

## **“We are equal, not different”**

The experiences of parents with disability engaged with the child safety system

## **Submission by the Queensland Independent Disability Advocacy Network (QIDAN)**

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

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## About the Queensland Independent Disability Advocacy Network

The Queensland Independent Disability Advocacy Network (QIDAN) is comprised of core members which are organisations delivering individual advocacy services to Queenslanders living with disability. These organisations are the Aboriginal and Torres Strait Islander Disability Network Queensland; Aged and Disability Advocacy; Amparo Advocacy Inc; Capricorn Citizen Advocacy; Independent Advocacy in the Tropics; Mackay Advocacy Inc; People with Disability Australia; Queensland Advocacy for Inclusion; Rights in Action; Speaking Up For You; and TASC.

QIDAN has three aims:

- **Systemic advocacy:** to take coordinated action to address systemic issues experienced by people with disability,
- **Member support:** to provide a collaborative space for the exchange of information, resources and issues affecting disability advocacy organisations, and
- **Sector advocacy:** to promote the importance and value of independent disability advocacy on a local, state and national basis.

QIDAN's core members provide an array of independent disability advocacy services across Queensland, including general disability advocacy, specialized individual advocacy (including National Disability Insurance Scheme appeals and Disability Royal Commission advocacy), citizen advocacy, systemic advocacy and operating a statewide information and referral service. These experiences inform QIDAN's understanding and recommendations.

## QIDAN's recommendations

QIDAN's recommendations involve reform to both the Department of Children, Youth Justice and Multicultural Affairs (the Department) as well as services that interact with the Department and the child safety system. QIDAN recommends:

1. The Department to progressively hire staff with disability to bring lived experience into the workplace.
2. The Department to educate all staff on their policies and procedures and regularly review actions taken by Department staff to ensure they are being followed.
3. The Department to actively address unconscious bias towards parents with disability through ongoing training and development.
4. The Department to develop a process to collect data about how many parents with disability are engaged with the system and ensure these parents are offered assistance to connect with support.
5. The Department to develop, monitor and publicly report on targets to ensure parents with disability are not overrepresented in the child protection system. A suggested



target could be a 50% reduction in the number of children of parents with disability in out of home care by 2032.

6. The *Child Protection Act 1999* (Qld) to be amended to ensure reasonable adjustments for parents with disability are automatically considered prior to engagement with the Department. Support should be provided by workers who are trained and skilled at working from an evidence based best practice approach.
7. Child safety staff to complete professional development in relation to working with people with disability in order to understand attitudinal barriers, discrimination, and misperceptions about parents with disability. This training should be facilitated by a person with lived experience of disability and should be ongoing to develop professional practice.
8. The Department to ensure case plans are clear, unambiguous and are regularly reviewed to be a working document that actively works towards reunification, rather than a tool to support separation.
9. The Department to develop an accessible complaints process, which accepts complaints in any format that best meets a person's accessibility needs.
10. The Queensland Government to develop an independent body to have oversight over complaints in relation to the Departments conduct.
11. The Department to complete regular reviews of long-term guardianship orders in line with recommendation 111 of the Carmody Inquiry to ensure children are not drifting through the care system once they have entered it.
12. There should be a whole of government approach to developing and co-designing a community-based Centre of Excellence to support professionals to develop their understanding and clinical practice in supporting parents with disability.
13. The Department to provide counselling support to all parents engaged with the Department to enhance their psychological wellbeing and process the grief inherent in the loss of parental rights and responsibilities.
14. The Department develop clear policy guidance and monitor the implementation of this guidance to ensure investigations that occur are based on current information and not reliant upon reports that were generated as a result of a parent's previous time under the care of the Department.
15. Parenting capacity assessments to be completed by an appropriately trained and independent professional with reasonable adjustments for disability, such as assessments completed over numerous sessions, in different environments including home and community. People with lived experience of disability should be prioritised for conducting assessments of parents with disability. There should be a focus on both the parent's strengths and weaknesses, rather than solely focusing on the parent's weaknesses and the Department should undertake auditing of its current process to

identify areas for improvement. The parenting capacity assessments should have the parent completing parenting tasks with their children, rather than being based on hypothetical scenarios.

16. The Department to allocate funds to provide in home support for parents with disability.
17. The Department to provide specialist disability advocacy funding to independent disability advocacy organisations to enable parents with disability to be supported to navigate the child safety system.
18. The Department to introduce guidelines for timeframes which enable parents to seek external advice about signing documents.
19. The Attorney General to provide adequate funding for free legal services to provide advice to parents with disability about signing documentation.
20. The Department to ensure all staff are aware of their obligations to provide information in an accessible manner, including the booking of interpreters.
21. The Department to ensure parents are able to access information relating to their children at all times, including on weekends.
22. The Department to reassess how it communicates with parents and external stakeholders, with training on the importance of transparency, including advising external stakeholders when they have a requirement to provide information.
23. The Department to fund disability specific parenting programs for parents with disability during pregnancy, birth and post-pregnancy.
24. The Department to invest in optional disability specific placements for parents with disability similar to those at the Ellen Barron Family Centre and/or develop a program to enable parents with disability to receive wrap around support and parenting coaching at home following the birth of their child.
25. The Department to ensure all support programs are culturally safe with embedded ongoing cultural awareness development.
26. The Department and Queensland Government to invest in school holiday programs for vulnerable families, irrespective of a parent or child's NDIS status.
27. The State and Federal governments to provide support to all people with disability to go through the NDIS access process. This needs to be meaningful, practical support to go through each step of the access process.
28. The NDIA to invest in research to identify innovative ways in which disability support funding can be utilised to best meet the needs of parents with disabilities.
29. The NDIA to develop guidelines that are consistent with the COAG agreement specifically point 3.5 and provide disability specific parenting supports to parents with disability, without the need to go through lengthy reviews.

30. The NDIA to create a settlement register to bring transparency to the external review process in line with the Joint Standing Committee's recommendation.
31. The Department and NDIA to create a collaborative and consistent approach in supporting parents with disability to develop the skills that will protect their children from harm. This should include funded assistance to implement NDIS plans.
32. The Department to undergo training to understand how capacity is assessed against the *Guardianship and Administration Act 2000* (Qld), to further understand different areas where a decision maker can be appointed and to understand the scope of a decision makers role.
33. Child Protection solicitors be required to partake in professional development in relation to working with people with disability in order to understand attitudinal barriers, discrimination, and misperceptions about parents with disability. This training should be facilitated by a person with lived experience of disability and should be ongoing to develop professional practice.
34. Duty lawyers and court staff to have warm referral pathways to free legal assistance providers and other support services to ensure parents with disability are connected to legal help.
35. The Queensland Government to provide funding to establish a service where disability advocates and solicitors work together to deliver wrap around services, similar to New South Wales' Intellectual Disability Rights Service. This service should have advocates and solicitors working together in multiple locations across the State to enable face to face engagement and outreach.
36. Courts and tribunals to address accessibility barriers by providing documentation in Easy English and Plain English, ensuring rooms are fitted with hearing loops, and people with disability having access to interpreters including live closed captioning, AUSLAN and languages other than English.
37. The Department of Communities, Housing and Digital Economy (Department of Housing) allow parents to apply for housing solutions which facilitate the reunification of children.
38. The Department to collaborate with the Department of Housing when housing is an influencing factor in reunification.
39. The Queensland Government to adequately fund disability advocacy, including providing funding for specialist child safety disability advocacy for parents with disability.
40. The Department to enter into a memorandum of understanding with the Queensland Independent Disability Advocacy Network in relation to working to support parents with disability.

## Background

Disability advocacy organisations are increasingly required to support parents with disability to engage with the child protection system. In early 2022, it was identified that supporting parents with a disability, in particular parents with an intellectual impairment, to have their voice heard and human rights upheld when interacting with the child protection system, was as a key issue facing all QIDAN members. In 2022, 7% of disability advocacy services provided and 5% of calls received by Pathways were in relation to child protection.<sup>1</sup> As principal advocate for QIDAN, Queensland Advocacy for Inclusion (QAI) undertook consultations both face to face and via online meetings with 7 parents with lived experience of disability and engagement with the child protection system, 43 disability advocates, and 10 professionals who interact with the child protection system. The collective wisdom from these consultations has formed the content of this submission.

## Introduction

The purpose of the child protection system is to protect children from harm and to ensure the safety, well-being and interests of children remain paramount. The importance of an effective and responsive child protection system is unquestionable and indeed critical to a healthy and high-functioning society. However, people with disability who engage with the child protection system as parents encounter significant prejudice and discrimination. This occurs across the whole system, from the practices of local child safety service centers to the attitudes of lawyers at the Director of Child Protection Litigation (DCPL).

Under Queensland’s human rights legislation, families are the fundamental group unit of society and are entitled to protection by society and the State.<sup>2</sup> Additionally, under Article 23 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), parents and children have a right not to be separated due to disability.<sup>3</sup> However, people with disability are disproportionately having their human right to be a parent taken away from them and many are presumed to have little to no capacity to parent, even in the absence of evidence to support this assumption.

Researchers at the University of Sydney’s Centre for Disability Research and Policy found that parents with intellectual disability are significantly over-represented in child protection proceedings and that there is a higher likelihood of their children being placed into care.<sup>4</sup> The

<sup>1</sup> Queensland Independent Disability Advocacy Network, July 2022, *Data analysis January – June 2022*, page 9 & 13.

<sup>2</sup> *Human Rights Act 2019* (Qld), section 26 (1).

<sup>3</sup> United Nations, 3 May 2008, *Convention on the Rights of Persons with Disabilities*, article 23, point 4.

<sup>4</sup> Llewellyn, G & Hindmarsh, G, 2015, ‘Parents with intellectual disability in a population context’, *Current Developmental Disorder Reports*, vol 2, page 124.

experiences of many people with disability reflect a system that is ill-equipped to support parents with disability, with devastating consequences to parents and their children.

The child protection system is a continuum of intervention, from families who require education and support to situations of abuse and neglect which require a child's removal from their home. Parents with disability feel as though they are placed further along the risk continuum simply because of their disability. Doubts regarding a parent's willingness and ability to protect their child from harm can be raised in the absence of a reasonable suspicion of child abuse or neglect, otherwise developed in the presence of risk factors, indicators or disclosures of abuse, or the presence of injuries or behaviour that raise concern about a child's safety.

As a result, people with disability are forced to defend their right to be a parent within an environment that is inaccessible and at times, hostile towards people with a disability. Parents with disability are effectively punished for seeking help and are inadequately supported to develop the skills that will protect their children from harm.

This submission will canvass many of the systemic barriers that parents with disability involved with the child protection system encounter and will provide key recommendations for reform. It will begin by briefly describing some general issues associated with Queensland's Department of Children, Youth Justice, and Multicultural Affairs before outlining specific issues that pertain to parents with disability. The general issues impacting the Department are typically of greater consequence to parents with disability, many of whom face significant challenges and/or intersectional disadvantage and do not have the resources to overcome them without support.

## **General systemic issues associated with the Department of Children, Youth Justice, and Multicultural Affairs**

Many of the challenges encountered by individuals interacting with the Department of Children, Youth Justice and Multicultural Affairs (the Department) are well known to those who support parents and children who are engaged with the Department. Despite multiple inquiries, recommendations to government and subsequent changes to practice, there remains significant failings in the Department's capacity to successfully achieve its aim. That is, to support families to provide a safe and secure home for their children.

During QIDAN's consultation process, the lack of trauma-informed practice by child safety officers was a reoccurring theme. An example of this is child safety officers discussing traumatic incidents from an individual's past without forewarning and without providing appropriate support. It was also commonly felt that the Department failed to acknowledge or mitigate against the trauma that is experienced by a parent whose child is removed. Such compound trauma could contribute to difficulties in working towards reunification of the family at a later time. Further, the views of child safety officers who had worked alongside the family and who

understood the unique family context were then overridden by decision-makers not known to the family, such as DCPL.

Frequently changing child safety officers was also a common experience. A high level of staff burnout and turnover was reflected in staff simply not returning phone calls or replying to emails. It also disrupted key stakeholder relationships and forced parents to constantly retell their stories to new workers. Progress made by one child safety officer could be quickly undone by a replacement officer, leading to the feeling that ‘good work’ was being wasted. Parents also note that there are minimal staff employed by the Department who have lived experience of disability and lived experience of working with parents with disability, knowing about and using best practice.

The Department is also perceived as being consistently inconsistent and failing to follow their own policies and principles. Parents report they often had to upskill and understand the Department’s policies and principles, such as the Framework for practice to ensure the Department’s staff implemented them. There are large discrepancies between regions, offices and even child safety officers in the same region. This lack of consistency means many parents and children under the care of the Department are unsure as to what is going to happen next.

Parents reported that child safety officers are failing to implement the Aboriginal and Torres Strait Islander Child Placement Principles, which recognize the importance of connections to family, community, culture, and country.<sup>5</sup> Some families felt they were judged and assessed through a ‘white lens’ which failed to understand or respect their unique cultural practices. For example, it can be normal for First Nations children to be safely looked after by multiple relatives. Additionally, advocates reported that some First Nations families have relatives willing to look after a child, however, they were overlooked by the Department as suitable placement options.

It was also expressed that child safety officers seemingly practiced from the perspective that parents who engaged with the child protection system were ‘bad parents’ and subsequently dedicated their time to substantiating these beliefs, rather than supporting parents to build their skills and capacity. For example, historical incidents, such as whether an individual has applied for a Domestic Violence Order in the past, have been used against parents even when they are no longer in that relationship. Other examples included child safety officers demanding parents take a pregnancy test or drug test after photos of the parent socializing were posted on social media. This reportedly occurred even though the photos did not depict risk-taking behaviour and the act of viewing the photos meant the parent felt like their privacy was breached. Other parents reported experiencing negative consequences as a result of declining

<sup>5</sup> Department of Children, Youth Justice & Multicultural Affairs, 22 April 2021, *Child Placement Principle*, <https://www.cyjma.qld.gov.au/foster-kinship-care/training/aboriginal-torres-strait-islanders/child-placement-principle>.

to ‘voluntarily’ engage with the Department during pregnancy, such as being subjected to additional scrutiny and assumptions being made about their ability to parent. Despite it being framed as ‘voluntary’, parents felt that there were consequences following the birth of their child if they did not engage with the Department prior to their child’s birth.

Other concerns included families feeling that children were inadequately supported past the age of 18; families having multiple child safety officers for children of the same parent and having to grapple with the stigma associated with involvement with the child protection system. As a result of these and many other common experiences, parents reported being fearful of child safety officers and experiencing intense and at times, debilitating anxiety with regards to their interactions with the Department. Parents found it exhausting to constantly advocate for themselves in an environment that failed to understand the trauma histories of those interacting with it and which failed to always appropriately support families to remain together.

Additionally, the Department has advised advocates that it does not keep data about how many parents of children under their care have a disability. A search of the Queensland Government’s *Open Data Portal* confirms this information is not available.<sup>6</sup> This is concerning as it raises questions regarding whether the Department has a clear intake process in place to identify parents who may require reasonable adjustments due to disability to be able to engage with the Department. Advocates have had discussions with the Department who advised they are committed to implementing data collection; however this is yet to occur. It should also be borne in mind that parents who are of Aboriginal and/or Torres Strait Islander descent may not identify as having a disability for many reasons, including that there is no such equivalent word in Aboriginal and Torres Strait Islander languages.

Currently, there is no support for parents with disability required by legislation when engaging with the Department. Parents and advocates alike would like to see the *Child Protection Act 1999* (Qld) amended to ensure that reasonable adjustments for parents with disability are automatically considered when engaging with the Department. These adjustments should be community based and optional, allowing parents to choose what type of support and how they engage with that support to best suit their needs.

### Recommendations:

- 1. The Department to progressively hire staff with disability to bring lived experience into the workplace.**

<sup>6</sup> A search was undertaken using the *Open Data Portal*, with the following key words used in combination: ‘disability’, ‘impairment’, ‘parent’, ‘child protection’. No results were found relating to parents and data relating to children subject to a child protection order with a disability was last updated in 2014. <https://www.data.qld.gov.au/>

2. The Department to educate all staff on their policies and procedures and regularly review actions taken by Department staff to ensure they are being followed.
3. The Department to actively address unconscious bias towards parents with disability through ongoing training and development.
4. The Department to develop a process to collect data about how many parents with disability are engaged with the system and ensure these parents are offered assistance to connect to support.
5. The Department to develop, monitor and publicly report on targets to ensure parents with disability are not overrepresented in the child protection system. A suggested target could be a 50% reduction in the number of children of parents with disability in out of home care by 2032.
6. The *Child Protection Act 1999* (Qld) to be amended to ensure reasonable adjustments for parents with disability are automatically considered prior to engagement with the Department. Support should be provided by workers who are trained and skilled at working from an evidence based best practice approach.

## Systemic issues that specifically impact parents with disability

This section will outline the most commonly cited barriers facing parents with disability engaging with the child protection system. They are:

- The presumption of a person's inability to parent due to the presence of disability,
- Consequences for parents with disability who ask for support,
- Poor and inaccessible communication with parents with disability,
- Lack of meaningful support for parents with disability,
- Intersectional issues with the National Disability Insurance Scheme,
- Intersectional issues with substitute decision makers,
- Intersectional issues with legal representation,
- Intersectional issues with the Department of Housing,
- Issues for advocates.

Recommendations will be provided in each section. The recommendations have been made with the entire system of child safety in mind.

## Presumption of a person's inability to parent due to the presence of disability

We have heard repeatedly from parents with disability and disability advocates alike that despite people with disability having the right to parent under the CRPD,<sup>7</sup> parents with

<sup>7</sup> United Nations, 3 May 2008, *Convention on the Rights of Persons with Disabilities*, Article 23.

disability feel they are being discriminated against because of their disability. This is even more pronounced when one or both parents have a disability that impacts their cognitive functioning, such as an intellectual impairment or acquired brain injury. The presence of a disability or mental illness is classed as a 'parent concern' and plays a part in decision making processes as set out in the Child Protection Guide.<sup>8</sup>

We were told that despite the Department having guidelines on working with parents with disability, which includes information about how parents with disability often experience attitudinal barriers, discrimination, and misperceptions about their abilities,<sup>9</sup> the way in which Departmental staff continue to interact with parents with disability further perpetuates the systemic ill treatment of people with disability. People with disability felt there was an assumption from the Department that if a parent lives with disability, that this disability equates to a reasonable suspicion that harm has or will occur to a child. This can occur despite there being little to no evidence of this being factual.

The burden of proving that a parent with disability is willing and able to protect their child from harm falls to the parent with disability, typically once their child has been removed. The *Child Protection Act 1999* (Qld) states:

*In protecting a child, the State should only take action that is warranted in the circumstances*<sup>10</sup>

However, for parents living with disability, the action taken is usually the removal of their children, an action which is not always warranted. Research shows that with appropriate support and parent training, parents with disability can successfully raise their children.<sup>11</sup> The level of evidence that is required to support a parent's ability to protect their child from harm when the parent has a disability appears to be far higher than that required of parents without disability as reported by both parents with disability and advocates alike. Parents with disability feel that they need to show they can be 'the perfect parent' without ever being told what the perfect parent is, an acknowledgement that the perfect parent does not exist, or an opportunity to learn how to be a parent.

If a parent with disability feels they are being discriminated against whilst engaged with the child safety system due to their disability, they find it very difficult to raise this as an issue.

<sup>8</sup> Department of Child Safety, Youth and Women, March 2019, *Queensland Child Protection Guide 2.1*, <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/partners/government/child-protection-procedures-manual.pdf>, page 93-100.

<sup>9</sup> Queensland Government, 15 November 2019, *Child safety practice manual: Working with a parent with disability – Stigma and bias*, <https://cspm.csyw.qld.gov.au/practice-kits/disability/working-with-a-parent-who-has-a-disability/seeing-and-understanding/stigma-and-bias>.

<sup>10</sup> *Child Protection Act 1999* (Qld) section 5B(e) ('CPA').

<sup>11</sup> Wade, C, Llewellyn G & Matthews, J 2008, 'Review of parent training interventions for parents with intellectual disability', *Journal of Applied Research in Intellectual Disabilities*, vol. 21, page 353.

Parents told us that when they raised a complaint with the Department about how they have been treated, they can be seen as a ‘problematic parent’ and receive condescending responses. It is difficult to lodge an anti-discrimination complaint whilst engaged with the Department, due to the time and energy required for this additional litigation pathway. Additionally, parents fear retaliatory action by the Department as a result of lodging a complaint while the Department has the power to approve contact with their children. Discrimination lawyers also told us that the confidentiality provisions under the *Child Protection Act 1999* (Qld) precluded the provision of relevant evidence to substantiate a complaint of discrimination made under Federal or State Discrimination law. This ultimately results in the Department’s conduct being left unchecked and a reduction in the accountability of their actions and decisions.

Parents have reported that they feel the Department has pre-determined that they are “unfit to be a parent” and as a result, effectively set the parent with disability up to fail in their attempts for reunification. Some actions of the Department described to us include:

- The development of case plans that have unclear or ambiguous goals, including outlining expectations that the parent with disability feels are unobtainable or unrealistic and subscribe to the notion that in order for reunification to occur, a parent needs to be ‘the perfect parent’,
- Changing case plans when parents achieve the goals set out in the case plan to create additional barriers for reunification that have not been previously raised,
- Case noting which only focuses on the negative aspects of a parent’s parenting style and ability,
- Threatening to include information in a certain way in affidavits that would present the parent in an unflattering light before the court, such as when a parent advised they would be seeking legal advice before signing a document that if they did not sign the document at the time it was presented, the child safety officer would write an affidavit stating the parent was non-compliant with the Department’s requests,
- Arranging contact visits that are not within the vicinity of public transport, knowing the parent uses public transport to meet their transport needs, then stating the parent does not attend contact visits,
- Repeatedly changing contact visits at short notice when the parent needs to plan in advance to attend contact visits or requires structure or routine as a way of managing their disability,
- Outlining parenting courses a parent must participate in, despite the course being unavailable or inaccessible,
- Excluding parents from aspects of their children’s lives, such as parent teacher interviews, health appointments and milestone moments,
- Providing documentation to parents with no explanation as to what the documentation is, and

- Making comments about parents being unable to parent due to their disability, even with support, to the parent and their supporters. This includes comments such as “*they could have 24/7 support, they still wouldn’t know how to be a parent*”.

A key issue that some parents raised relates to timelines. Parents report that prior to the Carmody Inquiry, there was the ability to have multiple short-term orders (usually two years in duration) consecutively, with the aim of reunification. However, after the Carmody Inquiry recommendations were handed down in 2013, children may be placed under a two-year order, and should reunification not occur within the two-year order period, the child is then placed under a long-term order (until they are 18 years old). This ultimately means that a parent has two years to prove they can look after their child, and if this does not occur, there are little hopes for reunification thereafter. Although the change in types of orders was introduced to provide stability to the child, it does not take into account that parents with disability are trying to prove and improve their ability to parent, to a system that inherently believes they are incapable of doing so and which inadequately supports them to do so. A parent can request a review of a case plan (which includes the decisions surrounding long term guardianship), however the Department can refuse this request. If the Department refuse to review the case plan, a parent can then request a review of this decision.<sup>12</sup> The reviewable decision process is through the Queensland Civil and Administrative Tribunal (QCAT), which despite being a jurisdiction where the expectation is for parties to represent themselves without legal assistance, was described as incredibly difficult to navigate, particularly for people with disability.

A case plan is created for every child who is under the care of the Department. However, both parents and advocates alike feel as though this document which has the intended aim of supporting the wellbeing of the child in care, including the goals and actions to achieve permanency for the child (including reunification),<sup>13</sup> is used as a tool to keep parents with disability and their children separated. This is done by case plans being written in ways that are ambiguous, including goals that are unachievable for any parent, and by the case plan being changed when parents meet the goals. Although case plans are supposed to be a collaborative process, many parents feel as though it is a process where they are set up to fail from the outset.

The presumption of an inability to parent was described as not just coming from the Department, but being culturally engrained in society and evident in many mainstream services such as health, legal, and parenting and family support services. Such presumptions are likely to

<sup>12</sup> CPA Schedule 2 – Reviewable decisions and aggrieved persons, review of section 51VA or 51VB.

<sup>13</sup> Queensland Government, 18 November 2022, *Child safety practice manual: Case planning*, [https://cspm.csyw.qld.gov.au/procedures/support-a-child-in-care/case-planning#Develop\\_a\\_case\\_plan](https://cspm.csyw.qld.gov.au/procedures/support-a-child-in-care/case-planning#Develop_a_case_plan).

lead to increased notifications to the Department and subsequent investigations due to a person with disability presenting as pregnant or with children.

A way to tackle these presumptions regarding a parent's ability to parent is by providing education on how to challenge one's own bias and to upskill in how to best support parents with disability to be parents. However, there are limited resources and training for practitioners to educate themselves on how to best support parents with disability. Healthy Start provides information and resources on a broad level,<sup>14</sup> however more support is required for this program to continue and expand. In the United Kingdom, there is *Disabled Parent*,<sup>15</sup> which provides not only practical information and peer support for parents with disability, but also has an entire section dedicated to resources for practitioners across multiple fields. The University of Sydney has the Research Centre for Children and Families, which has developed a website for parents with intellectual disability, family members and support workers to provide practical guidance on how best to support a parent with disability.<sup>16</sup> However, QAI has identified that quality resources to help professionals navigate and support parents with disability engaged with the child safety system in a Queensland context are few and far between, and difficult to locate. QAI plans to develop some resources to fill this gap.

Many parents with disability described their engagement with the Department as traumatic. When a parent with disability falls pregnant, it feels as though it is not a case of *if* they become engaged with child safety, but rather, *when*. There is the trauma of having a child or children removed, sometimes only hours after giving birth, the trauma associated with not knowing what is going to happen next and when you will see your child or children, and the trauma of engaging with systems that are inherently difficult to navigate. There are also one-off events that cause trauma such the Department requesting a parent to take a pregnancy test "to ensure they're not pregnant" or the Department requesting that a parent start a particular type of birth control to "ensure the parent does not get pregnant again" (such as a Mirena or implant). One of the most traumatic events for parents with disability is when their child advises their birth parent that they now call their foster parents Mum or Dad.

The outcome of this ongoing trauma can present itself during meetings with the Department with parents display trauma responses. Rather than this response being understood as a reasonable response in the circumstances, this display of emotion is interpreted as further evidence that the person is unfit to be a parent. However, the removal of a child or children can have a significant impact on a parent's mental health and induce profound grief and loss. This is exacerbated when the parent receives little to no contact time with their child and emotions come to the surface when meeting with the Department to discuss next steps. Parents also

<sup>14</sup> Parenting Research Centre, no date, *Healthy Start*, <https://www.parentingrc.org.au/programs/healthy-start/>.

<sup>15</sup> DisabledParent.org.uk, no date, *Disability, pregnancy & parenthood*, <https://www.disabledparent.org.uk>.

<sup>16</sup> The University of Sydney, no date, *Research Centre for Children and Families*, <https://rccf-parenting-disability.sydney.edu.au>.

report receiving little to no counselling support to process their loss or adjust to the removal of their child from a psychological perspective. Parents with disability may require different or additional support to ensure they are able to process their grief.

Many of the parents with disability consulted reported they were also a child who grew up under the care of the Department themselves. Although not stated in any public material, many people reported that when someone who grew up under the care of the Department becomes pregnant, they are automatically investigated due to previously being a child in care being an identified risk factor. Whilst it is acknowledged that there is no publicly available information to support this assertion, QIDAN is anecdotally aware of the Department utilising reports about a person with disability from when they were a child in the care of the Department as evidence as to why the person with disability is unfit to be a parent. This has reportedly been used against parents who are both still under the care of the Department (those under the age of 18 years) and those who have aged out of the system.

Being a child in care can leave psychological and, in some cases, physical scars and can impact what someone's informal support network may look like. Adults with disability who were previously under the care of the Department typically have less informal supports (family and friends) that would naturally provide support during difficult times due to moving around during different placements and being disconnected from their birth families. This is pronounced when re-engaged with child safety as a parent rather than a child, as their support systems are generally smaller and they have more engagement with formal supports.

Another issue consistently raised during consultations was that of parenting capacity assessments. Parenting capacity assessments often look and feel like psychological evaluations, psychometric testing, or intelligence quotient tests. They are heavily focused on cognitive abilities, rather than parenting skills.<sup>17</sup> In this sense, disability is equated to lack of parenting capacity. It is questionable how the capacity of a parent can be determined when a parent is assessed by a professional in a clinical setting without the presence of the parent's children over the course of a few hours. Parents with disability and advocates alike report that parenting capacity assessments appear to be on the basis of hypothetical scenarios rather than observations in a natural environment. Parents with disability also report feeling as though the parenting capacity assessment is a process of evidence gathering as to *why they can't be parents*, rather than an exercise that highlights both their skills and deficits.

Some parents agree that there is utility in a parenting capacity assessment if it is completed holistically and from a strength-based perspective. The parenting capacity assessment could help to identify a person's skills and strengths as well as areas for improvement, including identifying the environmental factors that can impact their parenting. A way this could be

<sup>17</sup> Aunos, M & Pacheco, L 2021, 'Able or unable: How do professionals determine the parenting capacity of mothers with intellectual disabilities', *Journal of Public Child Welfare*, vol. 15, page 374.

achieved is if parenting capacity assessments occurred in different environments, over different days, and times and with the person's child or children present. This would enable parenting capacity assessments to more accurately capture a parent's abilities and therefore help guide where further support was required. Additionally, parents request that at least some of this parenting capacity assessment to occur during their child's usual routine. This is an example of a reasonable adjustment that should be considered prior to intervention.

Issues with parenting capacity assessments are further compounded by the individuals who administer them. Often, the assessor is someone who regularly completes assessments for the Department and/or was previously an employee of the Department. The independence of assessments was questioned during our consultations.

## Recommendations

- 7. Child safety staff to complete professional development in relation to working with people with disability in order to understand attitudinal barriers, discrimination, and misperceptions about parents with disability. This training should be facilitated by a person with lived experience of disability and should be ongoing to develop professional practice.**
- 8. The Department to ensure case plans are clear, unambiguous and are regularly reviewed to be a working document that actively works towards reunification, rather than a tool to support separation.**
- 9. The Department to develop an accessible complaints process, which accepts complaints in any format that best meets a person's accessibility needs.**
- 10. The Queensland Government to develop an independent body to have oversight over complaints in relation to the Departments conduct.**
- 11. The Department to complete regular reviews of long-term guardianship orders in line with recommendation 111 of the Carmody Inquiry to ensure children are not drifting through the care system once they have entered it.<sup>18</sup>**
- 12. There should be a whole of government approach to developing and co-designing a community-based Centre of Excellence to support professionals to develop their understanding and clinical practice in supporting parents with disability.**

<sup>18</sup> Queensland Government, December 2013, *Response to the Queensland Child Protection Commission of Inquiry final report*, <https://cabinet.qld.gov.au/documents/2013/Dec/Response%20cpcoi/Attachments/Response.pdf>, page 31, recommendation 111,

13. The Department to provide counselling support to all parents engaged with the Department to enhance their psychological wellbeing and process the grief inherent in the loss of parental rights and responsibilities.
14. The Department develop clear policy guidance and monitor the implementation of this guidance to ensure investigations that occur are based on current information and not reliant upon reports that were generated as a result of a parent's previous time under the care of the Department.
15. Parenting capacity assessments to be completed by an appropriately trained and independent professional with reasonable adjustments for disability, such as assessments completed over numerous sessions, in different environments including home and community. People with lived experience of disability should be prioritised for conducting assessments of parents with disability. There should be a focus on both the parent's strengths and weaknesses, rather than solely focusing on the parent's weaknesses and the Department should undertake auditing of its current process to identify areas for improvement. The parenting capacity assessments should have the parent completing parenting tasks with their children, rather than being based on hypothetical scenarios.

### Consequences for parents with disability who ask for support

Although there is fear amongst parents with disability to engage with the Department, there are times when parents feel they need to reach out to ask for additional support. For many of these parents, this is an action they come to regret. Parents who self-identify and request assistance from child safety either due to their disability, the disability of their children or due to changes in circumstances (such as the death of their partner) are investigated by child safety to identify if there is a risk to the child; that is, to identify if there is a parent able and willing to provide care to the child.<sup>19</sup> This is despite there being no notification made and the parent requesting assistance. By the parent identifying the need for additional support, parents described the Department as interpreting this as the parent being unable to care for their child, which can sometimes lead to the child's removal. Once again, these decisions appear to be based upon a presumption of inability to parent due to the presence of disability, regardless of the reason the parent with disability is seeking assistance.

In many cases, parents are not wanting to relinquish their children, they simply want some support to not only get things back on track, but to keep them on track. This may look like a period of respite (time for the parent to recoup), support to identify where assistance is required (including identifying support from mainstream departments such as the National Disability Insurance Scheme (NDIS) or education), and case management. However, what the

<sup>19</sup> CPA section 10(b).

parents were hoping for in terms of support and what the parents said they received are very different.

Parents voluntarily asking for help reported having their children removed and often sent to residential care, where they are then unable to visit their child without pre-authorization. In cases we were told about, this authorization never came, and the only time parents saw their child was at a child safety service centre under strict conditions and supervision. Some parents reported being advised by the Department not to contact their child at all.

Some parents who request additional assistance from the Department may also have formal supports funded through the NDIS, or the Queensland Community Support Scheme (QCSS). Formal supports can be seen as a protective factor, however, when parents do not engage with their supports, advocates advised that the Department sees this as a warning that the parent may not have the cognitive insight into their disability support needs. In the same breath, if a parent's formal supports provide assistance during contact, this can also be seen as an issue. One advocate described it as:

*“Child safety want to see the parent engaging with their formal supports, but if the formal support steps in to help, then it is held against them. It is like a driving instructor. They have the ability to stop the car, but if they do, it's a bad thing”.*

When a child is removed, a case plan is made to outline the steps a parent must take in order to be reunified with their child.<sup>20</sup> This is also the case when parents self-identify and request assistance from child safety. However, there is limited independent support to breakdown what this case plan means in practice and everyday life, meaning that parents with disability can struggle to understand and implement the case plan. Parents with disability may ask for clarification, however parents reported this was held against them as yet another reason why their child should not be reunified with them.

If a parent with disability could access support from an independent disability advocacy service that could help them navigate the different systems, this may result in less children of parents with disability being removed after the parent self-identifies the need for assistance. This is because parents would be supported to understand what support different departments should provide in terms of assistance, and the parent can be helped to navigate these processes. However, often parents with disability are unaware that disability advocacy exists. As the disability advocacy sector is chronically underfunded and the demand is ever increasing, disability advocacy organisations are unable to self-promote their service as they cannot meet the current demand, let alone an increase. Disability advocacy that is independent from the Department and other government agencies is vital to upholding a parent with disability's

<sup>20</sup> Queensland Government, 18 November 2022, *Child safety practice manual: Case planning*, [https://cspm.csyw.qld.gov.au/procedures/support-a-child-in-care/case-planning#Develop\\_a\\_case\\_plan](https://cspm.csyw.qld.gov.au/procedures/support-a-child-in-care/case-planning#Develop_a_case_plan).

rights. The Department could implement a similar funding model to what the Queensland Government’s Department of Education (DoE) implemented after the introduction of the *Human Rights Act 2019* (Qld). The DoE provides funding to QAI to deliver independent disability advocacy specific to students with disability in Queensland state schools.<sup>21</sup> This has seen students with disability be able to access specialist services that meet their needs.

### Recommendations:

**16. The Department to allocate funds to provide in home support for parents with disability.**

**17. The Department to provide specialist disability advocacy funding to independent disability advocacy organisations to enable parents with disability to be supported to navigate the child safety system.**

### Poor and inaccessible communication with parents with disability

One of the biggest issues that we heard about was the lack of quality communication and the extent to which the Department fails to communicate in an accessible manner which meets each parents’ individual needs. Parents told us that from the outset, the Department’s culture instills a belief that if a parent is engaged with the Department, they are a “bad parent”. They described communication that often lacked compassion or appeared misleading. Some parents felt the Department deliberately misinformed them or failed to explain to parents their rights.

Comments by the Departmental representatives made when providing parents with documentation to sign, included:

- *“Sign this form it will make life easier”* – this form was signing NDIS nominee status over to the Department, despite the parent still being the child’s legal guardian,
- *“Sign this form and your Aunt will be able to look after the children while you’re gone”* – this form provided guardianship to the Aunt until the children turned 18, and
- *“If you do not sign this form now, I will write in the affidavit that you were non-compliant”* – this was in response to a parent who was unable to read or write, advising the Department they were taking the form home to bring back in a weeks’ time once they had received legal advice about what the form was and the implications of signing it.

A consistent message from parents was that they felt like they had to sign the forms put in front of them, even if they didn’t understand what the forms said, as they felt like they had no choice. Parents should be supported to seek advice about documents they are signing. At no time were they advised they had a right to obtain independent legal advice or where they could access this advice. Parents also reported being unaware of independent supports such as a

<sup>21</sup> Queensland Advocacy for Inclusion, 2022, *Education advocacy*, <https://qai.org.au/education-in-schools/>.

disability advocate, and felt that the Department could do more to advise parents of this support. However, once engaged with the Department, some parents began to learn that they had rights and asked for these rights to be respected, such as having only small amounts of information provided in written form, or for communication to go through a support person. We were told that very rarely were these requests for accessible communication upheld, and in most cases, requesting additional communication or using alternative communication models resulted in negative commentary about a parent's ability to parent due to alternative communication needs being included in correspondence. One disability advocate recalled asking for an Auslan interpreter for the parent they were supporting, a request that was subsequently denied, as the child safety officer "didn't know how" to book an interpreter.

One independent disability advocate described how it can be very hard to get information from child safety. The advocate felt that without their advocacy, child safety would not have actively upheld a parent's rights, including access to information and understanding what they were signing. Parents also reported an issue with the Department presenting information that presents the parent in a positive light. They said often information about a parent that is positive will be excluded from communication, as observations and evidence from people who support the parent is classed as biased and unreliable by the Department.

A secondary issue with communication from the Department is timing. The preliminary stages of removal of a child can occur hours after birth, when the birth parent is still in hospital, exhausted and still recovering. During this time, child safety officers often talk about court proceedings and other legal matters in legal language. Without a support person present, to explain in plain English what is happening, the parent might agree to things they do not understand, whilst recovering from the effects of giving birth. Although the Practice Guide states that when completing an assessment for an unborn child, the Department should ask if the parent would like a support person present,<sup>22</sup> some parents do not have such support available.

In other cases, we were told the Department will frequently remove the child on a Friday afternoon or evening, meaning that the parent must wait until Monday to speak to someone about what has occurred and to make arrangements for contact. In such instances, the Department may state that this is because the child needed immediate intervention, however advocates report that there appears to be a pattern of removals occurring on a Friday afternoon suggesting a trend that is more than coincidental.

Another problem reported to us was communication with external stakeholders. In some cases, parents with disability have stakeholders external to the Department such as an advocate, a

<sup>22</sup> Department of Children, Youth Justice and Multicultural Affairs, 21 December 2022, *Practice Guide: Respond to an unborn child*, <https://cspm.csyw.qld.gov.au/getattachment/7033c407-f221-44e8-a7ab-6a242e33e164/pg-respond-to-an-unborn-child-nov22.pdf>, page 4.

support coordinator, support workers, a therapist, or legal guardian. Parents reported increased communication with stakeholders in cases of removal and refusal to engage to support reunification.

Parents and advocates described the Department's communication style with stakeholders and parents alike as aggressive, hostile, and argumentative, and lacking in compassion. Though some external stakeholders are required to share information with the Department, others are not and yet due to the tone of the Department's communication, may feel obliged to do so. For example, support workers or support coordinators who may be less well versed in information sharing requirements have shared information when there was no requirement to do so.

When a parent's information is shared with the Department without their consent, it can create concerns about engaging with services in the future as parents might fear the services are there to report information back to the Department. This can lead to parents not wanting to engage with services such as housing and homelessness services, domestic violence services and mental health services, even if there is a need to do so.

#### **Recommendations:**

- 18. The Department to introduce guidelines for timeframes which enable parents to seek external advice about signing documents.**
- 19. The Attorney General to provide adequate funding for free legal services to provide advice to parents with disability about signing documentation.**
- 20. The Department to ensure all staff are aware of their obligations to provide information in an accessible manner, including the booking of interpreters.**
- 21. The Department to ensure parents are able to access information relating to their children at all times, including on weekends.**
- 22. The Department to reassess how it communicates with parents and external stakeholders, with training on the importance of transparency, including advising external stakeholders when they have a requirement to provide information.**

#### **Lack of meaningful support for parents with disability**

In addition to poor communication practices, parents and advocates alike report that there is a lack of meaningful support available to parents with disability to address issues of risk. Rather than having their children removed, parents would like support to learn the practical aspects of being a parent. No person knows immediately how to be a parent, rather it is a role someone learns as time goes on. Parents without disability are able to make mistakes and learn how to do things differently the next time, however parents with disability felt they were not afforded this learning opportunity as their children are often removed instead.

Parents report that what they need most, is disability specific support during pregnancy, birth, and post pregnancy. What parents are currently able to access is mainstream parenting programs that do not take into account their disability or accessibility requirements. There is limited opportunity for training to occur in the home, and if this training does occur in the home, it is piecemeal. Parents want and need regular, ongoing support in the home and community before and after their child is born.

A part of providing disability specific parenting support is ensuring there are placements for parents to have wrap around training, coaching and support, similar to the support provided at the Ellen Barron Family Centre through Children’s Health Queensland. Parents need it to be a place where all staff are disability and culturally responsive, trauma informed and can build capacity of parents using a strengths-based approach. A voluntary option to stay at a residential facility could provide parents with disability an ‘in home’ type of support with a focus on parenting capacity building that tapers off over time. These supports would need to be made available to parents with disability regardless of their NDIS status.

All support that is provided to parents with disability must also take into consideration the cultural needs of the parent and family. The Aboriginal and Torres Strait Islander Child Placement Principles have been developed to recognise the importance of connections to family, community, culture and country,<sup>23</sup> however there appears to be inconsistent application of these principles when the Department is working with Aboriginal and Torres Strait Islander families. This inconsistent application raises concerns over how culturally aware and culturally safe support programs the Department may implement can be.

It must be understood that it takes time to build relationships with parents with disability and in most cases, more time to build relationships with people with disability from culturally and linguistically diverse backgrounds. Some people from culturally and linguistically diverse backgrounds have experienced significant trauma and might be unaware of what life could look like with support. They therefore require time to process this information and develop their skills. Unfortunately, many family intensive support services are short term, meaning that trust is unable to be developed and the outcomes are not fully achieved before the support ends.

There is the opportunity for disability advocates to support parents through this journey and to resolve issues as they arise. Many parents describe disability advocates as “disability interpreters”; someone who can put into words what support is needed, when that support is needed and why. Without this support, some parents feel as though their needs as a parent are not understood and, in some cases, used against them.

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<sup>23</sup> Department of Children, Youth Justice & Multicultural Affairs, 22 April 2021, *Child Placement Principle*, <https://www.cyjma.qld.gov.au/foster-kinship-care/training/aboriginal-torres-strait-islanders/child-placement-principle>.

Sometimes disability advocates are able to complete proactive advocacy rather than reactive advocacy. For example, some disability advocacy organisations have been able to set up warm referral pathways with General Practitioners and Midwives and with the consent of the parent, connect the parent with a disability advocate. This means that if and when the Department comes into contact with the parent, a lot of work has been conducted to put plans in place for any concerns that the Department might have. On many occasions, this has resulted in the Department closing their investigation without the removal of the child. Disability advocates will also work with people who do not have a confirmed diagnosis of disability, and with people who identify as having a disability, meaning that providing assistance to parents with disability regardless of verification of disability type or NDIS status is possible. However, as this work is not funded appropriately, there is very little scope for this to occur currently.

Before the introduction of the NDIS, advocates reported there were different school holiday programs that were run for vulnerable families. However, many of these programs have since lost their funding and are now only available to those with access to the NDIS. This is despite attendees being from various backgrounds and not necessarily being eligible for the NDIS. It should be noted that the NDIS only supports approximately 10% of people with disability,<sup>24</sup> and there remain significant systemic barriers experienced by many people seeking access to the scheme, therefore obstructing a persons access to disability programs.

There needs to be greater investment in parents with disability, rather than a focus on investing in out of home care for children of parents with disability. Early intervention support is critical if parents with disability are to be afforded their rights to be a parent and to have a family. This support is required well before a child is removed and must be transparent and readily accessible to parents with disability.

### Recommendations:

- 23. The Department to fund disability specific parenting programs for parents with disability during pregnancy, birth and post-pregnancy.**
- 24. The Department to invest in optional disability specific placements for parents with disability similar to those at the Ellen Barron Family Centre and/or develop a program to enable parents with disability to receive wrap around support and parenting coaching at home following the birth of their child.**
- 25. The Department to ensure all support programs are culturally safe with embedded ongoing cultural awareness development.**

<sup>24</sup> National Disability Insurance Scheme, 14 May 2020, *Who the NDIS supports*, <https://www.ndis.gov.au/understanding/how-ndis-works/who-ndis-supports>.

## 26. The Department and Queensland Government to invest in school holiday programs for vulnerable families, irrespective of a parent or child's NDIS status.

### Intersectional issues with the National Disability Insurance Scheme

Outside of the Department itself, the next topic that generated the most discussion was the NDIS and how it impacts parenting rights for people with disability. The impact that the NDIS has on the reunification process of a child removed from a parent with disability cannot be understated.

The first hurdle parents with disability must overcome is accessing the NDIS. Access to the NDIS is notoriously difficult, and in Queensland, there is no longer a funded organisation or service that helps with accessing the NDIS. In June 2022, the Queensland Government ceased funding for the Assessment and Referral Team (ART) which helped Queenslanders to access the NDIS in priority cohorts (including those engaged with the criminal justice system, those living in regional, rural and remote areas and people who identified as Aboriginal and Torres Strait Islander or culturally and linguistically diverse). This meant not all people with disability were able to access ART, thus not all people with disability could get help to access the NDIS. In August 2022, the Queensland Government refunded the ART program, but only for young people aged 7-25 years old. It is acknowledged that sometimes the Department's staff will try to assist parents with disability or their children to access the NDIS, however as they are not experts in this area, this can be a frustrating and fruitless expedition.

The government's both at a State and Federal level, argue that assistance with access to the NDIS is a task completed by the Local Area Coordinator Partner in the Community program (LAC PITC),<sup>25</sup> however it is commonly experienced that assistance provided by the LAC PITC program in relation to access is tokenistic and piecemeal. The LAC PITC program's assistance in relation to access involves the LAC emailing or mailing a copy of an Access Request Form, with the advice of "ask your GP to fill this form out". There is little practical assistance, no-in-depth support and no ongoing follow up, despite in-depth and practical assistance being required for many people seeking access to the NDIS.

Should a parent with disability manage to gain access to the NDIS, the next hurdle they encounter is ensuring their plans have funds approved to assist them with parenting and capacity building. In order to gain disability specific funds, a parent with disability must meet with the NDIA or the LAC PITC to discuss their goals, and explain what funding is required. There is generally a lack of understanding as to what constitutes disability specific support for parents with disability, and parents and advocates alike reported a lot of pushback from both the LAC PITC and the NDIA when requesting funding for capacity building programs such as

<sup>25</sup> National Disability Insurance Scheme, 29 June 2021, *Get help applying*, <https://www.ndis.gov.au/applying-access-ndis/how-apply/get-help-applying>.

circle of security, which despite being a program developed for mainstream audiences, has disability specific versions.

The principles that determine the responsibilities of the NDIS and other mainstream service systems (also known as the COAG agreement) states:

*The NDIS will be responsible for support to children, families and carers required as a direct result of the child's or parent's disability, including supports that enable families and carers to sustainably maintain their caring role, including community participation, therapeutic and behavioural supports, additional respite, aids and equipment and supports to help build capacity to navigate mainstream systems.<sup>26</sup>*

However, despite it being clear that the NDIS has responsibility to provide assistance to parents with disability to maintain their caring role, advocates advise the National Disability Insurance Agency (the NDIA) takes the stance that this funding is not their responsibility but rather the Department's,<sup>27</sup> or that it is not related to the parent's disability.<sup>28</sup> Advocates advised the Department relies heavily on the COAG agreement that it is indeed the NDIA's responsibility to fund disability specific parenting support and therefore also refuses to provide such support to parents with disability. What results is a parent who is involved with two bureaucratic systems, being passed back and forth over who will provide support, while receiving no support in the meantime. This back and forth can go on for months and even years. Parents told us that without this support, the Department refuses to work towards reunification and once the short-term order expires, the only option left is for the Department to apply for long-term guardianship while a parent goes through internal and external NDIS review and appeals processes.

Also commonly misunderstood is the reality that parenting support looks different for each parent, child and family. For some parents, it may look like practical capacity building skills such as cooking or organizing, while for others, it may look like regular assistance with transport or community engagement. It may also include funds to support children of parents with disability who also have disability to have support workers and access services away from the family home to provide parents respite and time to recoup. Each family unit's needs must therefore be assessed as a whole and not siloed into different funding categories.

Parents and advocates reported a lack of innovation in the way people accessing the NDIS can be supported to be a parent, and much of that comes from how prescriptive the NDIA has

<sup>26</sup> Council of Australian Governments, 27 November 2015, *Principles to determine the responsibilities of the NDIS and other service systems*, [https://www.dss.gov.au/sites/default/files/documents/09\\_2021/ndis-principles-determine-responsibilities-ndis-and-other-service-1.pdf](https://www.dss.gov.au/sites/default/files/documents/09_2021/ndis-principles-determine-responsibilities-ndis-and-other-service-1.pdf), page 8, point 5.

<sup>27</sup> National Disability Insurance Agency, 29 November 2021, *Child protection and family support*, <https://ourguidelines.ndis.gov.au/how-ndis-supports-work-menu/mainstream-and-community-supports/who-responsible-supports-you-need/child-protection-and-family-support>

<sup>28</sup> Ibid.

become in what they will and will not fund, despite there being no exhaustive list of approved supports nor the price guide providing sufficient guidance. Additionally, if parents are involved with the Department, there is a compelling need for support coordination funding to ensure the parent is supported to implement their or their child's plan when involved with multiple government systems. Support coordination assistance also ensures people from culturally and linguistically diverse backgrounds can obtain information in a way that is appropriate and accessible to them.

Parents can request reviews of funding decisions internally and then externally at the Administrative Appeals Tribunal (AAT). Prior to NDIS, disability support funding was block funded and was not individualised, which meant if there was insufficient funding to meet a parent's disability specific parenting needs, there were no avenues of appeal. However, these reviews can also be problematic. Although a parent can externally review a funding decision at the AAT, this process is complicated and extremely cumbersome. The AAT is similar to QCAT in that it is a jurisdiction where self-representation is expected, however for a person living with disability, the process is very inaccessible. While Tribunal's staff members including conference registrars and case managers try and facilitate meaningful and accessible engagement, the NDIA briefs both internal and external solicitors, some of whom take an extremely adversarial approach, and the power imbalance is significant.<sup>29</sup>

Parents reported that if and when the NDIA eventually agrees to fund disability specific parenting support many months and sometimes years have gone by where a child or children are unable to be reunified with their parent due to lack of funding for parenting support. When these matters are resolved through the AAT process, the NDIA will often wait up until the day of a hearing to provide an offer to the parent, wasting critical resources in preparing for hearings and more importantly significantly impacting a parent's mental health and relationship with their child. The matters that are resolved by consent are not published anywhere, meaning there is no real ability to understand just how many parents are affected or how frequently the NDIA repeat this process.

When a parent is eventually afforded funding to engage a service provider to assist with meeting their disability specific parenting needs, another issue that presents itself is the culture of the service provider. Some service providers will successfully support parents with disability to parent, for example assisting with transport to and from appointments, or assisting with cooking, while some service providers will refuse to even engage with the children. There is a lack of understanding of the crucial role a service provider can play in ensuring the success of a parent with disability remains the primary caregiver of a child or children. As the Department views formal supports such as those provided by NDIS service providers as a positive protective

<sup>29</sup> Sheetal Deo, 20 May 2022, *Great intentions, tragic outcomes: A practitioner's perspective on the NDIS*, <https://www.qlsproctor.com.au/2022/05/great-intentions-tragic-outcomes-a-practitioners-perspective-on-the-ndis>.

factor, formal supports must upskill to ensure they have the knowledge on how best to work with parents with disability in a way that supports the reunification process.

The excitement that used to reverberate throughout the community when talking about the possibilities of the NDIS has faded over time. When discussing the NDIS, there is often now a level of distrust, concern, and fear that if a parent says the wrong thing during their planning meeting, such as requesting parenting education rather than disability specific capacity building, that their funds will be cut, resulting in further intervention from the Department. The NDIA and the Department must therefore come together to proactively establish how they can collaboratively support parents with disability to uphold their right to be parents and to develop the skills they need to ensure the safety of their children, rather than acting in silos and in ways that impact one another's decision making.

### Recommendations:

- 27. The State and Federal governments to provide support to all people with disability to go through the NDIS access process. This needs to be meaningful, practical support to go through each step of the access process.**
- 28. The NDIA to invest in research to identify innovative ways in which disability support funding can be utilised to best meet the needs of parents with disabilities.**
- 29. The NDIA to develop guidelines that are consistent with the COAG agreement specifically point 3.5 and provide disability specific parenting supports to parents with disability, without the need to go through lengthy reviews.**
- 30. The NDIA to create a settlement register to bring transparency to the external review process in line with the Joint Standing Committee's recommendation.<sup>30</sup>**
- 31. The Department and NDIA to create a collaborative and consistent approach in supporting parents with disability to develop the skills that will protect their children from harm. This should include funded assistance to implement NDIS plans.**

### Intersectional issues with substitute decision makers

Some parents with disability who are engaged with the Department also have a legal decision maker appointed through QCAT. This may be a guardian for certain decision matters, or an administrator for financial decisions.

<sup>30</sup> Commonwealth of Australia, December 2019, *Joint Standing Committee on the National Disability Insurance Scheme: NDIS Planning Interim report*, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024350/toc\\_pdf/NDISPlanningInterimReport.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024350/toc_pdf/NDISPlanningInterimReport.pdf;fileType=application%2Fpdf), page 48.

Having a substitute decision maker appointed, such as the Office of the Public Guardian (OPG) or the Public Trustee of Queensland (PTQ), can further embed the notion that a parent with disability is unable to care for their child as they were found by QCAT to lack capacity in a certain decision-making area. Many parents feel as though having a guardian or administrator appointed automatically acts as yet another red flag against their ability to parent, however not all areas of decision-making, such as complex financial decisions, reflects a parent's ability to protect their child from harm and decision makers should be acting from a supported decision-making model and could therefore act as a protective factor in reunification.

The Department's lack of understanding of decision-making capacity being time, domain and matter specific, is evident when a guardian is appointed and the Department tries to bypass parents with disability by asking the OPG/PTQ to make a decision relating to the child in care. This is done despite the parent and OPG/PTQ advising the Department that the decision maker is not appointed for those decisions and that in many cases, the parent still has legal responsibility for their child and therefore the legal right to make these decisions. The Department then may come back and question why a decision maker was appointed and question the role of the decision maker. This may be due to the different definitions of what a guardian is under the *Child Protection Act 1999* (Qld) when compared to the *Guardianship and Administration Act 2000* (Qld). The Department must understand that a QCAT assessment is not (and should not) equal a parenting capacity assessment and this must be reflected in the Department's practice.

An additional problem with substitute decision makers can be the Department's insistence on the decision maker being present for stakeholder meetings. Although in theory this may make some sense, a decision maker is appointed for certain matter types only and generally becomes involved only when certain decisions need to be made. They do not act as day-to-day case managers or advocate for the person they are appointed for. Many people who have a substitute decision maker may also engage an advocate due to feeling that their wills and preferences are not being taken into consideration by the substitute decision maker. The role of a substitute decision maker is therefore not to act as an advocate, and parents generally wish for their advocates to be separate and independent of the services they are accessing.

Lastly, whilst engaged with the Department, some parents may wish to engage an independent lawyer, however PTQ usually will not allow this to occur, even if the parent has the available funds to do so. This appears to be yet another systemic failure which perpetuates the notion that "there is no point in fighting" to have children returned to parents with disability as it will not eventuate.

## Recommendations:

### 32. The Department to undergo training to understand how capacity is assessed against the *Guardianship and Administration Act 2000* (Qld), to further understand different areas



**where a decision maker can be appointed and to understand the scope of a decision makers role.**

## **Intersectional issues with legal representation**

When parents are initially engaged with the Department, many are unaware they are able to access legal assistance, for example through Legal Aid Queensland (LAQ). However, in order to access Legal Aid funding, they need to complete an application form. The LAQ application form is 16 pages long and requires applicants to include financial information such as bank statements, information about assets and answer complicated questions about processes that have occurred or are planned to occur. LAQ has arrangements with local law firms to assist people to complete applications, however the person with disability must be able to attend the law firm's office to receive this assistance and the law firms do not typically provide outreach, meaning if a parent with disability is unable to travel to a law firm in person, they cannot get assistance. To further complicate matters, parents need to reapply for funding at different stages throughout the legal proceedings. Sometimes parents think they have ongoing representation when, in reality, their funding and representation has ended.

LAQ also has the Client Assistance Service (CAS), which provides internal case management to vulnerable clients of LAQ, including people with disability, however this service can often be at capacity to assist clients despite its recent increase in size. This is a process a disability advocate could assist with to ensure parents with disability have access to justice.

In cases where parents are unable to make an application to LAQ for legal representation, which parents advised are due to their inability to read or write and lack of access to technology, parents were encouraged to see the duty lawyer that was rostered on at the court that day. Parents advised that when they have used the duty lawyer service, they felt as though their needs were not met due to duty lawyers not having the additional time to spend with parents with disability. Although the duty lawyer is meant to act as a referral pathway for people to be connected with LAQ or preferred suppliers, parents reported they were not connected to services via this pathway. Parents reported that Magistrates are usually willing to adjourn a matter for a parent in order to allow them to seek legal representation, however there is a gap in support between the adjournment and applying for legal aid.

Parents have described some of the solicitors through Legal Aid (both in house solicitors or external preferred suppliers) as being great. They take the time to understand the issues and understand the parent's preferred communication styles, strengths and weaknesses. However, these solicitors are few and far between. An ex-family solicitor turned disability advocate expressed their concern that family lawyers, especially in the legal aid funded sector, often move on from completing child safety matters, and in large family court matters, due the demand of the role. The workloads are high, and the matters themselves are stressful and complex. This constant cycle of solicitors means that parents must explain what has happened,

what the plans were and where the matter is currently at to multiple people at different stages of the legal proceedings during a process that is inherently stressful and traumatic for the parent. One parent had to brief four separate solicitors in the span of 12 months due to staff turnover.

Similar to broader societal attitudes, there appears to be a presumption of inability to parent due to disability among some solicitors. This means that in some cases parents told us their solicitors:

- Have not sought instructions from the parent with disability for the court matter as they have presumed the parent cannot give instructions despite being their own legal decision maker,
- If instructions have been sought, the solicitor has not followed those instructions as the solicitor decided to act on “best interests” and agreed to removals,
- The solicitor saying that the parent does not deserve contact with their child or children and therefore simply went through the motions and did not contest the order application,
- The solicitor advising things like “just do whatever the Department wants” or “there is no hope in you getting your child back so just sign the consent order”, and
- The solicitor not debriefing with the parent with disability to explain what has occurred and what the next steps are.

There is a need for more disability advocates to work with lawyers in child protection matters. A disability advocate can assist with day-to-day engagement with the Department. It is noted that legal aid funding for child safety matters is very limited. Each solicitor is trying to complete work that falls outside of the court ordered conference, family group meeting and hearings, however, the amount of work there is to do is simply not feasible for a legal aid funded solicitor.

Additionally, legal aid’s website advises there is an initial cap on how much funding they will provide to a family law matter of \$13,000, which remains in place for two years after the final order is made.<sup>31</sup> This can have an extremely adverse result for parents if the court makes orders for reunification to occur, and the Department then chooses to appeal this decision. If the parent has already utilised \$13,000 in legal aid funding, despite needing to respond to the appeal made by the Department, the parent must apply for an extension of the grant of aid.<sup>32</sup>

Unfortunately, many solicitors working in this space also have a poor understanding of disability and how to support someone with disability to be fully included, including how to provide

<sup>31</sup> Legal Aid Queensland, 15 July 2022, *Application process: Family law capping*, <https://www.legalaid.qld.gov.au/About-us/Policies-and-procedures/Grants-Handbook/Applying-for-aid/Application-process>.

<sup>32</sup> Ibid.

accessible information. This means that parents can feel as though the solicitor is doing the bare minimum when representing parents with disability even if that is not the case. This is further exacerbated when parents are not provided context and information as to why solicitors are not questioning the order applications or correcting the record before the court.

The issues above could be resolved by establishing a wraparound service similar to the Ability Rights Centre by the Intellectual Disability Rights Service (IDRS) in New South Wales. The Ability Rights Centre provides specialised advocacy, support, and legal assistance to parents with intellectual disability including providing both legal advice, casework and representation, and non-legal disability advocacy.<sup>33</sup> The IDRS team also work to build capacity among professionals working with parents with intellectual disability such as child safety staff, solicitors and court staff. This service, if rolled out in Queensland would need to have localised responses across the State to ensure face to face engagement and outreach. It would also enable parents to access support to request reviewable decisions before QCAT.

Lastly, courts and tribunals themselves can be inaccessible. Although improvements have been made to make locations physically accessible with ramps and accessible toilets, there is still a lot of work to be done in other aspects of accessibility. This includes ensuring documentation is available in Easy English and Plain English, that rooms are equipped with audio loops, there is availability to access interpreters including live closed captioning, AUSLAN interpreters and interpreters for languages other than English, to name just a few common accessibility requirements.

#### Recommendations:

- 33. Child Protection solicitors be required to partake in professional development in relation to working with people with disability in order to understand attitudinal barriers, discrimination, and misperceptions about parents with disability. This training should be facilitated by a person with lived experience of disability and should be ongoing to develop professional practice.**
- 34. Duty lawyers and court staff to have warm referral pathways to free legal assistance providers and other support services to ensure parents with disability are connected to legal help.**
- 35. The Queensland Government to provide funding to establish a service where disability advocates and solicitors work together to deliver wrap around services, similar to New South Wales' Intellectual Disability Rights Service. This service should have advocates and solicitors working together in multiple locations across the State to enable face to face engagement and outreach.**

<sup>33</sup> Intellectual Disability Rights Service, no date, *Parents with Disability*, <https://idrs.org.au/what-we-do/parents-with-disability>.

- 36. Courts and tribunals to address accessibility barriers by providing documentation in Easy English and Plain English, ensuring rooms are fitted with hearing loops, and people with disability having access to interpreters including live closed captioning, AUSLAN and languages other than English.**

## Intersectional issues with Department of Housing

Insecure housing can also be an issue that impacts whether children are able to be reunited with their parents. However, often it is a catch-22 situation. Parents require a housing solution that can meet the needs of the whole family. If a mother has two children for example, there is an expectation that she will reside in a 3-bedroom home, with one bedroom for each child and herself. However, if the children are not in the care of the mother, then she is not eligible to apply for a three-bedroom home. As the mother is unable to show she has a stable and suitable housing solution, the children will not be reunified. However, without reunification, she is unable to apply for a suitable housing solution, thus fulfilling a never-ending loop of housing insecurity impacting reunification.

### Recommendations:

- 37. The Department of Communities, Housing and Digital Economy (Department of Housing) allow parents to apply for housing solutions which facilitate the reunification of children.**
- 38. The Department to collaborate with the Department of Housing when housing is an influencing factor in reunification.**

## Issues for advocates

A major concern for parents with disability is having someone to be there to walk alongside them while going through processes with the Department. Disability advocacy can do this; however, the capacity of the sector is currently an issue. Disability advocacy in Queensland has seen a continual reduction in funding over the past decade. The Queensland Disability Advocacy Alliance (QDAA) had to campaign for advocacy funding to be continued in 2021,<sup>34</sup> and QIDAN faces the same fate currently, with the Queensland Government being unable to advise if state disability advocacy funding will continue past June 2023. Much of this stems from states and territories being hesitant to fund disability advocacy services post full roll out of the NDIS, with the belief that the NDIS has “fixed” disability issues.<sup>35</sup> Under the current Queensland Disability Advocacy Program (QDAP), 61% of issues disability advocates assisted with are Queensland Government issues (such as housing, education, child safety).<sup>36</sup>

<sup>34</sup> Queensland Disability Advocacy Alliance, 23 March 2021, *Stand with Us*, <https://www.standwithus.com.au/>.

<sup>35</sup> ProBono Australia, 22 March 2021, *Disability groups fight for QLD advocacy funding*, <https://probonoaustralia.com.au/news/2021/03/disability-groups-fight-for-qld-advocacy-funding/>.

<sup>36</sup> Queensland Independent Disability Advocacy Network, July 2022, *Data analysis January – June 2022*, page 8.

Despite the decrease in funding, the demand for disability advocacy assistance to support parents with disability is constant. One of the biggest barriers to disability advocacy services providing assistance to parents with disability is how resource intensive the support can be. Child safety matters can proceed for years and are complex with many stakeholders. Usually when a parent with disability is engaged with the Department, there are also other areas in their life that require advocacy, whether that be to obtain suitable housing, or be included in their child's education. Disability advocates do not just support the parent through child safety proceedings, but rather endeavor to work holistically to address issues in the parents' life.

It is difficult to provide a figure as to how many hours of work each child safety matter can take to support a parent with disability, as things can change rapidly from week to week. One week things may be going smoothly, and the next week there is preparation for a meeting, the meeting itself, debriefing after the meeting and completing follow up. Disability advocates report that they have never had a parent with disability wanting to attend a meeting with the Department by themselves due to fear of intimidation and poor outcomes when they have attended alone. Unfortunately, due to the level of demand, many parents with disability are unable to be supported by disability advocacy.

Table of requests for disability advocacy in relation to child safety by a parent with disability and how many were able to be assisted:<sup>37</sup>

	Req for advocacy: July 21 – Dec 21	Able to assist: July 21 – Dec 21	Req for advocacy: Jan 22 – June 22	Able to assist: Jan 22 – June 22
Brisbane Region	20	5	22	7
Cairns & North Queensland	18	8	7	6
A statewide service	29	0	32	1

Disability advocates report that child safety advocacy is not an area with obvious “wins” or reportable outcomes. This is difficult because outcomes and changes is what the Queensland Government uses to define whether a program is successful or not. However, a parent stating that they felt like they were heard for the first time, or having the Department understand the impact that constantly cancelling visits can have on a parent is something disability advocates would celebrate as a successful outcome, yet this is not widely understood nor reflected in

<sup>37</sup> Queensland Independent Disability Advocacy Network, no date, *Unpublished data*.

funding commitments. Research shows that parents who have access to disability advocacy feel heard, feel supported and build their skills and confidence.<sup>38</sup> Disability advocacy can be a helpful tool to ensure nothing is missed and assist with brainstorming innovative ways to support the reunification of families.

Unfortunately, disability advocates reported that the Department appears to perceive them as the enemy, as they are the ones who hold the Department to account and ensure parents' rights are upheld. There needs to be a greater understanding of the role of and value of advocacy.

### Recommendations:

- 39. The Queensland Government to adequately fund disability advocacy, including providing funding for specialist child safety disability advocacy for parents with disability.**
- 40. The Department to enter into a memorandum of understanding with the Queensland Independent Disability Advocacy Network in relation to working to support parents with disability.**

### Conclusion

Parents with disability in the child safety system are facing numerous barriers to equal treatment and the enjoyment of their right to family life. These barriers are across diverse government departments, but primarily the responsibility of the Department of Children, Youth Justice and Multicultural Affairs.

Parents with disability must be respected and have their rights upheld under the Queensland Human Rights Act and the United Nations Convention on the Rights of Persons with Disabilities. Once the child safety system starts to operate through a human rights lens, only then will meaningful change happen. The Department and other stakeholders need to listen to parents with disability to understand and implement inclusion, accessibility and meaningful engagement. By listening, the government will come to understand when parents with disability want support to be a parent and to raise their children in the family home and what that support might look like.

Parents with disability won't give up. They won't stop fighting to see their children or stop trying to change the system to be more disability aware and inclusive. They do this so the next generation of parents with disability have a better experience of family life. Parents with disability want to know that the government sees and treats them as equal, not different to parents without disability.

<sup>38</sup> Collings, S, Spencer, M, Dew, A & Dowse, L 2018, 'She was there if I needed to talk or to try and get my point across: specialist disability advocacy for parents with intellectual disability in the Australian child protections system', *Australian Journal of Human Rights*, vol. 24, page 169-173.