



Women With Disabilities ACT

Submission to the

**Changing the Children and Young People Act 2008 - Stage 2
Consultation**

21 November 2023

Women With Disabilities ACT acknowledges and pays respect to the Ngunnawal peoples, the traditional custodians of the ACT Region, on whose land our office is located. We pay our respects their Elders past, present and emerging. We acknowledge their spiritual, social, historical, and ongoing connection to these lands and the contribution they make to the life of the Australian Capital Territory. Sovereignty was never ceded.

About WWDACT

Women With Disabilities ACT (WWDACT) is a systemic advocacy and peer support organisation for women, girls, non-binary, and gender diverse people with disabilities in the ACT region. Established in 1995, WWDACT follows a human rights philosophy, based on the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of (All Forms Of) Discrimination Against Women (CEDAW). It works with government and non-government organisations to improve the status and lives of women* with disabilities in the ACT and surrounding region. Our priority areas include violence prevention, sexual and reproductive health, and healthcare.

WWDACT is a Disabled People's Organisation, governed by women, girls, non-binary, and gender diverse people with disabilities. WWDACT acknowledges the assistance of the ACT Government under the Office for Disability in making it possible to undertake our work.

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Endorsements

This submission is endorsed by Advocacy for Inclusion.



Our submission

Thank you for the opportunity to provide feedback on the second Changing the Children and Young People Act (CYP Act) Amendment Bill.

Women with Disabilities ACT (WWDACT) is the peak body for women, girls, non-binary and gender diverse people with disabilities in the ACT region. As a systemic advocacy organisation WWDACT does not engage directly with the child protection system, however we make this submission on behalf of our members, many of whom have experienced contact with child protection in the ACT. It is vital that the perspectives and experiences of children and parents with disabilities are included in any conversations about child protection.

Although there is a lack of data recording the number of parents with disabilities who interact with child protection services, there is Australian research indicating that parents with disabilities are over-represented as subjects of child protection allegations, are significantly more likely to have children removed from their care, and face discrimination at every stage of the child protection systemⁱ. Children with disabilities are also at greater risk of entering the child protection system, and being removed from their families and placed in out of home careⁱⁱ. In 2021-2022 13,000 children with disability were in out of home care, and 34,000 were involved in child protection investigationsⁱⁱⁱ.

It is important that any reforms made to the CYP Act take into consideration the disproportionate representation of people with disabilities in the child protection system, and consider what changes and non-legislative supports should be provided to uphold the rights of children and people with disabilities under the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC). Thus far, the voices of people with disabilities seem missing from the CYP Act reform consultations and processes. We hope that this submission could be a starting point for further consideration of the needs and rights of people with disabilities interacting with the child protection system.

We wish to highlight a few key concerns raised by our members in relation to how child protection interacts with people with disabilities in the ACT. As WWDACT does not work in the sector, it is unclear to us whether the proposed legislative changes will make progress towards addressing these concerns. Either way, we would love to see dedicated funding, policies and programs building off the legislation to increase supports to parents and children with disabilities and to reduce discrimination in the child protection system. If appropriate income, parenting and disability supports are available to parents this goes a long way to reduce the likelihood of interacting with the child protection system.

We also wish to acknowledge the history of discrimination against Aboriginal and Torres Strait Islander people when they encounter the child protection system, and that Aboriginal and Torres Strait Islander people continue to be overrepresented in child protection in the ACT. We recognise that for Aboriginal and Torres Strait Islander people with disabilities, this discrimination is compounded, and they are significantly more likely to have children removed or to be removed from their families^{iv}. An intersectional lens is vital to any reform of the CYP Act to consider how people experience multiple forms of discrimination and oppression within the child protection system.

Disability and family violence

People with disabilities experience domestic and family violence at far higher rates than people without disabilities^v. For parents with disabilities who are experiencing domestic and family violence, disability discrimination and ableism put them at higher risk of having their children removed and being denied custody of their children.

Perpetrators of domestic and family violence against people with disabilities can manipulate systems such as child protection to achieve their objectives^{vi}:

- They can make false allegations that a parent's disabilities or mental health issues are harmful to their children.

- They can give evidence of the parent with disabilities' past interactions with mental health or health systems, and use this as evidence of poor parenting.
- They can redirect the attentions of the child protection system towards a parent's disabilities and away from their coercive and manipulative behaviours.
- They can have allegations of violence dismissed as 'misinterpretations' or 'misunderstandings' by the parent with disabilities.
- They can exploit institutional biases against parents with disabilities to portray themselves as a stronger or better parent.

If the child protection system is not disability and violence-informed and these patterns are not recognised, people with disabilities will be less likely to be believed about their experiences of family violence and abuse. Perpetrators will be more likely to gain custody of the children.

It is easy to see how principles such as the 'best interests principle' could be misapplied if it is assumed the child's needs cannot be met by a parent with disabilities. It is important that this bias is addressed and mitigated through internal policies in the child protection system, and perhaps also in the legislation to ensure decision-making processes are not influenced by bias against parents with disabilities. It is also important that child protection workers have access to training and knowledge about violence against people with disabilities, so they can recognise these unique patterns of abuse.

Recommendation: Consider the proposed legislation reforms through the lens of family and domestic violence, considering how existing frameworks could be exploited by perpetrators, and strengthening or clarifying definitions of violence if required.

Recommendation: Recognise that there are societal and institutional biases against parents with disabilities, and consider how principles such as the 'best interests principle' might be misapplied due to assumptions about capacity of parents with disabilities. Include safeguarding policies that work against these biases.

Recommendation: Fund disability violence awareness training for child protection workers in the ACT.

Children with disabilities

Children with disabilities generally experience higher rates of abuse, neglect and discrimination compared to children without disabilities^{vii}. It is important that children with disabilities are able to grow up free from abuse, to be supported and loved and to have adequate care afforded to them. They have the same rights as children without disabilities.

The government has a responsibility to protect children with disabilities from violence and neglect. However, when the child protection system does not have knowledge of disability, there can be negative consequences when children are referred to the system. Children with disabilities are at greater risk of being removed from their parents, often due to misunderstandings about their disability and incorrect assumptions about a parent's ability to care for their child's needs.

Equally, parents can struggle to get the support they need to care for children with disabilities. Child protection services could play a more central role in helping parents access resources, information and supports to help them raise a child with disabilities. Being sensitive to signs of perceived abuse or maltreatment, and failing to consider these in their broader context, can result in missed opportunities to give parents the help they need.

For example, one member told us how their disability caused them to have multiple fractures as a child. Because the child protection system did not have an understanding of this disability, this member had significant (and unnecessary) involvement with child protection from a young age. If the child protection system had a better understanding of disability and the context of their injuries, it could have assisted the family in accessing additional resources for their child's disability, rather than raising concerns about safety and abuse.

It is important to note that a child's disabilities could make it harder to identify instances of abuse. Signs that could indicate evidence of abuse (such as a child being less trusting of adults) can be overlooked or dismissed because of a child's disabilities. The signs of abuse can also present differently for different children, for example if the child is neurodivergent. Children with disabilities might also experience barriers

to recognising and disclosing experiences of abuse – due to a lack of appropriate consent training for children with disabilities, and a lack of accessible reporting tools particularly for children who are non-verbal.

The child and youth participation principle embedded in these legislation changes is important to ensure children are heard and involved in the decision-making process. However, there is no consideration of adaptations and support for children with disabilities to be included in these decision-making processes. If children with disabilities are not given the tools to report abuse and neglect themselves and are not given the support to be included in decisions about their care, this violates the child and youth participation principle. It is important that supported decision making^{viii} is understood and implemented for children with disabilities to be included in decisions that affect them.

The experience of children with disabilities should be taken into consideration in all parts of this proposed legislation. Families of children with disabilities may need additional income, parental and disability supports to enable them to care for their children – the child protection system should facilitate access to these supports as a first priority. Children should also be meaningfully included in decisions about their care, and be supported to report abuse and neglect in ways accessible to them. Aspects such as the mandatory reporting threshold and restrictions on information sharing between institutions might lead to different outcomes for children with disabilities, and this also needs to be considered as part of this reform.

Recommendation: Consider how the child protection system can help parents to access resources to care for children with disabilities.

Recommendation: Develop and fund accessible tools for children with disabilities to report experiences of abuse and neglect.

Recommendation: Consider how supported decision making can be implemented as part of the child and youth participation principle.

Recommendation: Review the updated processes such as the mandatory reporting threshold and restrictions on information sharing between institutions, and consider how they may impact children with disabilities.

Support for parents with disabilities

Amongst the parents with disabilities we spoke to, there was a general fear of coming into contact with the child protection system. This fear stems from the increased likelihood of parents with disabilities having their children removed from them by child protection^{ix}.

Some parents are motivated to avoid contact with the health or mental health systems in order to stay 'off the radar' of the child protection system. They are scared that reaching out for support or parenting existence will be seen as a 'red flag raised' with child protection services. Interactions with health, mental health or parenting supports could be used as evidence against capability to parent, even years later.

One of our members was put in a situation where she was asked to sign away some control and parenting rights in exchange for receiving help with her children whilst unwell. This process was not transparent and occurred whilst she was not in a position to give informed consent. It is essential to have an individual advocate, disability liaison officer or access to disability-informed legal supports available to parents with disabilities so they can be supported in interactions with child protection systems.

All the parents we spoke to agreed that safeguarding children was the most important priority. One parent was assessed after experiencing mental illness postpartum, and reflects that this assessment is important to ensure children are kept safe. However, it is important to note that both children and parents can be vulnerable whilst interacting with child protection, and institutional biases against parents with disabilities can lead to worse outcomes. People with disabilities may struggle to engage with institutions such as child protection, knowing what kinds of information are relevant to share, and knowing how to stand up and justify their own capacities to parent. It is important that the child protection system is flexible and holds an understanding that disability should not be assumed to limit capacity to parent.

There also is a need in the ACT for increased informal and formal supports for parents with disabilities, to build their knowledge and networks and reduce the likelihood that they will need to interact with the

child protection system at all. Our members reported that parenting groups and materials normally assume parents without disabilities, and don't consider the specific needs and experiences of parenting with disabilities. For example, one neurodivergent parent of a neurodivergent child commented on the challenges of their parenting experience (including overstimulation and different triggers). Support networks for parents and expecting parents with disabilities would help build knowledge and share supports that take account of these unique experiences. There should also be more materials available to expecting parents about parenting with a disability.

Having disability-informed supports available to parents within the child protection system, and increasing disability-specific parenting resources, will likely improve outcomes for parents with disabilities. However, parents require adequate income and disability supports in order to care for their children, and many interact with a host of other systems (income support, NDIS, other disability supports, housing) to have these basic needs met. The government must adequately fund these supports – parents cannot care for children if their basic needs are not met.

Recommendation: Fund individual advocates and disability liaison officers in the child protection system, and ensure that disability-informed advice is available to parents who are in contact with the system.

Recommendation: Develop and fund support groups and information about parenting with a disability.

Recommendation: Consider how increases in funding for income support, disability support and housing can prevent parents from being in contact with child protection in the first place.

If you would like to discuss this submission further, please contact WWDACT CEO Kat Reed ceo@wwdact.org.au.

ⁱ Terri Libesman et al., "Parents with Disability and Their Experiences of Child Protection Systems," Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023,

<https://disability.royalcommission.gov.au/publications/parents-disability-and-their-experiences-child-protection-systems>.

ⁱⁱ “Submission to the Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability: Parents and Children with Disability,” Submission (Victoria: Office of the Public Advocate, December 2022), <https://www.publicadvocate.vic.gov.au/opa-s-work/submissions/royal-commission-into-violence-abuse-neglect-and-exploitation-in-disability-care/560-parents-and-children-with-disability-opa-submission-to-drc>.

ⁱⁱⁱ “Nature and Extent of Violence, Abuse, Neglect and Exploitation,” Final Report: Volume 3, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Commonwealth of Australia, September 2023), <https://disability.royalcommission.gov.au/publications/final-report-volume-3-nature-and-extent-violence-abuse-neglect-and-exploitation>.

^{iv} Terri Libesman et al., “Parents with Disability and Their Experiences of Child Protection Systems.”

^v “People with Disability in Australia: Violence against People with Disability,” Australian Institute of Health and Welfare, July 5, 2022, <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/violence-against-people-with-disability>.

^{vi} David Mandel, Anna Mitchell, and Ruth Stearns Mandel, “How Domestic Violence Perpetrators Manipulate Systems: Why Systems & Professionals Are So Vulnerable & 5 Steps to Perpetrator-Proof Your System” (Safe & Together Institute, 2023), <https://safeandtogetherinstitute.com/how-domestic-violenceperpetrators-manipulate-systems/>.

^{vii} “Working with Families with Disability: Supporting Good Practice” (ACT Child and Youth Protection Services, December 2020), https://www.communityservices.act.gov.au/_data/assets/pdf_file/0006/1703364/Disability-guide.pdf.

^{viii} Christine Bigby et al., “Diversity, Dignity, Equity and Best Practice: A Framework for Supported Decision-Making,” Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, <https://disability.royalcommission.gov.au/publications/diversity-dignity-equity-and-best-practice-framework-supported-decision-making>.

^{ix} Terri Libesman et al., “Parents with Disability and Their Experiences of Child Protection Systems.”