.
- 454 See eg Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116, pp 95–98; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 29; Alison Matthews & Jois Stansfield, ‘Supporting communication for parents with intellectual impairments: Communication facilitation in social work led parenting meetings’, (2013), vol 42, *British Journal of Learning Disabilities*, pp 244–250, p 244.
- 455 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 295.
- 456 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116.
- 457 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116.
- 458 Robyn Powell, Susan L Parish, Monika Mitra & Joanne Nicholson, ‘Responding to the legal needs of parents with psychiatric disabilities: Insights from parent interviews’, (2020), vol 38 (1), *Law and Inequality*, pp 69–116.
- 459 See eg Robyn Powell & Sasha Albert, ‘Barriers and facilitators to compliance with the Americans with Disabilities Act by the child welfare system: Insights from interviews with disabled parents, child welfare workers, and attorneys’, (2021), vol 32 (1), *Stanford Law & Policy Review*, pp 119–178, p 152; Sasha Albert & Robyn Powell, ‘Supporting disabled parents and their families: Perspectives and recommendations from parents, attorneys, and child welfare professionals’, (2020), vol 15 (5), *Journal of Public Child Welfare*, pp 1–35, pp 9–10, 19.
- 460 Sasha Albert & Robyn Powell, ‘Supporting disabled parents and their families: Perspectives and recommendations from parents, attorneys, and child welfare professionals’, (2020), vol 15 (5), *Journal of Public Child Welfare*, pp 1–35, pp 1, 9.
- 461 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.

- 
- 462 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, p 68. See also General Purpose Select Committee No 2, Parliament of New South Wales, *Child protection*, Report 46, March 2017, p 71.
- 463 David McConnell & Hanna Sigurjónsdóttir, 'Caught in the child protection net', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, Wiley Blackwell, 2010, pp 117–182, p 176.
- 464 See eg Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitors' experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability & Society*, pp 284–298, p 292; Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 98.
- 465 Judith Mosoff, 'Motherhood, madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 111. See also Theresa Glennon 'Walking with them: Advocating for parents with mental illnesses in the child welfare system', (2002), vol 12 (2), *Temple Political & Civil Rights Law Review*, pp 273–320, p 275.
- 466 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Report, University of New South Wales, 2014, p 31.
- 467 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Report, University of New South Wales, 2014, p 24.
- 468 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Report, University of New South Wales, 2014, p 25.
- 469 Law Council of Australia, *The Justice Project final report – Part 2: People with disability*, Report, August 2018, p 33. See also Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children's Court of New South Wales*, Report, University of New South Wales, 2014, p 23.
- 470 See eg Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 29; Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2008), vol 36 (2), *British Journal of Learning Disabilities*, pp 134–139, pp 136–37; Charlotte Atkin & Biza Stenfert Kroese, 'Exploring the experiences of independent advocates and parents with intellectual disabilities, following their involvement in child protection proceedings', (2021), *Disability and Society* (online), pp 7–12, <<https://doi.org/10.1080/09687599.2021.1881884>>.
- 471 See eg Robyn Powell & Sasha Albert, 'Barriers and facilitators to compliance with the Americans with Disabilities Act by the child welfare system: Insights from interviews with disabled parents, child welfare workers, and attorneys', (2021), vol 32 (1), *Stanford Law & Policy Review*, pp 119–178, p 156.
- 472 Rachel Cox, Biza Kroese & Roger Evans, 'Solicitor's experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability and Society*, pp 284–298, p 288.
- 473 Rachel Cox, Biza Kroese & Roger Evans, 'Solicitor's experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability and Society*, pp 284–298, p 288.
- 474 See eg James Rice & Hanna Sigurjónsdóttir, 'Notifying neglect: Child protection as an application of bureaucratic power against marginalized parents', (2018), vol 77 (2), *Human Organization*, pp 112–121; Hanna Sigurjónsdóttir & James Rice, '"Evidence" of neglect as a form of structural violence: Parents with intellectual disabilities and custody deprivation', (2018), vol 6 (2), *Social Inclusion*, pp 66–73.
- 475 See Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.

- 
- 476 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.
- 477 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.
- 478 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 280.
- 479 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal and Torres Strait Islander voices in child protection decision-making in New South Wales*, Report, The Law and Justice Foundation, forthcoming.
- 480 See eg Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.
- 481 See Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.
- 482 See NSW Legislative Standing Committee on Social Issues, *Care and support: Final report on child protection services*, Report 29, December 2002, p 129.
- 483 See Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Anglicare Tasmania, 2020, 55.
- 484 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631
- 485 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 44.
- 486 Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Anglicare Tasmania, July 2020, p 55.
- 487 Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, 306.
- 488 See eg Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 4.
- 489 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 282.
- 490 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 283.
- 491 See Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.
- 492 Sheila Gould & Karen Dodd, "Normal people can have a child but disability can't": The experiences of mothers with mild learning disabilities who have had their children removed', (2014), vol 42 (1), *British Journal of Learning Disabilities*, pp 25–35, p 35.
- 493 Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 308.
- 494 See Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.
- 495 Tamara Walsh & Heather Douglas, 'Lawyers, advocacy and child protection', (2011), vol 25 (3), *Melbourne University Law Review*, pp 621–650, p 631.

- 
- 496 McConnell, David, Gwynnyth Llewellyn & Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 15 (3), *International Journal of Social Welfare*, pp 230–239, p 236.
- 497 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 286.
- 498 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 285
- 499 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 44.
- 500 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 44.
- 501 McConnell, David, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 286.
- 502 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 44.
- 503 Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, July 2020, p 77.
- 504 Teresa Hinton, *Rebalancing the Scales: Access to Justice for parents in the Tasmanian child Safety System*, Report, Anglicare Tasmania, July 2020, p 77.
- 505 Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, July 2020, p 77.
- 506 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "‘She was there if I needed to talk or to try and get my point across’": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 164.
- 507 Teresa Hinton, *Parents in the child protection system*, Report, Anglicare Tasmania, June 2013, pp 83–84.
- 508 David McConnell & Gwynnyth Llewellyn 'Stereotypes, parents with intellectual disability and child protection', (2002 vol 24 (3), *Journal of Social Welfare and Family Law*, pp 297–317, p 307.
- 509 Teresa Hinton, *Rebalancing the scales: Access to justice for parents in the Tasmanian child safety system*, Report, Anglicare Tasmania, July 2020, p 79.
- 510 Teresa Hinton, *Parents in the child protection system*, Report, Anglicare Tasmania, June 2013, p 84.
- 511 Elizabeth Fernandez, Jane Bolitho, Patricia Hansen, Myvanwy Hudson & Sacha Kendall, *A study of the Children’s Court of New South Wales*, Report, University of New South Wales, 2014, p 33.
- 512 Teresa Hinton, *Parents in the child protection system*, Report, Anglicare Tasmania, June 2013.
- 513 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 290.
- 514 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings,' (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 290.
- 515 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 15 (3), *International Journal of Social Welfare*, pp 230–239, p 234.

- 
- 516 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Context-contingent decision-making in child protection practice', (2006), vol 15 (3), *International Journal of Social Welfare*, pp 230–239, p 234.
- 517 McConnell, David, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 290.
- 518 Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitors' experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes', (2015), vol 30 (2), *Disability & Society*, pp 284–298, p 291.
- 519 Rachel Cox, Biza Stenfert Kroese & Roger Evans, 'Solicitors' experiences of representing parents with intellectual disabilities in care proceedings: Attitudes, influence and legal processes,' (2015), vol 30 (2), *Disability & Society*, pp 284–298, p 291.
- 520 See eg Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 297; Marjorie Aunos & Laura Pacheco, 'Able or unable: How do professionals determine the parenting capacity of mothers with intellectual disabilities', (2021), vol 15 (3), *Journal of Public Child Welfare*, pp 357–383; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try to get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 164.
- 521 Marjorie Aunos & Laura Pacheco, 'Able or unable: How do professionals determine the parenting capacity of mothers with intellectual disabilities', (2021), vol 15 (3), *Journal of Public Child Welfare*, pp 357–383, p 375.
- 522 David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, pp 289–90.
- 523 Marjorie Aunos & Laura Pacheco, 'Able or unable: How do professionals determine the parenting capacity of mothers with intellectual disabilities', (2021), vol 15 (3), *Journal of Public Child Welfare*, pp 357–383, pp 372, 376.
- 524 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 468; Judith Mosoff, 'Motherhood, madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 111; Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illnesses in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 588.
- 525 Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 549.
- 526 Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 549.
- 527 See IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual Disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 301; David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, 'Disability and decision-making in Australian care proceedings', (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 296; Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552.



- 
- 528 See Hanna Sigurjónsdóttir & James Rice, “Framed”: Terminating the parenting rights of parents with intellectual disability in Iceland’, (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 544; IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, ‘Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities’, (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 301; Alister Lamont & Leah Bromfield, ‘Parental intellectual disability and child protection: Key issues’, Issues Paper No. 31, National Child Protection Clearinghouse, 2009, p 17; David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, pp 289–90.
- 529 See Hanna Sigurjónsdóttir & James Gordon Rice, “Framed”: Terminating the parenting rights of parents with intellectual disability in Iceland’, (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543–552, p 543; Daphne Martschenko, ‘The IQ test wars: Why screening for intelligence is still so controversial’, *The Conversation*, (Online, 10 October 2017), <<https://theconversation.com/the-iq-test-wars-why-screening-for-intelligence-is-still-so-controversial-81428>>.
- 530 See Daphne Martschenko, ‘The IQ test wars: Why screening for intelligence is still so controversial’, *The Conversation*, (Online, 10 October 2017), <<https://theconversation.com/the-iq-test-wars-why-screening-for-intelligence-is-still-so-controversial-81428>>.
- 531 Ella Callow, Munazza Tahir & Maurice Feldman, ‘Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities’, (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562.
- 532 Ella Callow, Munazza Tahir & Maurice Feldman, ‘Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities’, (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562, p 558.
- 533 Ella Callow, Munazza Tahir & Maurice Feldman, ‘Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities’, (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562, p 559.
- 534 Rachel Patterson, ‘The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings’, (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, 588.
- 535 See eg Abby Wilkerson, ‘Refusing diagnosis: Mother-daughter agency in confronting psychiatric rhetoric’, in Cynthia Lewiecki-Wilson & Jen Cellio (eds), *Disability and mothering: Liminal spaces of embodied knowledge*, Syracuse University Press, 2011, pp 99–113.
- 536 See eg David McConnell, Gwynnyth Llewellyn & Luisa Ferronato, ‘Disability and decision-making in Australian care proceedings’, (2002), vol 16 (2), *International Journal of Law, Policy and the Family*, pp 270–299, p 279, 294; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, ‘Intersecting challenges: Mothers and child protection law in BC’, (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 468–469, 502.
- 537 See eg Lorraine Anne Scott, Kelly Pope, Donald Quick, Bella Aitken & Adele Parkinson, ‘What does “recovery” from mental health and addiction mean? Perspectives from child protection social workers and from parents living with mental distress’, (2018), vol 87, *Children and Youth Services Review*, pp 95–102, p 97; David McConnell & Hanna Sigurjónsdóttir, ‘Caught in the child protection net’, in Gwynnyth Llewellyn, Rannveig Traustadottir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, John Wiley & Sons, 2010, pp 171–192, pp 176–79; Judith Mosoff, ‘Motherhood, madness and law’, (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 132.
- 538 Lorraine Anne Scott, Kelly Pope, Donald Quick, Bella Aitken & Adele Parkinson, ‘What does “recovery” from mental health and addiction mean? Perspectives from child protection social workers and from parents living with mental distress’, (2018), vol 87, *Children and Youth Services Review*, pp 95–102, pp 97–98.

- 
- 539 See eg Judith Mosoff, 'Motherhood madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 132.
- 540 See generally Judith Mosoff, 'Motherhood, madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142; Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, p 468; Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whitter Journal of Child and Family Advocacy*, pp 3–39, p 22.
- 541 Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whitter Journal of Child and Family Advocacy*, pp 3–39, p 22.
- 542 See eg Judith Mosoff, 'Motherhood, madness and law', (1995), vol 45 (2), *University of Toronto Law Journal*, pp 107–142, p 112.
- 543 See Susan Collings, M Spencer & p Kong, *Toward access and equity: Disability informed practice in child protection*, Report, Research Centre for Children and Families, The University of Sydney, 2022, p 11.
- 544 See Susan Collings, M Spencer & p Kong, *Toward access and equity: Disability informed practice in child protection*, Report, Research Centre for Children and Families, The University of Sydney, 2022, p 11.
- 545 See eg Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80; Robyn Powell, 'Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science and law', (2016), vol 20 (1), *CUNY Law Review*, pp 127–148, p 139.
- 546 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 109; Astrea Augsberger, Wendy Zeitlin, Trupti Rao, Danielle Weisberg & Noor Toraif, 'Examining a child welfare parenting intervention for parents with intellectual disabilities', (2021), vol 31 (1), *Research on Social Work Practice*, pp 65–74, p 73; Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, pp 49, 54, 66.
- 547 H Kosher, A Ben-Arieh & Y Hendelsman, *Children's rights and social work*, Springer, 2016, p vii, as cited in Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 57.
- 548 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 24.
- 549 Laura Franklin, Kate Theodore, Daniel Foulds, Mary Cooper, Lisa Mallaghan, Paul Wilshaw, Alison Colborne, Emilie Flower, Deborah Dickinson & Joyce Nga Yu Lee, "'They don't think I can cope, because I have got a learning disability...": Experiences of stigma in the lives of parents with learning disabilities', (2021), *Journal of Applied Research in Intellectual Disability* (advance online), pp 935–947, p 941.
- 550 Susan Collings, Margaret Spencer & p Kong, *Toward access and equity: Disability informed practice in child protection – A guide to assessing parenting capacity with parents with intellectual disability*, Research Centre for Children and Families, The University of Sydney, 2022, p 18.
- 551 Judith Mosoff, Isabel Grant, Susan B Boyd & Ruben Lindy, 'Intersecting challenges: Mothers and child protection law in BC', (2017), vol 50 (2), *UBC Law Review*, pp 435–504, pp 488–489.
- 552 Enne Mae Guerreo, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 93.
- 553 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *United*

- 
- Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 554 See eg Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 108; IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 303; Robyn Powell & Jack Rubinstein, *Supporting legislation to protect the rights of parents with disabilities and their children: Toolkit for legislators*, Brandeis University, 2020.
- 555 Robyn Powell & Jack Rubinstein, *Supporting legislation to protect the rights of parents with disabilities and their children: Toolkit for legislators*, Brandeis University, 2020.
- 556 Sasha Albert, Robyn Powell & Jack Rubinstein, 'Barriers and solutions to passing state legislation to protect the rights of parents with disabilities: Lessons from interviews with advocates, attorneys and legislators', (2022), vol 33(1) *Journal of Disability Policy Studies*, pp 15–24, p 16.
- 557 Wendy Hermeston, 'Safe, protected ... connected? The best interests of Aboriginal children and permanency planning in the NSW care and protection system', PhD Thesis, University of Technology, Sydney, 2022.
- 558 See Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41; Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021) *Child Maltreatment* (advance), p 9; Robyn Powell & Jack Rubinstein, *Supporting legislation to protect the rights of parents with disabilities and their children: Toolkit for legislators*, Brandeis University, 2020.
- 559 See Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 31; Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 19.
- 560 Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 31.
- 561 See Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41; Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with ascribed cognitive impairments in Canada', (2021) *Child Maltreatment* (advance), p 9; Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 31.
- 562 See e.g. Ella Callow, Munazza Tahir & Maurice Feldman, 'Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562, p 560.
- 563 See David McConnell, Marjorie Aunos, Laura Pacheco, Amber Savage, Lyndsay Hahn & Maurice Feldman, 'Screening for parental intellectual disability: A first step in planning and delivering equitable support services?' p (2021), vol 24 (4), *Journal of Family Social Work*, pp 282–298, pp 285, 292–93.
- 564 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review, Report, October 2019*, pp 160–61.

- 
- 565 *Bringing them home: Report of the National Inquiry into the Separation of Indigenous Children from their Families*, Report, Human Rights and Equal Opportunity Commission, 1997; Independent Review of Aboriginal Children and Young People in OOH, *Family Is Culture Review*, Report, October 2019.
- 566 See Terri Libesman, Eloise Chandler & Wendy Hermeston, 'New Bill in NSW could prove crucial to helping reduce numbers of First Nations children in out-of-home care', *The Conversation* (online, 25 March 2022), <<https://theconversation.com/new-bill-in-nsw-could-prove-crucial-to-helping-reduce-numbers-of-first-nations-children-in-out-of-home-care-170795>>.
- 567 See Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 107; Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 28.
- 568 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 30.
- 569 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 106.
- 570 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 107.
- 571 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 29.
- 572 See eg Elizabeth Lightfoot & Traci LaLiberte, 'Parental supports for parents with intellectual and developmental disabilities', (2011), vol 49 (5), *Intellectual and Developmental Disabilities*, pp 388–391, p 3.
- 573 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 30.
- 574 See Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 107; Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41.
- 575 See eg Elizabeth Lightfoot & Sharyn DeZelar, 'Social work with parents with disabilities: Historical interactions and contemporary innovations', (2019), vol 2, *Revista de Asistencia Sociala*, pp 19–30, pp 25–26; Elizabeth Lightfoot & Sharyn DeZelar, 'Parent centered planning: A new model for working with parents with intellectual disabilities', (2020), vol 114, *Children and Youth Services Review*, 105047.
- 576 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, pp 31–32.
- 577 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 32.

- 
- 578 Robyn Powell & Jack Rubinstein, *Supporting legislation to protect the rights of parents with disabilities and their children: Toolkit for legislators*, Brandeis University, 2020.
- 579 Robyn Powell & Jack Rubinstein, *Supporting legislation to protect the rights of parents with disabilities and their children: Toolkit for legislators*, Brandeis University, 2020.
- 580 See *Care and Protection Act 2008* (NSW), s71(2).
- 581 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509.
- 582 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 160–61.
- 583 See National Indian Welfare Association, *The Indian Child Welfare Act: A families guide*, Discussion Paper, National Indian Child Welfare Association, 2018, p 1.
- 584 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509, p 502.
- 585 See generally Matthew Fletcher, Wenona Singel & Kathryn Fort, *Facing the future: The Indian Child Welfare Act at 30*, Michigan State University Press, 2009.
- 586 See Muriel Bamblett & Peter Lewis, 'Detoxifying the child and family welfare system for Australian Indigenous peoples: Self-determination, rights and culture as critical tools', (2007), vol 3 (3), *First Peoples Child & Family Review*, pp 43–56.
- 587 *Bringing them home: Report of the National Inquiry into the Separation of Indigenous Children from their Families*, Report, Human Rights and Equal Opportunity Commission, 1997.
- 588 See eg An Act Respecting First Nations, Inuit and Metis Children Youth and Families S.C. 2019, c. 24.
- 589 Marcia Zug, 'ICWA downunder: Exploring the costs and benefits of enacting an Australian version of the United States' Indian Child Welfare Act', (2020), vol 33 (1), *Canadian Journal of Family Law*, pp 161–249, p 198.
- 590 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509.
- 591 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509, p 505.
- 592 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509, p 505.
- 593 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509, p 505.
- 594 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review Journal of Poverty Law and Policy*, pp 501–509, p 505.
- 595 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 6.
- 596 Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whittier Journal of Child and Family Advocacy*, pp 3–39, p 26.
- 597 For one of the most recent Australian examples see Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Report, Monash University, 2022, p 18.

- 
- 598 Leonard Edwards, 'Defining active efforts in the Indian Child Welfare Act', (2019), vol 41 (1), *NACC Guardian*, pp 1–8, 4. See also Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 160–61.
- 599 Leonard Edwards, 'Defining active efforts in the Indian Child Welfare Act', (2019), vol 41 (1), *NACC Guardian*, pp 1–8, p 3.
- 600 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 36.
- 601 See *The Aboriginal and Torres Strait Islander Child Placement Principle: Guide to support and implementation*, SNAICC, 2019, p 4.
- 602 Ella Callow, Kelly Buckland & Shannon Jones, 'Parents with disabilities in the United States: Prevalence, perspectives, and proposal for legislative change to protect the right to family in the disability community', (2011), vol 17 (1), *Texas Journal on Civil Liberties & Civil Rights*, pp 9–41, p 35
- 603 Paul Gray, 'First Nations reimagining of child welfare key to addressing ongoing disparities', (2021), vol 50 (3), *Australian Bar Review*, pp 466–475.
- 604 With respect to recent Canadian legislation, see An Act Respecting First Nations, Inuit and Metis Children Youth and Families S.C. 2019, c 24.
- 605 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 109; James Rice & Hanna Sigurjónsdóttir, 'Notifying neglect: Child protection as an application of bureaucratic power against marginalized parents', (2018), vol 77 (2), *Human Organization*, pp 112–121.
- 606 Sara Stefánsdóttir, James Rice, Marjorie Aunos & David McConnell, 'Appropriate measures? Supporting parents with ID in the context of the CRPD', (2022), vol 24 (1), *Scandinavian Journal of Disability Research*, pp 29–41, p 39.
- 607 See Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with cognitive impairments in Canada', (2021), *Child Maltreatment* (advance), p 8; Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 44.
- 608 Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 44.
- 609 Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 44.
- 610 Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 44.
- 611 Emily Munro & Maryam Zonouzi, *Reimagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, pp 45–46.
- 612 Laura Franklin, Kate Theodore, Daniel Foulds, Mary Cooper, Lisa Mallaghan, Paul Wilshaw, Alison Colborne, Emilie Flower, Deborah Dickinson & Joyce Nga Yu Lee, "'They don't think I can cope, because I have got a learning disability...": Experiences of stigma in the lives of parents with learning disabilities', (2021), *Journal of Applied Research in Intellectual Disabilities* (advance), pp 2, 10.
- 613 See e.g. Laura Pacheco, Marjorie Aunos, Maurice Feldman & David McConnell, 'Reasonable efforts? Child maltreatment investigations and service referrals of parents with cognitive impairments in Canada', (2021) *Child Maltreatment* (advance), p 9; Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 589.

- 
- 614 Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 589.
- 615 Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 592.
- 616 Rachel Patterson, 'The child welfare hyper surveillance state: Reimagining supporting parents with mental illness in 1028 hearings', (2020), vol 48 (2), *Fordham Urban Law Journal*, pp 545–595, p 594; Jenny Morris & Michele Wates, *Supporting disabled parents and parents with additional support needs*, Report, Social Care Institute for Excellence, 2006, p 128.
- 617 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 36.
- 618 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 166.
- 619 Jenny Morris & Michele Wates, *Supporting disabled parents and parents with additional support needs*, Report, Social Care Institute for Excellence, 2006, p 6; Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability and Society*, pp 413–434.
- 620 Laura Franklin, Kate Theodore, Daniel Foulds, Mary Cooper, Lisa Mallaghan, Paul Wilshaw, Alison Colborne, Emilie Flower, Deborah Dickinson & Joyce Nga Yu Lee, "'They don't think I can cope, because I have got a learning disability...": Experiences of stigma in the lives of parents with learning disabilities', (2021), *Journal of Applied Research in Intellectual Disabilities* (advance), p 8.
- 621 See e.g. Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability and Society*, pp 413–434, pp 423–24.
- 622 See Laura Franklin, Kate Theodore, Daniel Foulds, Mary Cooper, Lisa Mallaghan, Paul Wilshaw, Alison Colborne, Emilie Flower, Deborah Dickinson & Joyce Nga Yu Lee, "'They don't think I can cope, because I have got a learning disability...": Experiences of stigma in the lives of parents with learning disabilities', (2021), *Journal of Applied Research in Intellectual Disabilities* (advance), p 2.
- 623 See eg Laura Franklin, Kate Theodore, Daniel Foulds, Mary Cooper, Lisa Mallaghan, Paul Wilshaw, Alison Colborne, Emilie Flower, Deborah Dickinson & Joyce Nga Yu Lee, "'They don't think I can cope, because I have got a learning disability...": Experiences of stigma in the lives of parents with learning disabilities', (2021), *Journal of Applied Research in Intellectual Disabilities* (advance), p 10.
- 624 See eg Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p iv; Anne Dew, Priya Vaughan, Elizabeth McEntyre & Leanne Dowse, "'Our ways to planning": Preparing organisations to plan with Aboriginal and Torres Strait Islander people with disability', (2019), vol 2, *Australian Aboriginal Studies*, pp 3–18, p 4.
- 625 Anne Dew, Priya Vaughan, Elizabeth McEntyre & Leanne Dowse, "'Our ways to planning": Preparing organisations to plan with Aboriginal and Torres Strait Islander people with disability', (2019), vol 2, *Australian Aboriginal Studies*, pp 3–18, p 4; Laura Dunstan, Belinda Hewitt & Sana Nakata, 'Indigenous family life in Australia: A history of difference and deficit', (2019), vol 55 (3), *Australian Journal of Social Issues*, pp 323–338.

- 
- 626 See e.g. Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 11.
- 627 Anne Dew, Priya Vaughan, Elizabeth McEntyre & Leanne Dowse, “Our ways to planning”: Preparing organisations to plan with Aboriginal and Torres Strait Islander people with disability’, (2019), vol 2, *Australian Aboriginal Studies*, pp 3–18, p 15.
- 628 See eg Aboriginal Disability Network of New South Wales, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 3.
- 629 John Gilroy, Michelle Donnelly, Susan H Colmar & Trevor R Parmenter, ‘Conceptual framework for policy and research development with Indigenous people with disabilities’, (2013), vol 2, *Australian Aboriginal Studies*, pp 42–58, p 42.
- 630 John Gilroy, Michelle Donnelly, Susan H Colmar & Trevor R Parmenter, ‘Conceptual framework for policy and research development with Indigenous people with disabilities’, (2013), vol 2, *Australian Aboriginal Studies*, pp 42–58, p 43.
- 631 John Gilroy, Michelle Donnelly, Susan H Colmar & Trevor R Parmenter, ‘Conceptual framework for policy and research development with Indigenous people with disabilities’, (2013), vol 2, *Australian Aboriginal Studies*, pp 42–58, p 45.
- 632 John Gilroy, Michelle Donnelly, Susan H Colmar & Trevor R Parmenter, ‘Conceptual framework for policy and research development with Indigenous people with disabilities’, (2013), vol 2, *Australian Aboriginal Studies*, pp 42–58, p 45.
- 633 Paul Mortimer & Tadgh McMahon, ‘Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence’, Occasional Paper 2, Settlement Services International, October 2018, p 13.
- 634 Paul Mortimer & Tadgh McMahon, ‘Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence’, Occasional Paper 2, Settlement Services International, October 2018, p 18.
- 635 Paul Mortimer & Tadgh McMahon, ‘Still outside the tent: Cultural diversity and disability in a time of reform – A rapid review of the evidence’, Occasional Paper 2, Settlement Services International, October 2018, p 14.
- 636 Lisa Johnson, Elspeth Slayter & Allyson Livingstone, ‘Locating the intersections of disability, race and ethnicity in adoption rates among foster children’, (2020), vol 23 (2), *Adoption Quarterly*, pp 110–134, p 113.
- 637 Sheila Gould & Karen Dodd, “Normal people can have a child but disability can’t”: The experiences of mothers with mild learning disabilities who have had their children removed’, (2014), vol 42 (1), *British Journal of Learning Disabilities*, pp 25–35, p 36; Heikki Hiilamo & Miia Saarikallio-Torp, ‘Child custody placement outcomes for mothers’, (2011), vol 33 (9) p *Children and Youth Services Review*, pp 1489–1496, p 1495.
- 638 Bryn King, Barbara Fallon, Ami Goulden, Carolyn O’Connor & Joanne Filippelli, ‘What constitutes risk of future maltreatment among young mothers? An examination of child protection investigations in Ontario, Canada’, (2019), vol 100 (4), *Families in Society*, pp 409–421, p 418.
- 639 See eg Catherine Liddle, Paul Gray, John Burton, Claire Prideaux, Nicolette Solomon, Joanne Cackett, May Jones, Alex Bhathal, Tatiana Corrales, Arno Parolini, Wei Wu Tan & Clare Tilbury, *The Family Matters report 2021*, Report, SNAICC, 2021, p 25; Sharon Venn (ed), *Protecting children and young people – Early intervention support and strengthening families*, Dunedin Academic Press, 2015.
- 640 *Safe and Supported: The National Framework for Protecting Australia’s Children 2021–2031*, Department of Social Services, 2021, p 36.
- 641 Productivity Commission, *Report on government services (2022)* (online) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2022>>.



- 
- 642 See generally Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214.
- 643 Kylie Bennett, Andrew Booth, Susan Gair, Rose Kibet & Ros Thorpe, 'Poverty is the problem – Not parents: So tell me, child protection worker, how can you help?', (2020), vol 45 (4), *Children Australia*, pp 207–214.
- 644 See generally Jenni Mays, 'Mothering, welfare and political economy of basic income in Australia', in Karine Levasseur, Stephanie Paterson, Lorna A Turnbull (eds), *Mothering and welfare – Depriving, surviving, thriving*, Demeter Press, 2020, pp 227–242.
- 645 See generally Jenni Mays, 'Mothering, welfare and political economy of basic income in Australia', in Karine Levasseur, Stephanie Paterson, Lorna A Turnbull (eds), *Mothering and welfare – Depriving, surviving, thriving*, Demeter Press, 2020, pp 227–242.
- 646 See Jennifer Mays, Karen Fisher & p Saunders, 'Disability and poverty', in Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019, pp 237–257; Peter Whiteford, 'Social security since Henderson', in Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019, pp 89–121.
- 647 See generally Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019.
- 648 Richard Wilkinson & Kate Pickett, *The inner level – How more equal societies reduce stress, restore sanity and improve everyone's well-being*, Penguin, 2020.
- 649 See Jennifer Mays, 'Feminist disability theory: Domestic violence against women with a disability', (2006), vol 21 (2), *Disability & Society*, pp 147–158.
- 650 See Ronald Henderson, *Poverty in Australia: First main report*, Australian Commission of Inquiry into Poverty, April 1975.
- 651 Peter Whiteford, 'Social security since Henderson', in Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019, pp 89–121.
- 652 See generally Peter Whiteford, 'Social security since Henderson', in Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019, pp 89–121.
- 653 Boyd Hunter & Daniella Venn, 'Indigenous poverty in flux', in Peter Saunders (ed), *Revisiting Henderson: Poverty, social security and basic income*, Melbourne University Press, 2019, pp 201–14.
- 654 See eg Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23; Sue English, 'The importance of specialist advocacy services for parents with learning disabilities', (2010 vol 13 (1), *Learning Disability Practice*, pp 25–27; UK Joint Committee on Human Rights, *A life like any other? Human rights of adults with learning disabilities*, Report, 8 March 2008, p 87.
- 655 See eg Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181; Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23; Sue English, 'The importance of specialist advocacy services for parents with learning disabilities', (2010), vol 13 (1), *Learning Disability Practice*, pp 25–27; Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents with learning disabilities in child protection proceedings', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 675–690;

- 
- Annette Bauer, Gerald Wistow, Josie Dixon & Martin Knapp, 'Investing in advocacy for parents with learning disabilities: What is the economic argument?', (2015), vol 43 (1), *British Journal of Learning Disabilities*, pp 66–74.
- 656 UK Joint Committee on Human Rights, *A life like any other? Human rights of adults with learning disabilities*, Report, 8 March 2008, p 87.
- 657 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 177. See also Rannveig Traustadóttir & Hanna Sigurjónsdóttir, 'Parenting and resistance: Strategies in dealing with services and professionals', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, Wiley-Blackwell, 2010, pp 112–119.
- 658 See Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 29; Sue English, 'The importance of specialist advocacy services for parents with learning disabilities', (2010), vol 13 (1), *Learning Disability Practice*, pp 25–27.
- 659 Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181; Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability & Society*, pp 305–321; David Tobis, Andy Bilson & Isuree Katagampala, *International review of parent advocacy in child welfare: Strengthening children's care and protection through parent participation*, Better Care Network and IPAN, 2020, p 89.
- 660 See eg Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 23; Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021) *Disability and Society* (advance), p 19; Fintan Sheerin, Paul Keenan & Denise Lawler, 'Mothers with intellectual disabilities: Interactions with children and family services in Ireland', (2013), vol 41 (3), *British Journal of Learning Disabilities*, pp 189–196, p 194.
- 661 Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23, p 19.
- 662 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 7.
- 663 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 7; see also David Tobis, Andy Bilson and Isuree Katagampala, *International review of parent advocacy in child welfare: Strengthening children's care and protection through parent participation*, Report, Better Care Network and IPAN, 2020.
- 664 See Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 23.
- 665 See Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 29; Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents

- 
- with learning disabilities in child protection proceedings', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 675–690; Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 40.
- 666 Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents with learning disabilities in child protection proceedings', (2013), vol 7, *Journal of Public Child Welfare*, pp 675–690, p 684.
- 667 See Sue English, 'The importance of specialist advocacy services for parents with learning disabilities', (2010), vol 13 (1), *Learning Disability Practice*, pp 25–27, p 26.
- 668 See eg Alison Matthews & Jois Stansfeld, 'Supporting communication for parents with impairments: Communication facilitation in social work led parenting meetings', (2014), vol 42 (3), *British Journal of Learning Disabilities*, pp 244–250.
- 669 See eg Sue English, 'The importance of specialist advocacy services for parents with learning disabilities', (2010), vol 13 (1), *Learning Disability Practice*, pp 25–27, p 26.
- 670 Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23, p 11; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181.
- 671 See eg Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2008), vol 36 (2), *British Journal of Learning Disabilities*, pp 134–139, p 137
- 672 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010.
- 673 See eg Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23, p 7; Susan Collings, Margaret Spencer, Angela Dew & Leanne Dowse, "'She was there if I needed to talk or to try and get my point across": Specialist advocacy for parents with intellectual disability in the Australian child protection system', (2018), vol 24 (2), *Australian Journal of Human Rights*, pp 162–181, p 174.
- 674 See eg Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents with learning disabilities in child protection proceedings', (2013), vol 7 (5), *Journal of Public Child Welfare*, pp 675–690, p 679.
- 675 See eg Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021; Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23, p 8.
- 676 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 27.
- 677 Charlotte Atkin & Biza Stenfert Kroese, 'Exploring experiences of independent advocates and parents with intellectual disabilities following their involvement in child protection proceedings', (2021), *Disability and Society* (advance), pp 1–23, pp 11–12.
- 678 See eg Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 27.

- 
- 679 See eg Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2008), vol 36 (2), *British Journal of Learning Disabilities*, pp 134–139, p 137.
- 680 Beth Tarleton, 'Expanding the engagement model: The role of the specialist advocate in supporting parents with learning disabilities in child protection proceedings', (2013), vol 7, *Journal of Public Child Welfare*, pp 675–690, p 684.
- 681 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 39.
- 682 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, pp 29–31.
- 683 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 15.
- 684 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 2.
- 685 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 2.
- 686 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 2.
- 687 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, pp 29–30.
- 688 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 29.
- 689 See Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 33; Sheila Gould & Karen Dodd, "'Normal people can have a child but disability can't": The experiences of mothers with mild learning disabilities who have had their children removed', (2014), vol 42 (1), *British Journal of Learning Disabilities*, pp 25–35, p 36.
- 690 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Office of the Public Advocate, 2015, p 39.
- 691 Annette Bauer, Gerald Wistow, Josie Dixon & Martin Knapp, 'Investing in advocacy for parents with learning disabilities: What is the economic argument?', (2015), vol 43 (1), *British Journal of Learning Disabilities*, pp 66–74, p 69. See also Jenny Morris & Michele Wates, *Supporting disabled parents and parents with additional support needs*, Report, Social Care Institute for Excellence, 2006, p 63.
- 692 Annette Bauer, Gerald Wistow, Josie Dixon & Martin Knapp, 'Investing in advocacy for parents with learning disabilities: What is the economic argument?', (2015), vol 43 (1), *British Journal of Learning Disabilities*, pp 66–74, p 69.
- 693 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, pp 14, 34.
- 694 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, pp 14, 21.

- 
- 695 Annette Bauer, Gerald Wistow, Josie Dixon & Martin Knapp, 'Investing in advocacy for parents with learning disabilities: What is the economic argument?', (2015), vol 43 (1), *British Journal of Learning Disabilities*, pp 66–74, p 71.
- 696 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 33.
- 697 Chris Maylea, Lucy Bashfield, Sherie Thomas, Bawa Kuyini, Susie Costello, Kate Fitt & Meena Singh, *Final evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Report, Social and Global Studies Centre, RMIT University, 2021, p 41.
- 698 Intellectual Disability Rights Service, *Annual Report 2020–2021*, 2021, p 22.
- 699 ADACAS Advocacy, Submission No. 15 to the Inquiry into Child and Youth Protection Services – Part 2: Information sharing under the care and protection system, October 2019, p 9.
- 700 ADACAS Advocacy, Submission No. 15 to the Inquiry into child and Youth Protection Services – Part 2: Information sharing under the care and protection system, October 2019, p 9.
- 701 Our Booris, Our Way Steering Committee, *Our Booris, Our Way final report*, December 2019, p 81.
- 702 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 165–66.
- 703 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 165–66.
- 704 Sasha Albert & Robyn Powell, 'Supporting disabled parents and their families: Perspectives and recommendations from parents, attorneys and child welfare professionals', (2020) *Journal of Public Welfare* (advance), pp 1–35, pp 14, 19.
- 705 Karen Menzies, 'Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma', (2019), vol 62 (6), *International Social Work*, pp 1522–1534.
- 706 See Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80; Linda Ward, 'Supporting parents, supporting families: Changing approaches to parents with intellectual disability', (2010), vol 4 (2), *Advances in Mental Health and Intellectual Disabilities*, pp 38–43, p 40.
- 707 See generally Megan Kirshbaum & Rhoda Olkin, 'Parents with physical, systemic or visual disabilities', (2002), vol 20 (1), *Sexuality and Disability*, pp 65–80.
- 708 See National Center for Parents with Disabilities (Website, 2022) <<https://heller.brandeis.edu/parents-with-disabilities/index.html>>.
- 709 See *The Working Together with Parents Network (WTPN) 2021 update of the 2016 good practice guidance on working with parents with a learning disability*, Working Together with Parents Network, University of Bristol and Esmee Fairbairn Foundation, 2021.
- 710 See 'Healthy Start', *Parenting Research Centre* (Website, 2022) <<https://www.parentingrc.org.au/programs/healthy-start/>>.
- 711 See Susan Collings, M Spencer & p Kong, *Toward access and equity: Disability informed practice in child protection*, Report, Research Centre for Children and Families, The University of Sydney, 2022.
- 712 See Ella Callow, Munaza Tahir & Maurice Feldman, 'Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562, p 560; Theresa Glennon, 'Walking with them: Advocating for parents with mental illnesses in the child welfare system', (2002), vol 12 (2), *Temple Political & Civil Rights Law Review*, pp 273–320, p 291; Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 109.

- 
- 713 See eg Ella Callow, Munaza Tahir & Maurice Feldman, 'Judicial reliance on parental IQ in appellate-level child welfare cases involving parents with intellectual and developmental disabilities', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 553–562, p 560.
- 714 Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 93.
- 715 Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whittier Journal of Child and Family Advocacy*, pp 3–39, p 35.
- 716 Theresa Glennon, 'Walking with them: Advocating for parents with mental illnesses in the child welfare system', (2002), vol 12 (2), *Temple Political & Civil Rights Law Review*, pp 273–320, p 296; Karen Menzies, 'A new paradigm: Bringing a historical and sociopolitical trauma lens to the training for welfare practitioners working with Aboriginal families', (2020), vol 34, *Children & Society*, pp 408–423.
- 717 See eg Robyn Powell, Susan Parish, Moniker Mitra, Michael Waterstone & Stephen Fournier, 'Child welfare system inequities experienced by disabled parents: Towards a conceptual framework', (2022), *Disability and Society* (advance online), pp 1–28; Lorraine Anne Scott, Kelly Pope, Donald Quick, Bella Aitken & Adele Parkinson, 'What does "recovery" from mental illness and addiction mean? Perspectives from child protection social workers and from parents living with mental distress', (2018), vol 87, *Children and Youth Services Review*, pp 95–102, p 96.
- 718 See eg Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 20; Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75.
- 719 Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 20.
- 720 Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75.
- 721 Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75, p 71.
- 722 Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75, pp 71–72.
- 723 Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75, p 72.
- 724 See Karen Menzies & Rebekah Grace, 'The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma', (2022), vol 75 (1), *Australian Social Work*, pp 62–75, p 73; Naomi Pfitzner, Silke Meyer, Nicola Helps & Jasmine McGowan, *Stronger together: Strengthening families to improve outcomes for children*, Monash University, April 2022, p 56.
- 725 Sasha Albert & Robyn Powell, 'Supporting disabled parents and their families: Perspectives and recommendations from parents, attorneys and child welfare professionals', (2020), *Journal of Public Welfare* (advance), pp 1–35, p 22; see also IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability:

- 
- Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 302; Laura Kollinsky, Laura Simonds & Julie Nixon, 'A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities', (2013), vol 41 (2), *British Journal of Learning Disabilities*, pp 86–93, p 93.
- 726 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 111.
- 727 Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, pp 7.
- 728 Sasha Albert & Robyn Powell, 'Supporting disabled parents and their families: Perspectives and recommendations from parents, attorneys and child welfare professionals', (2020), *Journal of Public Welfare* (advance), pp 1–35, p 23.
- 729 See eg Sharyn DeZelar & Elizabeth Lightfoot, 'Use of parental disability as a removal reason for children in foster care in the US', (2018), vol 86, *Children and Youth Services Review*, pp 128–134, p 134.
- 730 Peter Choate, Christine Torotorelli, Danielle Aalen & Jina Baek, 'Parents with fetal alcohol spectrum disorder within Canada's child protection trials', (2020), vol 39 (3), *Canadian Family Law Quarterly*, pp 283–307, p 306.
- 731 See generally Fiona Arney, Marie Iannos, Alwin Chong, Stewart McDougall & Samantha Parkinson, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations', CFCA Paper No 34, Australian Institute of Family Studies, August 2015.
- 732 Enne Mae Guerrero, 'A necessary job: Protecting the rights of parents with disabilities in child welfare systems', (2021), vol 18 (1), *Hastings Race and Poverty Law Journal*, pp 91–112, p 111.
- 733 Traci LaLiberte, Kristine Piescher, Nicole Mickelson & Mi Hwa Lee, 'Child protection services and parents with intellectual and developmental Disabilities', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 521–532, p 529.
- 734 Robyn Powell & Sasha Albert, 'Barriers and facilitators to compliance with the Americans with Disabilities Act by the child welfare system: Insights from interviews with disabled parents, child welfare workers, and attorneys', (2021), vol 32 (1), *Stanford Law & Policy Review*, pp 119–178, 167. 7
- 735 Australian Government Department of Social Services, *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*, 2021, <[www.dss.gov.au/sites/default/files/documents/12\\_2021/dess5016-national-framework-protecting-childrenaccessible.pdf](http://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf)>.
- 736 Karen R. Fisher & Eloise Hummell, 'Labor vows to tackle the NDIS crisis – what's needed is more autonomy for people with disability', *The Conversation*, 20 April 2022, <[www.theconversation.com/how-does-this-keep-happening-after-so-many-child-protection-inquiries-and-reform-efforts-its-time-for-a-new-approach-185412](http://www.theconversation.com/how-does-this-keep-happening-after-so-many-child-protection-inquiries-and-reform-efforts-its-time-for-a-new-approach-185412)>.
- 737 Australian Government Department of Social Services, *Australia's Disability Strategy 2021–2031*, 2021, <[www.disabilitygateway.gov.au/sites/default/files/documents/2021-11/1786-australias-disability.pdf](http://www.disabilitygateway.gov.au/sites/default/files/documents/2021-11/1786-australias-disability.pdf)>.
- 738 *National Disability Insurance Scheme Act 2013* (Cth), <[www.legislation.gov.au/Details/C2018C00276](http://www.legislation.gov.au/Details/C2018C00276)>.
- 739 DRC, *Decision-making Controls for NDIS Participant Plans*, <[www.disability.royalcommission.gov.au/system/files/exhibit/DRC.9999.0053.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/DRC.9999.0053.0001.pdf)>.
- 740 David Tune, *Review of the National Disability Insurance Scheme Act 2013 – Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, <[www.dss.gov.au/sites/default/files/documents/01\\_2020/ndis-act-review-final-accessibility-and-prepared-publishing1.pdf](http://www.dss.gov.au/sites/default/files/documents/01_2020/ndis-act-review-final-accessibility-and-prepared-publishing1.pdf)>.

- 
- 741 'Improving the NDIS', *NDIS*, web page, <[www.ndis.gov.au/about-us/improving-ndis](http://www.ndis.gov.au/about-us/improving-ndis)>.
- 742 'Landmark reforms to deliver on the promise of Australia's NDIS', *NDIS*, web page, <[www.ndis.gov.au/news/5207-landmark-reforms-deliver-promise-australias-ndis](http://www.ndis.gov.au/news/5207-landmark-reforms-deliver-promise-australias-ndis)>.
- 743 Australian Government Department of Social Services, *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*, 2021, <[www.dss.gov.au/sites/default/files/documents/12\\_2021/dess5016-national-framework-protecting-childrenaccessible.pdf](http://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf)>, p 23.
- 744 Australian Government Department of Social Services, *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*, 2021, <[www.dss.gov.au/sites/default/files/documents/12\\_2021/dess5016-national-framework-protecting-childrenaccessible.pdf](http://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf)>, p 24.
- 745 Government of South Australia, *Department of Human Services*, web page, <[www.dhs.sa.gov.au/about-us](http://www.dhs.sa.gov.au/about-us)>.
- 746 Statement of Lois Boswell to DRC public hearing 8, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0195.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0195.0001.0001.pdf)>, p 2.
- 747 NSW Government Communities and Justice, About Us, web page, <[www.justice.nsw.gov.au/about-us](http://www.justice.nsw.gov.au/about-us)>; Tasmanian Premier Peter Gutwein wants to scrap the state's Communities Department', *ABC News*, 25 February 2022, <[www.abc.net.au/news/2022-02-25/communities-department-to-be-scraped-under-government-plans/100857976](http://www.abc.net.au/news/2022-02-25/communities-department-to-be-scraped-under-government-plans/100857976)>.
- 748 Australian Institute of Family Studies, *Australian Child protection legislation*, CFA Resource Sheet, 1 August 2022, web page <<https://aifs.gov.au/resources/resource-sheets/australian-child-protection-legislation>>
- 749 See 'Services', Families, Fairness and Housing, web page, <[www.services.dffh.vic.gov.au](http://www.services.dffh.vic.gov.au)>.
- 750 'Child protection', Families, Fairness and Housing, web page, <<https://www.dffh.vic.gov.au/child-protection-0>>.
- 751 *Children, Youth and Families Act 2005* (Vic), <[www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121](http://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121)>.
- 752 *Child Wellbeing and Safety Act 2005* (Vic), <[www.legislation.vic.gov.au/in-force/acts/child-wellbeing-and-safety-act-2005/034](http://www.legislation.vic.gov.au/in-force/acts/child-wellbeing-and-safety-act-2005/034)>.
- 753 'Child protection', *Families, Fairness and Housing*, web page, <<https://www.dffh.vic.gov.au/child-protection-0>>.
- 754 *Children and Young Persons (Care and Protection) Act 1998* (NSW), <<https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-157>>.
- 755 'Changes to child protection and what it means', *Communities and Justice*, web page, <[www.facs.nsw.gov.au/download?file=673039](http://www.facs.nsw.gov.au/download?file=673039)>.
- 756 Family Is Culture, *Independent Review of Aboriginal Children in OOHC, Review Report 2019*, Sydney, <[www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](http://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)>.
- 757 SNAICC, *The Family Matters Report 2021: Measuring the trend to turn the tide of the over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care in Australia*, <<https://www.familymatters.org.au/the-family-matters-report-2021/>>.
- 758 Victorian Government, *Roadmap for Reform: Strong Families, Safe Children*, <[www.dffh.vic.gov.au/sites/default/files/documents/202109/Roadmap-for-reform-28-4-2016.pdf](http://www.dffh.vic.gov.au/sites/default/files/documents/202109/Roadmap-for-reform-28-4-2016.pdf)>.
- 759 Northern Territory Government, *Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023*, <[www.rmo.nt.gov.au/\\_data/assets/pdf\\_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf](http://www.rmo.nt.gov.au/_data/assets/pdf_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf)>.
- 760 Northern Territory Government, *Royal Commission into the Protection & Detention of Children in the Northern Territory, Findings and Recommendations*, <<https://www.royalcommission.gov.au/system/files/2020-09/findings-and-recommendations.pdf>>.



- 
- 761 Northern Territory Government, *Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023*, <[www.rmo.nt.gov.au/\\_data/assets/pdf\\_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf](http://www.rmo.nt.gov.au/_data/assets/pdf_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf)>, p 10.
- 762 Northern Territory Government, *Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023*, <[www.rmo.nt.gov.au/\\_data/assets/pdf\\_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf](http://www.rmo.nt.gov.au/_data/assets/pdf_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf)>, p 4.
- 763 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013, <[www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](http://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)>.
- 764 NSW Government, *Independent Review of Out of Home Care in NSW – Final Report*, <[www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf](http://www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf)>.
- 765 ‘Our Organisation’, *Communities and Justice*, web page, <<https://www.theirfuturesmatter.nsw.gov.au/about-us/our-organisation>>.
- 766 ‘Working with non-government organisation partners’, About the Permanency Support Program, web page, <[www.facs.nsw.gov.au/families/permanency-support-program/about](http://www.facs.nsw.gov.au/families/permanency-support-program/about)>.
- 767 Margaret Crawford, *Their Futures Matter: Performance Audit*, July 2020, Audit Office of New South Wales, Sydney, <<https://www.audit.nsw.gov.au/sites/default/files/documents/Their%20Futures%20Matter%20-%20PDF%20Report.pdf>>.
- 768 Queensland Government, *Our Way – A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037*, <[www.cyjma.qld.gov.au/resources/campaign/supporting-families/our-way.pdf](http://www.cyjma.qld.gov.au/resources/campaign/supporting-families/our-way.pdf)>.
- 769 Queensland Government, *Our Way – A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037*, <[www.cyjma.qld.gov.au/resources/campaign/supporting-families/our-way.pdf](http://www.cyjma.qld.gov.au/resources/campaign/supporting-families/our-way.pdf)>, p 4.
- 770 ‘Wangurilwil Gagapduir Aboriginal Children and Families Agreement’, web page, <[www.dffh.vic.gov.au/publications/wungurilwil-gagapduir-aboriginal-children-and-families-agreement](http://www.dffh.vic.gov.au/publications/wungurilwil-gagapduir-aboriginal-children-and-families-agreement)>.
- 771 Sumeyya Ilanbey, ‘Child protection bill aims to keep Indigenous families together’, *The Age*, 23 June 2022, <[www.theage.com.au/politics/victoria/child-protection-bill-aims-to-keep-indigenous-families-together-20220622-p5avlb.html](http://www.theage.com.au/politics/victoria/child-protection-bill-aims-to-keep-indigenous-families-together-20220622-p5avlb.html)>.
- 772 Sumeyya Ilanbey, ‘Child protection bill aims to keep Indigenous families together’, *The Age*, 23 June 2022, <[www.theage.com.au/politics/victoria/child-protection-bill-aims-to-keep-indigenous-families-together-20220622-p5avlb.html](http://www.theage.com.au/politics/victoria/child-protection-bill-aims-to-keep-indigenous-families-together-20220622-p5avlb.html)>.
- 773 NSW Government, *NSW Disability Inclusion Plan 2021–2025*, <[www.facs.nsw.gov.au/download?file=822134](http://www.facs.nsw.gov.au/download?file=822134)>.
- 774 *Disability Inclusion Act 2014 No 41 (NSW)*, <<https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2014-041>>.
- 775 NSW Government, *NSW Disability Inclusion Plan 2021–2025*, <[www.facs.nsw.gov.au/download?file=822134](http://www.facs.nsw.gov.au/download?file=822134)>, p 3.
- 776 NSW Government, *NSW Disability Inclusion Plan 2021–2025*, <[www.facs.nsw.gov.au/download?file=822134](http://www.facs.nsw.gov.au/download?file=822134)>, p 8.
- 777 Government of South Australia, *Disability Inclusion Act 2018 (SA)*, <[www.legislation.sa.gov.au/legislation/lz/c/a/disability%20inclusion%20act%202018/current/2018.1.auth.pdf](http://www.legislation.sa.gov.au/legislation/lz/c/a/disability%20inclusion%20act%202018/current/2018.1.auth.pdf)>.
- 778 Government of South Australia, *State Disability Inclusion Plan – Inclusive SA 2019–2023*, <[www.inclusive.sa.gov.au/resources/state-disability-inclusion-plan](http://www.inclusive.sa.gov.au/resources/state-disability-inclusion-plan)>.
- 779 Government of South Australia, *Disability Inclusion Action Plan 2020–2024*, <[www.childprotection.sa.gov.au/\\_data/assets/pdf\\_file/0005/248585/dcp-disability-access-inclusion-plan.pdf](http://www.childprotection.sa.gov.au/_data/assets/pdf_file/0005/248585/dcp-disability-access-inclusion-plan.pdf)>.

- 
- 780 Government of Tasmania, *Disability Services Strategic Plan 2019–2021*, <[https://www.dpac.tas.gov.au/\\_data/assets/word\\_doc/0028/227845/Strategic\\_Plan\\_-\\_DCS\\_-\\_Disability\\_Service\\_Strategic\\_Plan\\_2019-2021\\_-\\_Final.asd.docx](https://www.dpac.tas.gov.au/_data/assets/word_doc/0028/227845/Strategic_Plan_-_DCS_-_Disability_Service_Strategic_Plan_2019-2021_-_Final.asd.docx)>.
- 781 Government of WA, *A Western Australia for Everyone: State Disability Strategy 2020–2030*, <<https://www.wa.gov.au/system/files/2021-04/state-disability-strategy-2020-2030-action-plan.pdf>>.
- 782 Government of WA, *A Western Australia for Everyone: State Disability Strategy 2020–2030*, <[www.wa.gov.au/system/files/2021-05/State-Disability-Strategy-2020-2030.pdf](http://www.wa.gov.au/system/files/2021-05/State-Disability-Strategy-2020-2030.pdf)>, p 14.
- 783 Government of WA, *A Western Australia for Everyone: State Disability Strategy 2020–2030 – Action Plan*, <[www.wa.gov.au/system/files/2021-04/state-disability-strategy-2020-2030-action-plan.pdf](http://www.wa.gov.au/system/files/2021-04/state-disability-strategy-2020-2030-action-plan.pdf)>.
- 784 Australian Institute of Health and Welfare, *Child Protection National Minimum Data Set*, online (accessed 23 August 2022), see: <<https://www.aihw.gov.au/about-our-data/our-data-collections/child-protection-national-minimum-data-set>>
- 785 51 Statement of Shane Wilson to the DRC public hearing 8, dated 16 October 2020, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0190.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0190.0001.0001.pdf)>, p 2.
- 786 Statement of Leonie Warburton to the DRC public hearing 8, dated 5 October 2020, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf)>, p 3.
- 787 Statement of Leonie Warburton to the DRC public hearing 8, dated 5 October 2020, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf)>, p 4.
- 788 Statement of Leonie Warburton to the DRC public hearing 8, dated 5 October 2020, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0186.0001.0001.pdf)>, p 4.
- 789 Statement of Michael Pervan to DRC public hearing 8 dated 27 October 2020, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf)>, p 1.
- 790 Statement of Michael Pervan to DRC public hearing 8 dated 27 October 2020, available at <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf)>, p 2.
- 791 Statement of Michael Pervan to DRC public hearing 8 dated 27 October 2020, available at <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0197.0001.0001.pdf)>, p 2.
- 792 WA Department of Communities, *Casework Practice Manual*, web page, <<https://manuals.communities.wa.gov.au/CPM/SitePages/HomePage.aspx>>.
- 793 WA Department of Communities, *Parents with disability*, web page, <[www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx](http://www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx)>.
- 794 WA Department of Communities, *Parents with disability*, web page, <[www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx](http://www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx)>.
- 795 NSW Government, *Casework Practice Advice – Working with parents with disabilities*, <[www.disability.royalcommission.gov.au/system/files/exhibit/NSW.0030.0017.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/NSW.0030.0017.0001.pdf)>.
- 796 NSW Government, *Care and Protection Practice Standards*, <[https://www.facs.nsw.gov.au/data/assets/pdf\\_file/0009/796581/Practice-Framework-Standards.pdf](https://www.facs.nsw.gov.au/data/assets/pdf_file/0009/796581/Practice-Framework-Standards.pdf)>.
- 797 NSW Government, *Casework Practice Advice – Working with parents with disabilities* <[www.disability.royalcommission.gov.au/system/files/exhibit/NSW.0030.0017.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/NSW.0030.0017.0001.pdf)>, p 5.
- 798 NSW Department of Communities and Justice, *Practice Framework Standards for Child Protection and Out of Home Care Practitioners*, Sydney 2020: Office of the Senior Practitioner, p 6.
- 799 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>.
- 800 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>, p 6.
- 801 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>.

- 
- 802 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 133.
- 803 'Assessment of safety and risk', Assessing wellbeing, safety and risk, *Communities and Justice*, web page, <<https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/assessing-wellbeing,-safety-and-risk/chapters/assessment-of-safety-and-risk>>.
- 804 Government of South Australia, Assessment framework for stakeholders, <<https://www.childprotection.sa.gov.au/documents/foi/policies/assessment-framework-for-dcp-staff.pdf>>
- 805 F Bredewold and E Tonkens, 'Understanding Successes and Failures of Family Group Conferencing: An in-depth Multiple Case Study' *The British Journal of Social Work*, Vol. 51(6) (2021)
- 806 'Shaping a Better Child Protection System – AbSec Submission', AbSec (2017), p 24.
- 807 SNAICC-National Voice for our Children, *Reviewing implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (2020)*, online (access 23 August 2022) <<https://www.snaicc.org.au/reviewing-implementation-of-the-aboriginal-and-torres-strait-islander-child-placement-principle-2020/>>
- 808 Statement of Assistant Children's Commissioner, Nicole Hucks to the DRC public hearing 8, dated 11 November 2020, <[www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory](http://www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory)>, p 8.
- 809 Statement of Assistant Children's Commissioner, Nicole Hucks to the DRC public hearing 8, dated 11 November 2020, <[www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory](http://www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory)>, p 8.
- 810 Statement of Assistant Children's Commissioner, Nicole Hucks to the DRC public hearing 8, dated 11 November 2020, <[www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory](http://www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory)>, p 15.
- 811 Statement of Commissioner April Lawrie to DRC public hearing 8, <[www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia](http://www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia)>, p 3.
- 812 Statement of Commissioner April Lawrie to DRC public hearing 8, <[www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia](http://www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia)>, pp 6–7.
- 813 Government of South Australia, *DCP Practice Principles – The six pillars of our practice*, <[www.childprotection.sa.gov.au/\\_data/assets/pdf\\_file/0018/126126/dcp-practice-principles.pdf](http://www.childprotection.sa.gov.au/_data/assets/pdf_file/0018/126126/dcp-practice-principles.pdf)>.
- 814 Government of South Australia, *DCP Practice Principles – The six pillars of our practice*, <[www.childprotection.sa.gov.au/\\_data/assets/pdf\\_file/0018/126126/dcp-practice-principles.pdf](http://www.childprotection.sa.gov.au/_data/assets/pdf_file/0018/126126/dcp-practice-principles.pdf)>, p 6.
- 815 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 195.
- 816 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 198.
- 817 Government of WA, *Aboriginal Services and Practice Framework 2016–2018*, <[www.wa.gov.au/system/files/2021-11/Aboriginal-Services-and-Practice-Framework.pdf](http://www.wa.gov.au/system/files/2021-11/Aboriginal-Services-and-Practice-Framework.pdf)>, p 3.
- 818 Government of WA, *Casework Practice – Creating culturally safer disability support*, web page, <<https://manuals.communities.wa.gov.au/CPM/Lists/Steps/DispForm.aspx?ID=2619&ContentTypeld=0x0100E0C578542680C147B1C4A46CC54D83A000E7BCAE867742FC478D99ADA6524477C8>>.
- 819 ABC News, Fears over Aboriginal child removals as report reveals 'endemic racism' in WA Department of Communities, 3 February 2022, web page, <[www.abc.net.au/news/2022-02-03/fears-rates-of-aboriginal-children-removed-from-families-rising/100772704](http://www.abc.net.au/news/2022-02-03/fears-rates-of-aboriginal-children-removed-from-families-rising/100772704)>
- 820 NSW Department of Communities and Justice, *Practice Framework Standards for Child protection and Out of Home Care Practitioners*, Sydney, 2020: Office of the Senior Practitioner.

- 
- 821 Megan Davis, *Family is Culture Review Report*, 2019, Sydney, p XVI.
- 822 NSW Government, *Aboriginal Case Management Policy*, web page, <[www.facs.nsw.gov.au/providers/children-families/deliver-ppsp/aboriginal-case-management-policy/policy-statement2/chapters/policy](http://www.facs.nsw.gov.au/providers/children-families/deliver-ppsp/aboriginal-case-management-policy/policy-statement2/chapters/policy)>.
- 823 The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation, <[www.snaicc.org.au/product/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation](http://www.snaicc.org.au/product/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation)>.
- 824 Richard Weston, Special Report under section 139(2) of the Children's Guardian Act 2019: Family is Culture Review, Office of the Children's Guardian, NSW, March 2022.
- 825 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 229.
- 826 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 230.
- 827 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[www.cspm.csyw.qld.gov.au/getmedia/bb209f6d-55d4-4ecf-9d17-ac03e899e4fa/Disability\\_1.pdf](http://www.cspm.csyw.qld.gov.au/getmedia/bb209f6d-55d4-4ecf-9d17-ac03e899e4fa/Disability_1.pdf)>, p 233.
- 828 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>, p 10.
- 829 Government of WA, *Culturally and Linguistically Diverse Services Framework*, <[www.disability.royalcommission.gov.au/system/files/exhibit/WA.0001.0001.0023.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/WA.0001.0001.0023.pdf)>.
- 830 Government of WA, *Casework Practice – Creating culturally safer disability support*, web page, <<https://manuals.communities.wa.gov.au/CPM/Lists/Steps/DispForm.aspx?ID=2619&ContentTypeld=0x0100E0C578542680C147B1C4A46CC54D83A000E7BCAE867742FC478D99ADA6524477C8>>.
- 831 Government of WA, *Culturally and Linguistically Diverse Services Framework*, <[www.disability.royalcommission.gov.au/system/files/exhibit/WA.0001.0001.0023.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/WA.0001.0001.0023.pdf)>, p 3.
- 832 Government of WA, *Cultural Support Planning*, web page, <[www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=334](http://www.manuals.communities.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=334)>.
- 833 See eg 'Assessment of safety and risk', Assessing wellbeing, safety and risk, *Communities and Justice*, web page, <<https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/assessing-wellbeing,-safety-and-risk/chapters/assessment-of-safety-and-risk>>.
- 834 Queensland Government DCYJMA, *Child Safety Policy – Structured Decision Making*, <[www.cyjma.qld.gov.au/resources/dcsyw/protecting-children/structured-decision-making-407.pdf](http://www.cyjma.qld.gov.au/resources/dcsyw/protecting-children/structured-decision-making-407.pdf)>.
- 835 Email correspondence 16 February 2022
- 836 'Assessing wellbeing, safety and risk', Communities and Justice, web page, <[www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/assessing-wellbeing,-safety-and-risk](http://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/assessing-wellbeing,-safety-and-risk)>.
- 837 Queensland Government, *Child Safety Practice Manual: Assessing harm and risk of harm (Practice guide)*, <[www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/pg-assess-risk-of-harm.pdf](http://www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/pg-assess-risk-of-harm.pdf)>.
- 838 Government of South Australia, *Assessment framework for stakeholders*, <<https://www.childprotection.sa.gov.au/documents/foi/policies/assessment-framework-for-dcp-staff.pdf>>.
- 839 Queensland Government, *Child Safety Practice Manual: Assessing harm and risk of harm (Practice guide)*, <[www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/pg-assess-risk-of-harm.pdf](http://www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/pg-assess-risk-of-harm.pdf)>, p 10.
- 840 Family Is Culture, *Independent Review of Aboriginal Children in OOHC*, Review Report 2019, Sydney, <[www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](http://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)>.
- 841 August-2021-Family-is-Culture-Response-Progress-Report.pdf (nsw.gov.au)
- 842 'What is Signs of Safety?', *Signs of Safety*, web page, <<https://www.signsofsafety.net/what-is-sofs/>>

- 
- 843 Baginsky, M., Hickman, B., Moriarty, J., and Manthorpe, J. (2019). Working with Signs of Safety: Parents' perception of change, *Child and Family Social Work*, <https://doi.org/10.1111/cfs.12673>
- 844 Andrew Turnell and Terry Murphy, *Signs of Safety Comprehensive Briefing Paper*, 4<sup>th</sup> Edition. (2017) Resolution Consultancy Pty Ltd. Perth. Sourced from NT Government at (accessed 20 August 2022): [https://tfhc.nt.gov.au/\\_data/assets/pdf\\_file/0007/996199/signs-of-safety-briefing-paper-4th-edition.pdf](https://tfhc.nt.gov.au/_data/assets/pdf_file/0007/996199/signs-of-safety-briefing-paper-4th-edition.pdf)
- 845 'SAFER children framework', *Health and Human Services*, web page, <[www.cpmanual.vic.gov.au/safer-children-framework](http://www.cpmanual.vic.gov.au/safer-children-framework)>.
- 846 'MARAM in Child Protection practice', *Health and Human Services*, web page, <[www.cpmanual.vic.gov.au/maram-child-protection-practice](http://www.cpmanual.vic.gov.au/maram-child-protection-practice)>.
- 847 'Parental intellectual disability assessment tool', *Health and Human Services*, web page, <[www.cpmanual.vic.gov.au/advice-and-protocols/tools-checklists/assessment-tools/parental-intellectual-disability-assessment](http://www.cpmanual.vic.gov.au/advice-and-protocols/tools-checklists/assessment-tools/parental-intellectual-disability-assessment)>.
- 848 Email communication from DCJ dated 4 March 2022.
- 849 Email communication from DCJ dated 4 March 2022.
- 850 Statement of Katherine Alexander to the DRC dated 20 November 2022, <[www.disability.royalcommission.gov.au/system/files/2021-01/STAT.0244.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/2021-01/STAT.0244.0001.0001.pdf)>, p 2.
- 851 Statement of Katherine Alexander to the DRC dated 20 November 2022, <[www.disability.royalcommission.gov.au/system/files/2021-01/STAT.0244.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/2021-01/STAT.0244.0001.0001.pdf)>, p 3.
- 852 'TFHC Care and Protection Induction Program', *My Learning*, web page, <<https://mylearning.nt.gov.au/course/info.php?id=2431>>.
- 853 Email communication from DCYJMA dated 16 February 2022.
- 854 Statement of Lois Boswell to DRC public hearing 8, <[www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0195.0001.0001.pdf](http://www.disability.royalcommission.gov.au/system/files/exhibit/STAT.0195.0001.0001.pdf)>, pp 14–15.
- 855 Statement of Commissioner April Lawrie to DRC public hearing 8, <[www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia](http://www.disability.royalcommission.gov.au/publications/exhibit-8-018-stat022600010001-statement-commissioner-aboriginal-children-and-young-people-april-lawrie-south-australia)>, p 10.
- 856 Correspondence from Rachael Green, 21 April 2022.
- 857 Statement of Assistant Children's Commissioner, Nicole Hucks to the DRC public hearing 8, dated 11 November 2020, <[www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory](http://www.disability.royalcommission.gov.au/publications/exhibit-8-025-stat022400010001-statement-assistant-childrens-commissioner-nicole-huck-northern-territory)>, p 14.
- 858 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/\\_data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>, pp 10–11.
- 859 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/\\_data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>, p 10.
- 860 ACT Government, *Working with Families with Disability*, <[www.communityservices.act.gov.au/\\_data/assets/pdf\\_file/0006/1703364/Disability-guide.pdf](http://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/1703364/Disability-guide.pdf)>, p 10.
- 861 'Independent Family Advocacy and Support', *Victoria Legal Aid*, web page, <[www.legalaid.vic.gov.au/about-us/what-we-do/independent-family-advocacy-and-support](http://www.legalaid.vic.gov.au/about-us/what-we-do/independent-family-advocacy-and-support)>.
- 862 Parent and carer support groups and disability advocacy groups, web page, <[www.cfecfw.asn.au/parent-and-carer-support-groups-and-disability-advocacy-groups](http://www.cfecfw.asn.au/parent-and-carer-support-groups-and-disability-advocacy-groups)>.
- 863 Statement of Kenn Cliff to DRC Public Hearing 8, dated 17 November 2020, <[STAT.0218.0001.0001.pdf](http://STAT.0218.0001.0001.pdf) (royalcommission.gov.au)>; Statement of Julia Wren to DRC Public Hearing 8, dated 18 November 2020, <[STAT.0225.0001.0001.pdf](http://STAT.0225.0001.0001.pdf) (royalcommission.gov.au)>.
- 864 Statement of Julia Wren to DRC Public Hearing 8, dated 18 November 2020, <[STAT.0225.0001.0001.pdf](http://STAT.0225.0001.0001.pdf) (royalcommission.gov.au)>.

- 
- 865 Megan Davis, *Family is Culture Review Report*, 2019, Sydney.
- 866 'Regional Parenting Services', *Families and children*, web page, <[www.services.dffh.vic.gov.au/regional-parenting-services](http://www.services.dffh.vic.gov.au/regional-parenting-services)>.
- 867 'Strengthening Parent Support Program', *Families and children*, web page, <[www.services.dffh.vic.gov.au/strengthening-parent-support-program](http://www.services.dffh.vic.gov.au/strengthening-parent-support-program)>.
- 868 'Parentline', *Families and children*, web page, <<https://services.dffh.vic.gov.au/parentline>>.
- 869 'Positive Parenting Telephone Service', *Families and children*, web page, <[www.gatewayhealth.org.au/?option=com\\_content&view=article&id=90%3Apositive-parenting-telephone-service&catid=26&Itemid=221](http://www.gatewayhealth.org.au/?option=com_content&view=article&id=90%3Apositive-parenting-telephone-service&catid=26&Itemid=221)>.
- 870 'Supported Playgroups', *Families and children*, web page, <<https://services.dffh.vic.gov.au/supported-playgroups>>.
- 871 'Family Support', *Families and children*, web page, <[www.services.dffh.vic.gov.au/family-support](http://www.services.dffh.vic.gov.au/family-support)>.
- 872 'Your NDIS decisions', *Office of the Public Advocate*, web page, <[www.publicadvocate.vic.gov.au/your-rights/your-ndis-decisions](http://www.publicadvocate.vic.gov.au/your-rights/your-ndis-decisions)>.
- 873 Office of the public Advocate, *Guide to NDIS decision making*, <<https://www.publicadvocate.vic.gov.au/resource/file?id=37>>, p 4.
- 874 See Government of South Australia, *Parenting SA*, web page, <[www.parenting.sa.gov.au](http://www.parenting.sa.gov.au)>.
- 875 Government of South Australia, Developmental delay – Parent Easy Guide, *Parenting SA*, web page, <[www.parenting.sa.gov.au/easy-guides/development-delay-parent-easy-guide](http://www.parenting.sa.gov.au/easy-guides/development-delay-parent-easy-guide)>.
- 876 Government of South Australia, *Parenting SA*, web page, *Disability – brothers and sisters – Parent Easy Guide*, <[www.parenting.sa.gov.au/easy-guides/disability-brothers-and-sisters-parent-easy-guide](http://www.parenting.sa.gov.au/easy-guides/disability-brothers-and-sisters-parent-easy-guide)>.
- 877 Queensland Government, *Child Safety Practice Manual: Practice Kit – Disability*, <[https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09\\_1.pdf](https://cspm.csyw.qld.gov.au/getmedia/543846e7-e52f-4ac6-9b5c-101099c99932/Disability-2022-12-09_1.pdf)>, p 152.
- 878 Queensland Government, *Family and Child Connect*, web page, <[www.qld.gov.au/community/caring-child/family-child-connect](http://www.qld.gov.au/community/caring-child/family-child-connect)>.
- 879 Queensland Government, 'Aboriginal and Torres Strait Islander Family Wellbeing Services', *Protecting Children*, web page, <[www.cyjma.qld.gov.au/protecting-children/child-family-reform/meeting-needs-requirements-aboriginal-torres-strait-islander-children-families-communities/aboriginal-torres-strait-islander-family-wellbeing-services](http://www.cyjma.qld.gov.au/protecting-children/child-family-reform/meeting-needs-requirements-aboriginal-torres-strait-islander-children-families-communities/aboriginal-torres-strait-islander-family-wellbeing-services)>.
- 880 DCYJMA, *Intensive Family Support – Service Model and Guidelines 2022*, <[www.cyjma.qld.gov.au/resources/dcsyw/about-us/funding-grants/specifications/ifs-model-guidelines.pdf](http://www.cyjma.qld.gov.au/resources/dcsyw/about-us/funding-grants/specifications/ifs-model-guidelines.pdf)>.
- 881 Queensland Government, Protecting children and supporting families: A guide to reporting child protection concerns and referring families to support services, <[www.dsdsatsip.qld.gov.au/resources/campaign/supporting-families/protecting-children-supporting-families.pdf](http://www.dsdsatsip.qld.gov.au/resources/campaign/supporting-families/protecting-children-supporting-families.pdf)>, p 15.
- 882 Email communication from DCYJMA dated 16 February 2022.
- 883 Australian Government Productivity Commission, *Report on Government Services 2022*, 16A: Child Protection Services, (2022).
- 884 See Family Is Culture, Independent Review of Aboriginal Children in OOHC, Review Report 2019, Sydney; Child Protection Systems Royal Commission, *The life they deserve: Child Protection Systems Royal Commission Report, Volume 1: Summary and Report*, Government of South Australia, 2016; Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013; & Northern Territory Government, *Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Summary Report of the Board of Inquiry into the Child Protection System in the Northern Territory, 2010.

- 
- 885 See eg IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, pp 301, 303-304; Beth Tarleton, 'A Few Steps along the road? Promoting support for parents with learning difficulties', (2015) 43(2) *British Journal of Learning Disabilities* pp 114-120.
- 886 SNAICC, *The Family Matters Report 2021: Measuring the trend to turn the tide of the over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care in Australia*, <<https://www.familymatters.org.au/the-family-matters-report-2021/>>.
- 887 Australian Human Rights Commission, *Bringing Them Home – National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, <[www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](http://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)>.
- 888 See for example Family Is Culture, *Independent Review of Aboriginal Children in OOHC, Review Report 2019*, Sydney; Tracy Westerman, *Cultural Competency Audit of Child Protection Staff and Foster Care and Adoption Manual*, Indigenous Psychological Services, 2019, available <<https://www.wa.gov.au/system/files/2022-02/Cultural-Competency-Audit.pdf>>
- 889 See Chapter 6 on 'Better Practice'. See also Karen Menzies, 'Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma', (2019), vol 62 (6), *International Social Work*, pp 1522–1534.
- 890 Australian Government Productivity Commission, *Report on Government Services 2022*, 16A: Child Protection Services, 2022. **9**
- 891 Catherine Liddle, Paul Gray, John Burton, Rashmi Kumar, Tamasin Tunny, Claire Prideaux, Emily Armstrong, Anna McCracken, Benjamin French, Indy Attenborough, Heidi Wolfe, Lily Harris, Dakota Lally, Tatiana Corrales, Jacynta Krakouer, James Beaufile and Larissa Behrendt, *The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*, SNAICC – National Voice for our Children, 2022.
- 892 Harvard Center on the Developing Child model; see Center on the Developing Child at Harvard University, *Three principles to improve outcomes for children and families*, 2021 update. <<http://www.developingchild.harvard.edu>>.
- 893 Panel practitioners are private solicitors who are appointed by Legal Aid to a panel. A panel is essentially a pool of solicitors available to undertake direct representation or to be briefed in a legally aided care and protection matter. See 'Legal Aid Panels', *Legal Aid New South Wales* (Web Page), <<https://www.legalaid.nsw.gov.au/for-lawyers/panels-and-compliance>>.1
- 894 'Family Law: Litigation Guardians', *Federal Circuit and Family Court of Australia*, web page, 2022, <<https://www.fcfcoa.gov.au/fl/litigation-guardians>>.
- 895 'Family Law: Litigation Guardians', *Federal Circuit and Family Court of Australia*, web page, 2022, <<https://www.fcfcoa.gov.au/fl/litigation-guardians>>.
- 896 See Susan Collings, M Spencer and P Kong, *Toward access and equity: Disability informed practice in child protection*, Report, Research Centre for Children and Families, The University of Sydney, 2022, p 11.
- 897 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008).
- 898 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 899 Under Article 2 of the *Convention on the Rights of Persons with Disabilities* discrimination includes denial of reasonable accommodation: see the *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008).

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- 900 The Family is Culture review recommended state-wide First Nations child protection advocacy service for parents who engage with child protection services: Independent Review of Aboriginal Children and Young People in OOHC: Family Is Culture Review Report (Report, October 2019) pp 165-166.
- 901 The limitations are discussed more fully in chapter 1.
- 902 Richard Wilkinson & Kate Pickett, *The inner level – How more equal societies reduce stress, restore sanity and improve everyone’s well-being*, Penguin, 2020.
- 903 Economic Justice Australia, ‘1-in-4 on Newstart has a Significant Disability’, web page 2017, <<https://www.ejaustralia.org.au/1-in-4-on-newstart-has-a-significant-disability/>>.
- 904 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 13 December 2006).
- 905 Karen Broadhurst & Clair Mason, ‘Birth parents and the collateral consequences of court ordered child removal: Towards a comprehensive framework’, (2017), vol 31, *International Journal of Law, Policy and the Family*, pp 41–59, p 46.
- 906 See eg Nicola Wing Man, Catherine Wade & Gwynnyth Llewellyn, ‘Prevalence of parents with intellectual disability in Australia’, (2017), vol 42 (2), *Journal of Intellectual & Developmental Disability*, pp 173–179; National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012, p 42; Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, ‘A case record review of termination of parental rights cases involving parents with a disability’, (2017), vol 79 *Children and Youth Services Review*, pp 399, p 390; Carolyn Frohmader, *Parenting issues for women with disabilities in Australia*, Policy Paper, Women with Disabilities Australia, 2009, p 21.
- 907 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 5; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 7.
- 908 Sharyn DeZelar & Elizabeth Lightfoot, ‘Who refers parents with intellectual disabilities to the child welfare system? An analysis of referral sources and substantiation’, (2020), vol 119, *Children and Youth Services Review*, pp 3; Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 5.
- 909 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 910 National Council on Disability, *Rocking the cradle: Ensuring the rights of parents with disabilities and their children*, Report, 27 September 2012.
- 911 Barbara Carter, *Rebuilding the village: Supporting families where a parent has a disability – Report 2: Child protection*, Report, Office of the Public Advocate, 2015, p 12.
- 912 Elizabeth Lightfoot, Traci LaLiberte & Minhae Cho, ‘A case record review of termination of parental rights cases involving parents with a disability’, (2017), vol 79, *Children and Youth Services Review*, pp 399–407; Sandra Azar & Kristen Read, ‘Parental cognitive disabilities and child protection services: The need for human capacity building’, (2009), vol 36 (4) *Journal of Sociology and Social Welfare*, pp 127, p 140.
- 913 Melanie Bournsnel, ‘Assessing the capacity of parents with mental illness: Parents with mental illness and risk’, (2014), vol 57 (2), *International Social Work*, pp 92–108, 98.
- 914 Aboriginal Disability Network of NSW, *Telling it like it is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004–2005*, Report, 2007, p 11. See also Karen Soldatic, ‘Postcolonial reproductions: Disability, indigeneity and the formation of the white masculine settler state of Australia’, (2015), vol 21 (1), *Social Identities*, pp 53–68, p 57.



- 
- 915 Sandra Azar & Kristen Read, 'Parental cognitive disabilities and child protection services: The need for human capacity building', (2009), vol 36 (4), *Journal of Sociology and Social Welfare*, pp 127–151, p 140.
- 916 See, eg, Carlo Schuengel, Sabina Kef, Marja Hodes & Marieke Meppelder, 'Parents with intellectual disability', (2017), vol 15, *Current Opinion in Psychology*, pp 50–54; Hanna Sigurjónsdóttir & James Rice, "'Framed": Terminating the parenting rights of parents with intellectual disability in Iceland', (2017), vol 30 (3), *Journal of Applied Research in Intellectual Disabilities*, pp 543, p 545; IASSID Special Interest Research Group on Parents and Parenting with Intellectual Disabilities, 'Parents labelled with intellectual disability: Position of the IASSID SIRG on parents and parenting with intellectual disabilities', (2008), vol 21 (4), *Journal of Applied Research in Intellectual Disabilities*, pp 296–307, p 297.
- 917 Ella Callow & Jean Jacob, 'Parental disability in child welfare systems and dependency courts: Preliminary research on the prevalence of the population', (2014), vol 93 (6), *Child Welfare*, pp 73–92, p 89.
- 918 Melissa O'Donnell, Miriam Maclean, Scott Sims, Vera Morgan, Helen Leonard & Fiona Stanley, 'Maternal mental health and risk of child protection involvement: Mental health diagnoses associated with increased risk', (2015), vol 69 (15), *Journal of Epidemiology and Community Health*, pp 1175–1183, p 1176.
- 919 See eg Robyn Powell, 'Safeguarding the rights of parents with intellectual disabilities in child welfare cases: The convergence of social science and law', (2016), vol 20 (1), *CUNY Law Review*, pp 127–148; Hanna Sigurjónsdóttir & James Rice, 'The weight of history: Child protection and parenting with a disability in 20<sup>th</sup> century Iceland', (2020), vol 25 (2), *The History of the Family*, pp 214–229.
- 920 Tracy Westerman, Statement to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 24 November 2020.
- 921 Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 11.
- 922 Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3), *Disability & Society*, pp 11.
- 923 See for example Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 37.
- 924 See eg Beth Tarleton, 'Specialist advocacy services for parents with learning disabilities involved in child protection proceedings', (2007), vol 36, *British Journal of Learning Disabilities*, pp 134, p 135; David McConnell & Hanna Sigurjónsdóttir, 'Caught in the child protection net', in Gwynnyth Llewellyn, Rannveig Traustadóttir, David McConnell & Hanna Sigurjónsdóttir (eds), *Parents with intellectual disabilities: Past, present and futures*, John Wiley & Sons, 2010, pp 171–192.
- 925 See eg Susan Collings, Iva Strnadová, Julie Loblinzk & Joanne Danker, 'Benefits and limits of peer support for mothers with intellectual disability affected by domestic violence and child protection', (2020), vol 35 (3) *Disability & Society*, pp 413, p 426; Melanie Bournnell, 'Assessing the capacity of parents with mental illness: Parents with mental illness and risk', (2014), vol 57 (2), *International Social Work*, pp 92–108, p 100; Heather Douglas & Paul Harpur, 'Intellectual disabilities, domestic violence and legal engagement', (2016), vol 31 (3), *Disability & Society*, pp 305–321, p 312; Elizabeth Ely, Chris Wilson & Emily Phillips, 'Issues around service provision for parents with an intellectual disability', (1998), *Interaction: The Australian Magazine on Intellectual Disability*, pp 7–14, p 11.
- 926 See eg ACT Government Office for Disability, *Towards disability justice for the ACT: Summary of research and consultations*, Report, 2019, p 65; NSW Committee on Community Services, *Support for new parents and babies in New South Wales*, Report, 2018, pp 29–30;

- 
- Emily Munro & Maryam Zonouzi, *Re-imagining social care services in co-production with disabled parents*, Report, University of Bedfordshire, 2018, p 65; Kate Fitt, *Our forgotten families: Issues and challenges faced by parents with a disability in Victoria*, Report, Parents with a Disability Community Network, 2010, p 25; Jeanne Kaiser, 'Victimized twice: The reasonable efforts requirement in child protection cases when parents have a mental illness', (2011), vol 11 (1), *Whitter Journal of Child and Family Advocacy*, pp 3–39, p 26.
- 927 Ella Callow, 'The Indian Child Welfare Act: Intersections with disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review: Journal of Poverty Law and Policy*, pp 501.
- 928 See National Indian Child Welfare Association, *The Indian Child Welfare Act: A Families Guide*, 2018, p 1.
- 929 Leonard Edwards, 'Defining active efforts in the Indian Child Welfare Act', (2019), vol 41 (1), *NACC Guardian*, pp 1–8, p 4. See also Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 160–61.
- 930 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019.
- 931 Ella Callow, 'The Indian Child Welfare Act: Intersections with Disability and the Americans with Disabilities Act', (2013), vol 46, *Clearinghouse Review: Journal of Poverty Law and Policy*, pp 501.
- 932 Center on the Developing Child at Harvard University, 'Applying the science of child development in child welfare systems', Paper, 2016.
- 933 Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *Progress report*, 2019.
- 934 Joint Standing Committee on the National Disability Insurance Scheme, Parliament of Australia, *Progress report*, 2017.
- 935 See eg Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, and October 2019.
- 936 See eg Scott Avery & First Peoples Disability Network, *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia, 2018.
- 937 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 938 Laura Dunstan, Belinda Hewitt & Sana Nakata, 'Indigenous family life in Australia: A history of difference and deficit', (2019), vol 55 (3), *Australian Journal of Social Issues*, pp 323–38.
- 939 *Bringing Them Home: Report of the National Inquiry into the Separation of Indigenous Children from their Families*, Report, Human Rights and Equal Opportunity Commission, 1997.
- 940 Terri Libesman & Kyllie Cripps, 'Aboriginal and Torres Strait Islander Children's Welfare and Well-Being', in Lisa Young, Mary Anne Kenny, & Geoffrey Monahan (eds), *Children and the law in Australia*, LexisNexis Australia, 2016, pp 307–36.
- 941 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019.
- 942 Joint Council on Closing the Gap, *National Agreement on Closing the Gap*, 2020.
- 943 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019.
- 944 In South Australia these functions are separated, but the project did not have the scope to investigate the impact of this reform.
- 945 See eg Nicola Ross, Lou Johnston, Jessica Cocks & Lynette Stoker, 'Evidence-based law and practice with disadvantaged populations: Perspectives of parents involved in child proceedings', (2017), *Newcastle Law Review*, pp 23.

- 
- 946 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal participation in child protection decision-making in New South Wales*, Report, The Law and Justice Foundation, forthcoming
- 947 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal participation in child protection decision-making in New South Wales*, Report, The Law and Justice Foundation, forthcoming
- 948 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal participation in child protection decision-making in New South Wales*, Report, The Law and Justice Foundation, forthcoming
- 949 Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019.
- 950 Terri Libesman, Wendy Hermeston & Eloise Chandler, *Aboriginal participation in child protection decision-making in New South Wales*, Report, The Law and Justice Foundation, forthcoming.
- 951 We note this recommendation was also made by the *Family is Culture Review* and the Legal Services Commission: see support and measures to address discriminatory systems and practices in Independent Review of Aboriginal Children and Young People in OOHC, *Family Is Culture Review*, Report, October 2019, pp 125–30.
- 952 Terri Libesman, Paul Gray & Katherine Ellinghaus, 'Colonial Law and its Control of Aboriginal and Torres Strait Islander Families', in Peter Cane, Lisa Ford & Mark McMillan (eds) *The Cambridge Legal History of Australia*, Cambridge University Press, 2022, pp 433-455.







**Royal Commission**  
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