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FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES
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Submission Cover Sheet

Inquiry into Child and Youth Protection Services Information Sharing under the Care and Protection System

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Inquiry into Child and Youth Protection Services

Part 2: Information Sharing under the Care and Protection System

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1. About ADACAS

The ACT Disability Aged and Carer Advocacy Service (ADACAS) has been delivering advocacy for and with people with disability, people experiencing mental ill health (or psychosocial disability), older people, and carers in Canberra and the ACT for 28 years. ADACAS also provides free advocacy and information to people with disability in parts of NSW: specifically, in set areas of Shoalhaven, the Eurobodalla Hinterland, Batemans Bay, Broulee – Tomakin, Moruya – Tuross Head.

As an advocacy service, ADACAS is frequently working with people who are “falling through the cracks” in current service systems. We advocate on many topics including housing, quality of service issues, NDIS appeals, at psychiatric treatment order tribunal hearings, on child protection matters, on restrictive practice/restraint/seclusion, substitute decision making etcetera.

ADACAS advocates visit clients at their homes or places of the clients’ choosing. ADACAS additionally offer NDIS support coordination to a small number of NDIS participants, and have a Projects/research team currently exploring practical responses to issues arising through advocacy and Supported Decision Making. We have also recently commenced delivering Redress Scheme support services to people who are survivors of institutional child sexual abuse and individuals making submissions to the Royal Commission into Aged Care Quality and Safety, and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

ADACAS acknowledges the traditional owners of the lands on which we work, and pay our respects to their Elders, and to all Aboriginal and Torres Strait Islanders in our communities.

2. Systemic Issues

A. Introduction

The terms of reference for this ACT Legislative Assembly Inquiry into Child Protection, note that:

- "(a) the 2004 Vardon report raised concerns from community members that the ACT's care and protection system lacked 'effective external scrutiny' to remedy 'unlawful or incorrect administrative actions or decisions', and also mentioned the need for 'transparency and accountability in decision making';
- (b) the 2016 Glanfield inquiry recommended, as one of four key outcomes, the 'improved quality of, and transparency in ... decision making and practices' in the ACT's care and protection system;
- (c) in its 2016 Response to Family Violence, the ACT Government stated that:
 - (i) 'increased transparency and the building of trust is particularly necessary in child protection cases';
 - (ii) the Territory's care and protection system 'must adopt a culture of transparency'; and
 - (iii) 'the ACT Government accepts that proper accountability enhances community confidence in public administration, especially in complex areas such as statutory child protection services' ; and
- (d) the ACT Government recently released a discussion paper on options for the review of child protection decisions in the ACT for public consultation;"

Whilst we are conscious that this inquiry has arisen in response to a particular case, and seeks to identify potential systemic issues in relation to that case, we are taking the liberty also with this response of commenting also on other additional systemic issues to assist the committee with their considerations and responses.

B. Context:

Whilst we have focused this paper around the needs of parents with disability and/or mental ill health where CYPS is involved, and endeavoured to respond to the issues as presented, up front we need to state that CYPS involvement should never be assumed in circumstances where a parent has disability or mental health issues-

CYPS typically becomes involved with any family where concerns are raised related to the safety and wellbeing of a child or young person (concerns re child abuse or neglect). In many of those situations, addressing any gaps in information/knowledge or support needed by the parent/family can address concerns about the child and family's wellbeing and mitigate risk. In some situations where a child concern report is made, there may be a parent with disability and/or mental ill health. ADACAS is focussing this paper on parents with disability/mental ill health in those circumstances.

For Aboriginal and Torres Strait Islander families: the Our Booris Our Way review¹ and steering committee has been focussed on seeking to change the over-representation of Aboriginal and Torres Strait Islander Children within the Care and Protection System. We very strongly endorse all recommendations made by the Steering Committee's efforts and urge full implementation as a matter of priority.

C. Systemic issue of concern: Effective external scrutiny and review/oversight of child protection decision making

We affirm the continued and urgent need to reform the review pathways and scrutiny/oversight of child protection decision making in the ACT. It is imperative that there are improved avenues to seek review of/test CYPS and ACT together decisions, especially decisions on topics such as models for contact/ number of contact visits etc. ADACAS provided a submission and participated in consultations as part of the recent ACT Government review into this topic, and is happy to provide further information on this topic as needed.

D. Systemic issue of concern: Knowledge amongst CYPS staff of disability and adherence to the requirement to make reasonable adjustments when needed

All CYPS workers should be undertaking quality training and ongoing mentoring on disability, human rights, and the responsibility of CYPS workers to make appropriate reasonable adjustments such that a person with disability and/or mental ill health, has an equitable experience of the CYPS system.

At the present time – there is varying level of skill and experience among CYPS staff in working with children and families with disability. The compounding impact of a negative experience with CYPS, or one based on negative assumptions about disability and mental ill health, on parents and child is significant. Thoughtful interrogation of prevailing attitudes and assumptions and constant reference to human rights could diminish some of this negative effect.

One place to begin is with awareness and resources to initiate reasonable adjustments to enable equitable access to CYPS. A reasonable adjustment might mean that a CYPS worker provides information about rights and CYPS processes in Easy English for a person with limited literacy, or that meetings have breaks each half hour, or that the key points discussed are provided in written format at the end of each meeting. The approaches need to be tailored to the individual circumstances of the parents involved.

We are conscious that as part of the Disability Justice efforts, the Office for Disability and CYPS have been working together with other stakeholders to influence change in these areas and we applaud this. In the last year there has also been significant

¹ Our Booris Our Way Steering Committee (2019), *Our Booris Our Way Review*, Interim Report, and subsequent recommendations. Accessed via: <https://www.strongfamilies.act.gov.au/our-booris,-our-way> in October 2019.

work towards developing a Practice Guide for CYPS workers working with parents with disability²: We welcome efforts in this arena too.

We suggest that thorough and quality training on these topics be automatically being included as part of the standard induction processes for new staff. Ongoing and quality professional development on this topic also needs to be provided. We also note that training/information alone, is often not sufficient to embed cultural change, and thus would also strongly encourage an ongoing mentoring approach, whereby staff and parents with disability can seek independent support to navigate the process.

E. Systemic issue of concern: Inadequate levels of funding for both independent advocacy and legal support for parents with disability and/or mental ill health during CYPS processes:

At the present time, there is a significant gap in the support available to parents with disability or mental ill health during assessment and legal processes related to child protection matters.

In our view, all parents with disability and/or mental ill health where CYPS is involved or looking to become involved should be automatically entitled to:

- independent expert support (e.g. from independent advocacy services) and
- legal support

from the beginning and all the way through any CYPS involvement, including through all court processes as applicable.

This is especially important in matters where emergency action is taken, and where there is consideration of removing a child from a family.

i. More advocacy support needed:

At present, there is important empowerment-focused self-advocacy support available to families via the Red Cross Birth Family advocacy service. We note with pleasure that their funding had recently been extended to assist in response to a waiting list of many months.

Many parents with disability and/or mental ill health, however, need a level of support that is greater than the support to self-advocate. They need individual advocacy support, where advocates are both supporting parents to self-advocate to the extent possible, but also, with the parent's agreement, engaging directly during meetings on the parent's behalf, and working with individuals and families and service systems in the background as needed the entire way through all assessment and legal

² ACT Government Office for Disability (2019), *Disability Justice Strategy 2019-2029: Disability Justice Strategy 2019-2029: A strategy to Address Unequal Access to Justice in the ACT*, accessed in October 2019 via https://www.communityservices.act.gov.au/_data/assets/pdf_file/0008/1397924/Disability-Justice-Strategy.pdf

processes to seek to ensure the shared desired outcome: the best possible outcomes for the children and families involved.

Whilst individual advocacy of this type can be resource intensive work, dependent on the specific support needs of a parent to enable equitable access to the system, it is nonetheless vital. Awareness of availability of supports and of the critical importance of using them to uphold the rights of people with disabilities is uncommon.

Whilst ADACAS and other advocacy agencies such as Advocacy for Inclusion and Carers ACT, and legal agencies such as Legal Aid ACT, Canberra Community Law and the Women's Legal Service, seek to offer either independent individual advocacy, or for the legal services, legal support, to the extent that we can within the generic current independent advocacy and legal funding available, the demand is much higher than any of our services are currently able to meet. Provision of specific advocacy supports for parents with disability engaged in the child protection system was specifically mentioned in the report: *Towards Disability Justice for the ACT: Summary of research and consultations* (2018)³, and would align with efforts to increase natural justice, and procedural fairness. We additionally support the need for culturally safe legal and advocacy support to be made available for Aboriginal and Torres Strait Islander families in situations where Child Protection is involved⁴.

- An example situation

A parent with disability (and two young children) need additional support in the home to manage successfully. The parent is accessing what is available in terms of community supports, but it is not sufficient to meet needs and participation in the NDIS is pending. The entry process to the NDIS is complex, and can be time consuming especially when extra medical diagnostic information is needed. The family also is experiencing financial issues, and is not sure where to turn to find the funds to pay for the extra diagnostic testing. A child concern report is made. CYPS timelines are based around the best interests of the child. Much work is needed to support that parent to seek to find funding for diagnostic testing and seek to achieve expedited entry to the NDIS and an NDIS plan that can meet the parent's support needs in such a way that the child's needs are also being prioritised. It takes a considerable amount of knowledge of disability, human rights, reasonable adjustments, the NDIS and CYPS to be able to provide this type of support.

³ ACT Government Office for Disability (2019), *Towards Disability Justice for the ACT: Summary of research and consultations 2019*, accessed in October 2019 via https://www.communityservices.act.gov.au/_data/assets/pdf_file/0005/1337783/Towards-Disability-Justice-for-the-ACT-Summary-of-research-and-consultations-2019.pdf

⁴ Our Booris Our Way Steering Committee (2019), Our Booris Our Way Recommendations May 2019: Letter to Minister Rachel Smith, ACT Minister for Children, Youth and Families from Barb Causon, Chair, Our Booris, Our Way. Accessed via: https://www.strongfamilies.act.gov.au/_data/assets/pdf_file/0007/1361626/Our-Booris-Our-Way-Signed-Third-Set-of-Recommendations-May-2019.pdf in October 2019.

ii. More legal support needed:

Option 1: Legal Aid:

Parents with disability or mental ill health can apply for legal assistance via Legal Aid to seek representation in court. There are limitations, however, to this representation, imposed by funding restrictions, which limit Legal Aid to constantly assess the “merit” of a case and determine whether or not there are “reasonable prospects of success”. This can have the effect of Legal Aid reaching a point where they feel that a parent with disability or mental ill health is unlikely to be successful with a Children’s court matter about parenting orders, and then deciding to withdraw, leaving the parent legally unrepresented in court⁵, unless pro bono legal support is provided from another source

Whilst we expect that the new funding provided in the 2019/2020 budget for Legal Aid to have a Duty Solicitor present at the Children’s Court to assist in child protection matters⁶ will be of significant assistance, given the complexity of many of the CYPS cases, and the additional time that can sometimes be needed as a reasonable adjustment for a person with disability and/or mental health to obtain equitable assistance/access to justice, we contend that more legal funding continues to be urgently needed.

The power imbalance between parents with disability and CYPS in court can be immense. It can also cause intense distress and be very traumatising for parents to suddenly have to self-represent part-way through such an important process. It is not conducive to people feeling like there has been procedural fairness, nor natural justice.

In ADACAS’ view – a parent with disability and/or mental illness attending court in relation to a child protection matter should be entitled to and guaranteed legal assistance for the full duration of any legal processes.

Option 2: Private Legal Assistance:

If a parent has financial means, they can alternatively seek private legal representation. In our experience, this has not usually been an option for most parents with disability / parents with mental illness due to financial constraints.

Option 3: Pro bono Assistance:

In our experience, when we have supported clients to seek pro bono (free) legal assistance through the ACT Pro Bono Clearing House, it has not been possible to access such assistance via that avenue. We have been advised that legal firms have chosen not to register pro bono support in this area of law. It has been suggested we encourage our clients to approach individual legal firms directly to see

⁵ Le Lievre, K (2019), “Parents on unequal footing against government in legal fight for children”, Canberra Times, 2 June 2019, accessed via <https://www.canberratimes.com.au/story/6191886/parents-on-unequal-footing-against-government-in-legal-fight-for-children/?src=rss> in October 2019

⁶ Le Lievre, K (2019), “Legal Aid to provide duty solicitor in Children’s Court with budget funding”, *Canberra Times*, 8 June 2019, accessed via: <https://www.canberratimes.com.au/story/6206670/act-budget-investment-in-childrens-court-support/digital-subscription/> in October 2019.

if any would consider assisting with a particular case. It is often extremely difficult to find a firm willing to offer pro bono assistance to a parent with disability and/or mental ill health in relation to child protection matters.

F. Systemic Issue: Family Group Conferencing and Supported decision-making approaches needed

We encourage the development of a family group conferencing approach that could be adapted to suit the individual needs of parents with disability and/or mental ill health, to allow for strengths based approaches, family voices to be heard and supported decision-making to occur as needed.

G. Systemic Issue: Early support for families

We support ACT Government initiatives that focus on the provision of early support to families in situations where it can assist, with the aim of reducing or avoiding any need for CYPS involvement, including the Functional Family Therapy: Child Welfare program that has been initiated with Aboriginal families).

We hope to see more and continued work in the area of early support, and would welcome the expansion of early support initiatives, and/or the commissioning of additional strengths based support options for other families/parents where this is needed.

H. Systemic issue of concern: Stronger focus on the rights of all parties needed by CYPS and ACT together staff

As an organisation that works with people with disability, and people who experience mental ill health, we especially urge a broadening of understanding of the concept of “best interests of the child”, noting that when interpreted narrowly (without due consideration of providing early supports to parents with disability/parents with mental ill health), it can lead to poorer outcomes both for children and their families. We recommend instead a stronger focus in decision-making on rights: those of the child as paramount, but also the rights of parents to achieve a balance.

I. Systemic issue: new models for contact needed

In situations where a parent with disability/mental illness is willing but unable to parent full time (due to impacts of disability/mental illness), it is imperative that new models are designed such that children can still have their parent with disability/ mental ill health involved to the greatest extent possible in their lives. Strong relationships between children and parents in these situations can be very protective for children. It is completely unacceptable in this day and age to restrict contact in these situations to twice a year. In situations where contact is being supervised: the supervisor’s role should evolve to be supporting a parent to make sure that the session goes well.

3. Information sharing under the Care and Protection System

The Royal Commission into Institutional child sexual abuse final report states that: "Information sharing between institutions with responsibilities for children's safety and wellbeing, and between those institutions and relevant professionals, is necessary to identify, prevent and respond to incidents and risks of child sexual abuse"⁷ and highlight the importance of this information-sharing being both timely and effective⁸.

The Royal Commission recommends that "nationally consistent legislative and administrative information exchange arrangements be established in each jurisdiction". The report provides considerable detail as to how this information exchange scheme should be designed.

ADACAS endorses the clear need for information exchange as one of the suite of necessary approaches to seek to prevent child abuse and neglect. There are many situations where information sharing is imperative.

We also however concur with the Royal Commissions' comment that the information exchange scheme should: "provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme"⁹. We encourage additional research and policy work to help guide decision-making in this space.

ADACAS welcomes efforts toward greater 'transparency and accountability in decision making' by CYPS staff. We especially encourage greater clarity, transparency and accountability in the communications between CYPS workers and the families experiencing CYPS processes.

In line with family group conferencing approaches, currently being implemented with Aboriginal families, and restorative practice principles we contend parents should be involved in the decisions about what information is shared and with whom and have an opportunity to put their views forward. A close involvement of parents with advocacy support through this process makes it more likely that any misconceptions/misunderstandings on either side, both CYPS and parents, can be avoided and/or addressed.

⁷Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) volume 8, page 12, accessed via: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_8_recordkeeping_and_information_sharing.pdf in October 2019.

⁸ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) volume 8, page 12, accessed via: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_8_recordkeeping_and_information_sharing.pdf in October 2019.

⁹ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) volume 8, page 13, accessed via: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_8_recordkeeping_and_information_sharing.pdf in October 2019.

We also encourage a process of frequent and regular information sharing from CYPS with families. We contend that information sharing with families should be:

- not only at case conferences, where there can sometimes be many other parties present.
- done in a timely way
- volunteered by CYPS workers rather than waiting for a parent to ask
- offered in an accessible format or with supports as nominated by the parent.
- specific with provision of concrete examples
- transparent, for example, not: “we would like to talk to your psychiatrist”, but “we would like to talk with your psychiatrist to seek to further understand X (specific topic) and the nature of the supports that would be helpful to you”

It is important that decisions on information sharing are two-way – and that the family is involved with the decisions about what information is shared and with whom beyond the family

Information sharing beyond the family should be:

- limited to that which is immediately relevant to the circumstances
- includes explaining why information is being shared, what is being shared, how long information will be kept, the consequences of sharing or not sharing the information and
- when possible, consented to by families

ADACAS is aware of past situations where CYPS actions around information-seeking have been counter-productive to their overall goals, for example subpoenaing every support person that a person works with (all their doctors, psychologists etc) instead of just asking for a report at key moments. This can make parents feel unsafe to seek any support at a time when CYPS would be wanting a parent to seek that support. Requests to share information should only be occurring when it is appropriate and necessary for this to occur.

In relation to parents with disability and/or mental ill health, and perhaps other parents too, it is also imperative that requests for information under the information exchange scheme are not being used as a “shortcut” in instances where it would be more appropriate and better for the working relationship for a CYPS caseworker, a CYPS team leader or a CYPS Operations manager to be asking the information needed via communications with the parent/ family concerned and/or their advocate, if they have one, as needed). This approach means that CYPS workers would generally need to be able to clearly explain to the parent what information was needed, the reasons it was needed, and the approach being taken to obtain this information.

In terms of general context when considering information privacy and information sharing, ADACAS emphasises also the rights of children and young people (to be able, when of age) to be able to access information about themselves, their lives and any child protection involvement as they were growing up.

4. Conclusion

There are many systemic improvements needed in order to ensure that the best outcomes for children and families are always and consistently achieved in all situations where CYPS is involved with families, especially in situations where parents (or children) live with disability and/or mental ill health. We encourage continued effort and energy into ensuring that everyone has a consultative and equitable experience of the CYPS processes such that the best possible outcomes for children and family are achieved.

Information-sharing can be a vital safeguard for children in vulnerable circumstances, and it is thus a topic which it is important to carefully consider, given that the appropriate sharing of information can be a vital safeguard in efforts to prevent abuse and neglect of children