

advocacy for **inclusion**

**Response to the ACT Law Reform
Advisory Council *Canberra* –
Becoming a Restorative City Issues
Paper**

Advocacy for Inclusion

August 2017

About Advocacy for Inclusion

Home of the Disability Rights Law Centre

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion is a non-for-profit Disabled People's Organisation (DPO) community organisation in the Australian Capital Territory (ACT), Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and is signed onto the *ACT Human Rights Act*.

Contact details:

2.02 Griffin Centre

20 Genge Street

Canberra City ACT 2601

Phone: 6257 4005

Fax: 6257 4006

Email: info@advocacyforinclusion.org

ABN: 90 670 934 099

Chief Executive Officer: Christina Ryan

Policy Officer: Bonnie Millen

August 2017

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Introduction

People with disabilities are the largest minority group in Australia and on the planet – yet continue to be marginalised and unrecognised in the communities we live in.¹

The *UN Convention on the Rights of Persons with Disabilities* (CRPD) defines disability as resulting from the ‘interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others’.² Negative attitudes in society towards disability often mean that people with disabilities routinely experience discrimination within the community which deny them equitable access to resources, services and opportunities for personal development and community participation.

A combination of environmental and attitudinal barriers contribute to high levels of marginalisation in the ACT has led to people with disabilities being effectively excluded from participating equitably in social, economic and political processes. As a result of discrimination and social exclusion, the invisibility of persons with disabilities at all levels of society and the lack of positive responses becomes a driving factor as to why people with disabilities cannot actively participate on an equal basis in areas of social and economic life, including the ACT justice system. To date the only disability justice response by the ACT government has been to expect people with disabilities to use generic processes designed for mainstream members of the community.

This systemic marginalisation places people with disabilities at an inherent disadvantage when engaging in their community. While community organisations and services designed to combat marginalisation in the ACT have good intentions they are simply unskilled in providing the specialist disability response required to ensure that people with disabilities are able to participate equitably and with appropriate supports. This is most evident in where people are deemed unable to make their own decisions in areas of their lives that affect them or have been given the opportunity to participate within the community on the same equal basis of others. Many people with disabilities are specifically excluded or are not recognised as requiring a level of reasonable adjustment until it is too late.

The inequality and marginalisation that affects the participation of people with disabilities includes:

- a) Outdated understandings of legal capacity commonly prevent people with disabilities from being informed about or involved in legal decision-making directly concerning their lives;³
- b) People with disabilities regularly don’t attend Tribunal processes which impose or review Guardianship and Administration Orders;⁴
- c) Parents with disabilities are poorly resourced to respond to the removal of their children by Care and Protection, or to access the parenting supports and/or legal advocacy needed to have their children returned from out of home care;⁵

¹ World Health Organisation, 2016, fact sheet on disability, <http://www.who.int/mediacentre/factsheets/fs352/en/>

² United Nations, 2006, preamble para (e), <http://www.un.org/disabilities/convention/conventionfull.shtml>

³ The Australian Law Reform Commission has recommended in its 2014 Report, *Equality, Capacity and Disability in Commonwealth Laws*, that the existing tests relating to a person’s capacity to exercise legal rights or participate in legal process must be reformulated to focus on whether and to what extent a person can be supported to play their role in the justice system. Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws – Final Report*, ALRC Report 124, p192.

⁴ Advocacy for Inclusion (2015) *The Right to Equality: Review of Guardianship Arrangements for Adults with Disabilities in the ACT - Submission to the Law Reform Advisory Council*, 22-27.

d) People with disabilities are stranded in situations of abuse or violence, unaware of their rights and feel isolated and powerless to speak up, or without access to recourse against the perpetrator(s).⁶

e) The denial of vilification and public marginalisation that remains unacknowledged when people with disabilities are mocked and taunted by others as a form of hate crime and ignorance.^{7 8}

The current levels of marginalisation in Canberra will not be addressed by mere legislative reform, but will require coordinated investment in changing culture and attitudes and in supporting people with disabilities to exercise their self-determination through self-advocacy support. Such an investment can be achieved with a restorative practice approach, should it be inclusive, equal and fair to people with disabilities that represent the most of the marginalised in the ACT.⁹

Acknowledging Marginalisation and Creating Outcomes

An inclusive and restorative community must aim to be respectful, safe, empowering and to implement practices that overtly include community members who are marginalised and subject to discrimination on a daily basis. This includes recognising how it has excluded people and to have outcomes in place to address the systematic marginalisation and trauma in our community.

Advocacy for Inclusion continues to see the consequences caused by marginalisation and sees an urgent need to address this to ensure people with disabilities have equal participation in the ACT community. The benefits of working towards a restorative community that includes people with disabilities will lead to:

- a) Reduced number of people with disabilities entering the criminal justice system by shifting the support emphasis to the beginning of any justice process, by assuming that appropriate communication supports must be provided at the inception to ensure that people with disabilities enjoy effective access to justice at all stages of their legal process.
- b) Restorative solutions to allow parents with disabilities to have access and support in their parenting roles away from child protection intervention

⁵ See Advocacy for Inclusion. (2013). *Counting them in: Parents with disabilities and the ACT Child Protection System*.

http://www.advocacyforinclusion.org/images/Publications/housing/Advocacy_for_Inclusion_Response_to_CSD_Out_of_Home_Care_Strategy_2015-2020_Dec2013_FINAL.docx

⁶ Advocacy for Inclusion (2015) *Submission to the Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings*, 8. <http://advocacyforinclusion.org/index.php/2014-09-22-05-11-32/publications-home/restraint>

⁷ ABC News Online (2010) *Disabled Australians subjected to hate crimes*, <http://www.abc.net.au/news/2010-08-07/disabled-australians-subjected-to-hate-crimes/935662>

⁸ Disability Discrimination Legal Service Inc. (2012) *Law Reform Submission to the Victorian Law Reform: Disability Vilification* see: <http://dlsaustralia.org/wp-content/uploads/2015/07/Disability-Vilification-Report-FINAL-3004121.pdf>

⁹ For more detailed recommendations see Advocacy for Inclusion (2015) *The Right to Equality: Review of Guardianship Arrangements for Adults with Disabilities in the ACT -Submission to the Law Reform Advisory Council*, 22-27. <http://advocacyforinclusion.org/index.php/2014-09-22-05-11-32/publications-home/decision-making>

- c) Increase in decision-making support during a court, tribunal or mediatory process with an advocate of choice present, leading to less reliance on the need for guardianship orders.
- d) A shift in cultural change towards environmental and attitudinal barriers in the ACT community and institutions that currently lead to people with disabilities being excluded from equal participation in social, civil and political processes.
- e) Reduction in discrimination and social exclusion, including the invisibility of people with disabilities being in the room on issues that impact their social participation and inclusion.
- f) Recognise that all people with disabilities, including people viewed as having 'significant' disabilities, have the right to participate as equals in their own justice process and to be supported by independent disability advocacy to do so.

A restorative community approach, with the necessity of data collection of people with disabilities in the ACT, has increased potential to address the marginalisation seen in social policy areas of legal participation, child protection, violence and abuse, housing inequality and more. For a restorative community to be successful, extensive data collection needs to be established to determine the level of marginalisation, particularly people with disability, living in the ACT community.

The current lack of disaggregated data collected and made publicly available about people with disabilities further pushes them into invisibility and away from a restorative community approach that will allow full participation. For example, the ACT Civil and Administrative Tribunal (ACAT) do not collect data about the age, gender, cultural background, and the type and duration of guardianship orders. Youth Child and Protection Services in the ACT do not collect data about whether or not their service users have disabilities.

The UN Committee on the Rights of Persons with Disabilities has recommended that Australia develops nationally consistent measures for data collection and public reporting of disaggregated data across the full range of UN CRPD obligations¹⁰, and that all data be disaggregated by age, gender, presence of disability, place of residence and cultural background. Accordingly, and in collaboration with the Federal Government, the ACT must establish data collection measures to gain a clear picture about people with disabilities to inform mainstream and disability specific policies and programs as a measure of recognising diversity and inclusion.

The Social Impact Marginalisation

Advocacy for Inclusion observes that individual experiences of disability depend not on the functional limitation relating to their disability, but also the social and cultural environment. Attitudinal barriers range from assumptions of an individual's own capacity and dependency to live, work and are included in society, which can lead to overprotection and disempowerment through negative beliefs and practices towards people with disabilities. The exclusion and negativity faced by people with disabilities result in experience of discrimination with the community which deny them equitable access to resources, services and opportunities that are not denied to people without disability.

¹⁰ CRPD/C/AUS/CO/1, *Statistics and Data Collection Article 31*:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/1&Lang=En

The damage and trauma caused by marginalisation lies in the continuing poverty that people with disabilities live in on a daily basis as they are simply not regarded on the same social equality scale as a person without disability. The relationship between disability and poverty is both a cause and a consequence of marginalisation nationally¹¹ and it is rising in the cost of social welfare expenditure, flowing into a number of marginalisation policy areas that impact people with disabilities.¹² Without dedicated approaches to restorative practices, the consequence of marginalisation will be a continuing problem in the ACT, particularly where people with disabilities have an unequal ability to take part in social and economic opportunities, leading towards a continued undermining of cohesiveness of society.

The ACT must actively move away from supporting the attitudinal and environmental barriers that people with disability face daily, and move towards an inclusive, human rights compliant model that recognises and celebrates the participation and diversity that people with disabilities bring to Canberra becoming a restorative city. This is an extremely important area for the ACT Government to consider and target as all other attempts to progress social policy for people with disabilities are hampered by underlying community attitudes.

The importance of redress and acknowledging marginalisation

The ACT *Human Rights Act 2004*¹³ recognises international instruments; including the UN *Convention on the Rights of Persons with Disabilities (CRPD)*¹⁴ and other treaties that Australia is party to. The uniqueness of the ACT *Human Rights Act 2004* is designed to offer people with disabilities greater opportunities to lead independent lives, to ensure they have equal participation in society and their communities.

The *Act* continues to carry an expectation of a continuing improvement in the lives of people with disabilities including inclusion in the community, access to employment and education opportunities and, fundamentally, the ability to live as other members of the community do. The ACT Government should be doing more to promote the full realisation of economic, social and cultural rights of people with disabilities in the ACT and address the marginalisation and systematic violations of human rights that Advocacy for Inclusion see on daily basis.

As a territory, the ACT has the following obligations:

- The *National Disability Strategy 2010-2020* is based on the social model of disability, which recognises that: Attitudes practices and structures are disabling and can prevent people from enjoying economic participation, social inclusion and equality. This is not an inevitable result of an individual's impairment.
- The *Strategy* commits governments to: Increase awareness and acceptance of the rights of people with disability (Policy direction 2.1)
- Remove societal barriers preventing people with disability from participating as equal citizens (Policy direction 2.2)

¹¹ Australian Council of Social Services (ACOSS) (2017), *Inequality in Australia 2015: A Nation Divided*, http://www.acoss.org.au/wp-content/uploads/2015/06/Inequality_in_Australia_FINAL.pdf

¹² ABS (2016), 5512.0 – Government Finance Statistics: General Government Expenditures by Purpose, Australia, 2014-15. <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/5512.0Main%20Features42015-16?opendocument&tabname=Summary&prodno=5512.0&issue=2015-16&num=&view=>

¹³ *Human Rights Act 2004* <http://www.legislation.act.gov.au/a/2004-5/default.asp>

¹⁴ UN Convention on the Rights of Persons with Disabilities - <http://www.un.org/disabilities/default.asp?navid=14&pid=150>

- The ACT Disability Services Act 1991 states that: *Programs and services should be designed and administered so as to promote recognition of the competence of, and enhance the image of, people with disabilities.*

People with disabilities have historically been excluded from community and political discussions, including about matters directly concerning them. This continues to be the case, with most consultations focusing on carers and service providers, who are much easier to consult, but who have different interests and perspectives to people with disabilities. The CRPD Civil Society Report 2012¹⁵ recommends that governments should develop robust mechanisms for engagement with people with disabilities, including through their representative organisations, to ensure meaningful involvement in all stages of the planning and implementation of policies concerning people with disabilities. Such consultation is lacking and current efforts are tokenistic. This exclusion perpetuates the marginalisation experienced by people with disabilities.

The community sector continues to be highly collaborative in its approach to supporting Canberra's most disadvantaged community members; however, this must be recognised and supported if people with disabilities are to be supported in the progress of a restorative city agenda. Cross sector collaborative frameworks are needed to ensure a broad understanding of developments and to develop inclusive frameworks.

The difference of advocacy in building restorative communities

People with disabilities are silenced not by their disability, but by a lack of support, training, and inclusion in our community. While leadership and development programs exist for other people with disabilities as they are silenced by marginalisation. There is no ongoing support for people with disabilities to build self-advocacy capacity, leadership and governance skills, or consumer representation ability. Yet many government and community processes seem to expect that confident well-spoken people with disabilities will naturally emerge to participate as required. This is not realistic, and is not expected in any other sector where the voice of consumers is respected.

There are many points along the advocacy continuum where the voice of people with disabilities can be heard. Each point requires specific supports and training to address further marginalisation and exclusion in the community, yet there is very little of either available. Ranging from individual advocacy relationships, through self-advocacy, peer self-advocacy support, diagnostic area support groups, consumer representation, and onto leadership and governance roles which support systemic advocacy, there are many opportunities for enhancing the capacity of people with disabilities to participate in decision making and contribute to policy and program development.

Disability remains one the most siloed areas of service provision in the community sector. While many other parts of the community sector have mainstreamed their work across all services and organisations, disability has been left behind. This means that people with disabilities continue to be surrounded by those concerned only with disability matters, including other consumers, and that workers in the sector are similarly isolated in understanding current good practice and what is happening in the broader community sector. Consequently, many mainstream organisations struggle to support people with disabilities and prefer to refer them to a specialist disability organisation. This situation is

¹⁵ CRPD Civil Society. (2012). *Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities.*

exacerbated by a lack of awareness and inclusion training appropriate to different sub-sectors, and no real understanding of the rights of people with disabilities.

The community sector continues to be highly collaborative in its approach to supporting Canberra's most disadvantaged community members; however, this must be recognised and supported if people with disabilities are to be supported right across the range of organisations and services available. Cross sector collaborative frameworks are needed to ensure a broad understanding of developments and to develop inclusive frameworks.

Paternalistic attitudes among the community perpetuate the belief that people with disabilities are passive and cannot be the drivers of their own lives. Many members of the community, including those working in the disability services sector, hold the misconception that people with significant disabilities cannot have self-determination.¹⁶ This includes their closest family, carers and support workers. Some people with disabilities are surrounded by 'doubters', which directly discourages and blocks a person's ability to self-advocate and exercise self-determination.

For some people with disabilities, the years of isolation and exclusion have had a profound impact on self-worth and self-esteem.¹⁷

Segregation from the community in institutional type settings such as group homes also deskills or prevents people with disabilities from learning the skills to self-advocate, to have choice and control, and engage in the wider community.

People with disabilities approach Advocacy for Inclusion because they have little or no meaningful control over their lives. They have never been able to choose where they live, who they live with, what activities they do during the day, what employment they undertake (if any), and even what food they eat. Some do not even realise that they can have a choice in these things. People with disabilities ask Advocacy for Inclusion "do I have the same rights as other people?"¹⁸ They can see that their lives are different, and often make the assumption that the segregation, exclusion, boredom and demeaning treatment surrounding them is acceptable to the community and therefore must be accepted by them.

Few in the Canberra community would be comfortable if they knew the real picture for people with disabilities, yet the segregation ensures it is so hidden that most people know nothing about it. This highly marginalised group within our community lives almost totally outside regular networks and interactions. While the NDIS will assist in some way, it is cultural shift that will provide a more sustainable sense of inclusion and subsequent reduction in marginalisation. A restorative community provides a real opportunity to address this marginalisation openly and consciously, with benchmarking over time.

Conclusion

Advocacy for Inclusion provides advocacy for the most marginalised, isolated and excluded in Canberra. These are often people who have no real voice of their own, have little or no involvement in making day to day decisions about themselves, and who have minimal opportunities to engage in the community. A further large cohort of people with disabilities has some level of community engagement, but no experience or skills in either self-advocacy or consumer representation. With no support to develop these skills as young people they

¹⁶ *SHUT OUT: The Experience of People with Disabilities and their Families in Australia*- National Disability Strategy Consultation Report prepared by the National People with Disabilities and Carer Council (2009) http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nds_report.pdf.

¹⁷ *Ibid*

¹⁸ Quote from Self-advocacy participant, Advocacy for Inclusion

are left by the wayside. This perpetuates exclusion for people with disabilities and the world remains inaccessible to them.

The discrimination and marginalisation of people with disabilities in the ACT has become systematic and entrenched with the lack of redress and continuing inconsistency of change. There is a lack of monitoring, data collection and enforcement of standards and no effective implementation to address the high levels of marginalisation faced by people with disability in the ACT.

Restorative practice aims to support community groups to build a cohesive and respectful community through mutual accountability for outcomes and shared responsibility. People with disabilities living in the ACT will not be included in Canberra society through the goodwill of people living around them. Instead, to be recognised as a leading restorative city, Canberra needs to support people with disabilities to change attitudinal and environmental barriers through increased equal participation, interactions and social engagement that celebrate their diversity.