TOWARDS DISABILITY JUSTICE FOR THE ACT
SUMMARY OF RESEARCH AND CONSULTATIONS 2019
MINISTERIAL FOREWORD

As the next step towards a Disability Justice Strategy (the Strategy) for the ACT, this report brings together feedback, research and community input on disability justice in the ACT as a foundation for the Strategy, which will be finalised in 2019.

It is well established that people with disability often do not have access to the legal supports and services they need and that the legal system can be particularly difficult to navigate. As a consequence, people with disability do not have the protection and services which are their right.

This report summarises the core issues and possible responses to address this disadvantage, and examines specific issues and options for the Disability Justice Strategy for the ACT. The report also highlights that there is already much good work happening in the ACT and there is a strong community and institutional will to make change. The Strategy will seek to harness this good will and build on successful efforts and approaches.

There has been a groundswell of related strategies, publications and research at a national level that has allowed us to extrapolate on learnings and developments in other jurisdictions as well as our own local community.

The report outlines the core themes raised by people with disability, what we know has worked elsewhere, ideas from research and suggestions from those within the justice system and people with disability as to what we could do in response. We thank all those who provided views and will be considering all views even if not specially referred to in this document.

The ACT Government’s vision for Canberra is an inclusive, welcoming society, open to diverse talent and determined to help everyone reach their fullest potential. Equity and Inclusion are fundamental values for the territory. If we cannot improve access to justice for people with disability we will not be living up to those values and the commitment that the benefits of growth are shared by all.

On behalf of the ACT Government, I thank everyone who has contributed to this work to date. In particular, thanks must go to the Disability Justice Reference Group and the community members who have shared their stories with us to inform the Strategy.

I look forward to continuing to work across government and with our community partners to improve access to justice and build a fairer, stronger, more connected Canberra.

Rachel Stephen-Smith MLA
Minister for Disability
## ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Shortened form</th>
<th>Full title</th>
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<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>ACAT</td>
<td>ACT Civil and Administrative Tribunal</td>
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<td>ACTCT</td>
<td>ACT Courts and Tribunals</td>
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<td>ADACAS</td>
<td>ACT Disability, Aged and Carer Advocacy Service</td>
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<td>AFI</td>
<td>Advocacy for Inclusions</td>
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<td>AHRC</td>
<td>Australian Human Rights Commission</td>
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<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
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<td>ALRC</td>
<td>Australian Law Reform Commission</td>
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<td>ALS</td>
<td>Aboriginal Legal Service</td>
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<td>AMC</td>
<td>Alexander Maconochie Centre</td>
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<td>AMC WCHM</td>
<td>Alexander Maconochie Centre Women’s Centre for Health Matters</td>
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<td>ANROWS</td>
<td>Australia’s National Research Organisation for Women’s Safety</td>
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<tr>
<td>BPD</td>
<td>Borderline Personality Disorder</td>
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<tr>
<td>CALD</td>
<td>Culturally and Linguistically Diverse</td>
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<td>CCL</td>
<td>Canberra Community Law</td>
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<td>CYPs</td>
<td>Child and Youth Protection Services</td>
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<td>DAIPs</td>
<td>Disability Access and Inclusion Plans</td>
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<td>DDL</td>
<td>Disability Discrimination Law</td>
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<td>DJRG</td>
<td>Disability Justice Reference Group</td>
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<td>FASD</td>
<td>Foetal Alcohol Spectrum Disorder</td>
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<td>HASI</td>
<td>Hayes Ability Screening Index</td>
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<td>IDRS NSW</td>
<td>Intellectual Disability Rights Service NSW</td>
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<tr>
<td>ILC</td>
<td>Information Linkages and Capacity building</td>
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<td>ITAS</td>
<td>Intensive Treatment and Support Service</td>
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<td>JCCD</td>
<td>Judicial Council on Cultural Diversity</td>
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<td>LAW Survey</td>
<td>Legal Australia-Wide Survey: Legal needs in Australia</td>
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<tr>
<td>LGBTQI</td>
<td>Lesbian, Gay, Bisexual, Transgender, Queer and Intersex</td>
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<td>LRAC</td>
<td>Law Reform Advisory Council</td>
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<td>NDIA</td>
<td>National Disability Insurance Authority</td>
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<td>NDIS</td>
<td>National Disability Insurance Scheme</td>
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<td>NGO</td>
<td>Non-government organisation</td>
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<tr>
<td>OCGFS</td>
<td>Office for the Coordinator-General for Family Safety</td>
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<td>PEA</td>
<td>Priority Enrolment Area</td>
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<td>PTSD</td>
<td>Post-traumatic Stress Disorder</td>
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<td>SDM</td>
<td>Supported Decision-Making</td>
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<td>SLP</td>
<td>Socio-Legal Practice</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>WWDACT</td>
<td>Women with Disability ACT</td>
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People with disability have the greatest occurrence of legal problems of any disadvantaged group. Legal problems include accidents, consumer, credit/debit, crime, employment, family, government, housing, money, personal injury and rights.

**INDICATORS OF UNEQUAL ACCESS TO JUSTICE**

<table>
<thead>
<tr>
<th>People with Disability Are:</th>
<th>2.2 x more likely to have legal problems</th>
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<tbody>
<tr>
<td></td>
<td>1.4 x more likely to be the victim of property crime</td>
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<tr>
<td></td>
<td>10 x more likely to be subject to violence</td>
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</table>

Up to 50% of adult detainees in prison have a disability

| Aboriginal and Torres Strait Islanders: | 1.7 x more likely than non-Aboriginal Torres Strait Islander people to be living with disability |

| Being maltreated as a child | Doubles the probability of committing a crime |

<table>
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<tr>
<th>Men with Intellectual Disability Are:</th>
<th>5 x more likely to experience problem gambling</th>
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| Women with Intellectual Disability Are: | 3 x more likely to be living with PTSD |

| Children with Disability Are Up to: | 4 x more likely to experience sexual assault |

| Chances of future offending increase the younger a child is at first contact with the justice system: | |

**Towards Disability Justice for the ACT**

Summary of Research and Consultations 2019
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PART 1 SUMMARY AND OVERVIEW
INTRODUCTION AND PURPOSE

This report is a major step along the road towards a strategy for equality and inclusion in the justice system in the ACT.

It summarises the outcomes of research as well as public and sector consultation on disability justice issues in the ACT in response to the ACT Government’s commitment to deliver a Disability Justice Strategy.

The development of a Disability Justice Strategy for the ACT is premised on the social model of disability which sees ‘disability’ as the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers.

People with disability include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

It therefore carries the implication that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others.

This report has been developed by staff in the Office for Disability and in the Justice and Community Safety Directorate, working together in partnership as the Disability Justice Strategy Project Team. Generous time and

WE HEARD:

“...We just want access to justice like everyone else.”

Consultation participant
advice have been provided by a broad range of stakeholders across community and government.

This report provides the evidence base for the development of the Disability Justice Strategy and for the specific actions that will make up the Strategy. It means that the final Strategy will be built upon a credible platform informed by data, experience, stakeholder input, and proven strategies and actions both locally and from interstate.

Most importantly, this report ensures that the voices of those currently disadvantaged by or excluded from the ACT justice system are heard and inform the development of the Disability Justice Strategy.

REPORT STRUCTURE

The report details the approach, issues and outcomes of consultation and research and suggests a range of possible actions for inclusion in the Strategy as it is developed over the coming months.

Part 1 provides a condensed overview and:
- highlights the key barriers for people with disability in accessing the justice system
- gives an overview of the evidence that has been pulled together into the report
- allows the reader to hear the voices of stakeholders, particularly those impacted by the response of the justice system to their disability
- identifies some ideas for how the ACT’s justice system can be improved, and that may form part of the Strategy
- provides a summary of the pockets of work occurring across the justice system that contribute to better access and delivery of services for people with disability
- explains what will happen next.

Part 2 consists of a series of chapters which look at aspects of the ACT justice system in the context of serving the justice needs of people with disability (e.g. civil justice issues, the criminal justice system, the experience of people with additional vulnerabilities, etc).

These chapters explore in greater detail how people with disability interact with or are impacted by the system and also identifies ways the system could be improved.

The individual chapters have been structured to address three areas of learning:
- what we (already) know
- what we (have) heard (as part of the consultation process)
- what could we do (to make the system work better).

There is a significant focus on identifying pre-existing data and research, finding how the ACT operates differently or consistently with the justice system in other jurisdictions and hearing the voices of people with disability and how they are affected by the system.

In identifying what could be done to improve the system, the report has adopted an approach of inclusion rather than selection of some ideas and approaches over others. Where available, the report includes some evaluation of certain strategies and programs but this is not the case for all ideas for improvement.
One of the key findings of our investigations has been the lack of ACT data on people with disability, their specific legal needs and their interaction with the justice system as at 2018. This is a serious shortcoming that means that people with disability are often invisible to the system, their needs go unrecognised and accordingly reasonable accommodations are not provided to assist them.

Given the lack of ACT data on the interaction of people with disability with the justice system and their legal needs, the project team has sought to build a validated picture of the ACT based upon:

- statistical information in other Australian jurisdictions
- research from other Australian jurisdictions or which provides an Australian-wide perspective
- real life case studies of the lived experience of people with disability in the ACT provided either by individuals or stakeholders in the justice system
- in depth discussions with groups, individuals and community members exploring the current situation and experience ranging from disability service providers, carers, parents, legal service bodies, detainees, care and protection workers, housing, courts and tribunals, disability advocates, youth workers and most importantly people with disability.

As a starting point, in October 2017 the project team commissioned a short review to provide a point in time snap shot upon which to build and explore the ACT situation in light of research findings and to shape consultation. Subsequently, we held face-to-face discussions with key stakeholders to confirm the information in the review, provide an updated position and clarify earlier information. The information from the review, subsequent research and follow-up consultations has shaped the information and conclusions in this report.

In addition, the work has been guided by a Disability Justice Reference Group, chaired by the Community Chair of the Disability Reference Group, Mr Dougie Herd and the Victims of Crime Commissioner, Ms Heidi Yates. The Reference Group is composed of representatives from key agencies, including Health, Community Services, Justice and Community Safety, police, legal service providers and the Human Rights Commission. In addition, a representative of the ACT Aboriginal and Torres Strait Islander Elected Body and a person with disability and lived experience of the criminal justice system are key members.
In the headings below, we have summarised the various learnings that are laid out in greater detail across the chapters in Part 2 of the report.

**DISABILITY JUSTICE — BARRIERS FOR PEOPLE WITH DISABILITY TO EQUALITY BEFORE THE LAW**

The ACT Government commitment to a Disability Justice Strategy is grounded in a recognition that people with disability have a right to be provided with necessary modifications and adjustments in order for them to obtain effective access to justice. Access to justice is a pressing issue for many in our community as illustrated in the Law Council of Australia’s Justice Project Report.

People with disability are one of the specific groups identified by the Law Council as requiring special attention and action. The Law Council’s Justice Project consultation paper People with Disability in August 2017 summarised the barriers to justice in this way:

People with disability face several systemic and structural barriers to accessing justice, including physical inaccessibility (such as inaccessible legal offices or courts), lack of support, adjustments and aids (such as a lack of Auslan interpreting or hearing augmentation), lack of legal information and advice in accessible formats, and negative attitudes to people with disability which can be held by those working in the justice system. People with intellectual disability or cognitive impairment also face barriers to accessing justice, including negative assumptions and stereotypes about the reliability of their evidence and their ability to participate in police interviews and court proceedings.

A series of reports, research projects and community consultation processes conducted across Australia since 2007 have recommended that all states and territories develop disability justice strategies as a vehicle to drive the reform and cultural change necessary to address barriers to justice.

Despite the lack of ACT specific data (see Chapter 1, Data, information and privacy), feedback from the community and input from key stakeholders in the services and justice sectors confirm that the barriers identified in the Australian Human Rights Commission report *Equal Before the Law: Towards Disability Justice Strategies* also exist in the ACT.

These barriers are:

- **Barrier 1**
  Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disabilities.

- **Barrier 2**
  People with disabilities do not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.

- **Barrier 3**
  Negative attitudes and assumptions about people with disabilities often result in people with disabilities being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.

- **Barrier 4**
  Specialist support, accommodation and programs may not be provided to people with disabilities when they are considered unable to understand or respond to criminal charges made against them (‘unfit to plead’).

- **Barrier 5**
  Support, adjustments and aids may not be provided to prisoners with disabilities so that they can meet basic human needs and participate in prison life.

It is evident that the justice system needs to do more to provide reasonable adjustments in its approaches and services to ensure the needs of people with disability are met. Often there is good will but little knowledge of how to make such adjustments. The lack of awareness and knowledge of how to make
reasonable adjustments is most evident where people with cognitive, intellectual and/or psychosocial disability are involved. The need for additional time, independent support, assistance in communication or the use of simplified, non-technical language can become overwhelming barriers in a busy, time constrained and financially restricted legal services environment.

It is also clear that access to justice and equality of treatment for people with disability is about more than access to a legal service but includes a broader range of barriers including:

- people with disability do not recognise the issue as the beginning of a legal issue
- people with disability don’t get a legal resolution that others without disability expect to have
- issues are resolved outside the formal system or by non-legal means as people just give up or submit to things that are unjust or unfair as they don’t see that they have an option
- the issues are ignored or unresolved as people with disability do not know what to do.

The justice system is at its core an adversarial one heavily reliant on written documentation and oral argument. It assumes a level of legal capability to access advice, recognise issues, seek possible remedies, and to interact with the system. As such it is not a system designed for people who experience any degree of complexity in demonstrating legal capability such as people with disability and other socially excluded groups. The justice system, by its very nature, unintentionally creates barriers to access for those who need it most.

**EARLY SUPPORTS, LIFETIME COSTS AND JUSTICE REINVESTMENT**

Research in this area illustrates that the lifetime costs of interaction with the justice system can be substantially reduced with early and sustained social supports which provide better outcomes for individuals but also prevent or significantly reduce justice system costs to government. The research illustrates that a number of small but successful initiatives appear to improve wellbeing and other outcomes and that for every dollar spent on these early investments, the return on investment range from $1.40 to $2.40 in government costs saved in the longer term.

Avoidance of homelessness, home supports, case management, and diversion programs can provide protective factors that reduce re-offending and assist people with disability to improve their lives. Such interventions and supports can disrupt the pathways that lead young people into contact with the criminal justice system and avoid many of the social and economic costs of incarceration.

The high economic and social costs of placing a person in prison are not just borne by the individual. In many cases incarceration sets off an intergenerational cycle of incarceration, affecting families around housing, education, employment and financial issues.

The Disability Justice Strategy will be informed by this research and the *ACT Justice Reinvestment Strategy*, which involves identifying drivers of crime, the associated criminal justice costs and then developing and implementing new ways of reinvesting scarce resources to reduce crime and imprisonment, recidivism rates, improve community safety and strengthen our most disadvantaged communities.
WHAT WE HAVE HEARD AND CONFIRMED

CURRENT STATE IN THE ACT FOR PEOPLE WITH DISABILITY AND ACCESS TO JUSTICE

Despite the lack of ACT-specific data, the evidence gathered through consultations and in particular the examination of real life case studies indicate that the ACT position is similar to other Australian jurisdictions. We can with a degree of validity extrapolate from their experience to provide a base line to support action through a Disability Justice Strategy.

The Law and Justice Foundation undertook an Australia-wide survey (the LAW Survey) published in 2012 to assess the legal needs of Australia, including the ACT. The report indicated that of all the people who indicated that they had legal needs:

- people with disability ‘constituted the most socially excluded of all disadvantaged groups due to systemic barriers and the experience of cumulative disadvantage’
- sixty-seven (67) per cent of people with disability aged 15 years or over are financially disadvantaged
- eighteen (18) per cent have low education levels
- seven (7) per cent are single parents
- fifty-nine (59) per cent are 65 years or older
- three (3) per cent are Aboriginal and Torres Strait Islander people
- twenty-two (22) per cent are from culturally and linguistically diverse background (CALD)
- eleven (11) per cent have poor English proficiency.

It is estimated that 62,000 people in the ACT identify as having disability. As at September 2018, 6,409 people have current plans under the National Disability Insurance Scheme (NDIS).

While the LAW Survey figures are not necessarily reflected across the ACT population, extrapolating them can give us some indication of the number of people who may be facing additional barriers in our own community. A straight application of the nation-wide proportions indicates that:

- 41,500 people with disability in the ACT are financially disadvantaged
- 11,100 have low education levels
- 4,340 are single parents
- 1,860 are Aboriginal and Torres Strait Islander people
- 13,600 are from CALD backgrounds
- 6,820 have poor English proficiency.

Consultations and case studies confirm that these factors are inhibiting the ability of many people with disability in the ACT to receive justice. This lack of justice is due in part to the lack of accessible information and services to address legal needs. In many instances, individuals’ legal needs are not even recognised and as such go unaddressed.

The LAW Survey found in relation to the ACT that nine (9) per cent of respondents accounted for 63 per cent of legal issues reported in 2012 and that people with disability had:

- significantly higher prevalence of legal issues overall, substantial legal issues, multiple legal issues and were the only group to face challenges in all 12 issue areas¹
- significantly lower levels of finalisation of legal issues (61 per cent compared to 70.4 per cent for those without disability)
- greater odds of experiencing legal issues, 2.2 times higher than other respondents (62.1 per cent compared to 46.8 per cent)
- the greatest increased prevalence of legal issues of any disadvantaged group according to the greatest number of measures.

The survey also emphasised that access to justice is an important route to tackling social exclusion.

In relation to ACT-specific data collected directly on access to justice by people with disability, the available data is from five sources:

- community legal centres
- Legal Aid ACT
- ACT Human Rights Commission discrimination jurisdiction
- Alexander McConachie Centre Inmate Health Survey 2016
- ACT Civil and Administrative Tribunal guardianship and property management section.

All other justice entities and services either do not collect data on disability; or only collect it at the most general level and collect it in such a way as to be inaccessible to analysis.

A clear issue for future action is to rectify the paucity of ACT specific data (see Chapter 1, Data, information and privacy).

Consultations confirmed that the legal needs of people with disability involve both civil law (e.g. housing, tenancy, discrimination, access to social and government services, decision making, consumer rights) for the majority of
people with disability, and criminal law as victims, witnesses or offenders. Figures from other Australian jurisdictions indicate that between ten (10) and 54 per cent of convicted persons have some form of disability and therefore make up a disproportionate number of people incarcerated or subject to criminal conviction. In addition, people with disability are reported to be ten times more likely to be subject to violence than people without disability, and the vast majority of people with disability who are offenders will themselves have been victims of crime and violence.

Consultations also outlined a widespread assumption that the NDIS would address many, if not all, of the concerns of people with disability. While the NDIS has clearly made a positive difference in the lives of many people with disability, it covers a relatively small proportion of people with disability in the ACT. The introduction of the NDIS has also resulted in much of the available individual advocacy support being consumed to facilitate access to the Scheme, leaving fewer resources available to support people with disability to seek justice across a range of life domains. The ACT Government has recognised this challenge with increased funding for individual advocacy in the 2018–19 Budget. Nevertheless, the pressure on services and changes in broader supports as the NDIS has rolled out have posed a considerable challenge in accessing justice for people with disability.

The changes in specific community-based disability support services make the accessibility of legal information, education, services and supports all the more important. However, the justice focused supports funded under the NDIS Information Linkages and Capacity building (ILC) program to date have been short-term and pilot-focused, which does not build the long-term capacity of the sector.

Nevertheless, positive examples of change should be noted and built upon. The Law Council of Australia’s The Justice Project noted positively the March 2018 changes to the Juries Act 1967 (Juries Act) in the ACT which ensures people with disability are not automatically exempt from jury duty. Section 16 of the Juries Act now provides that if a person may be unable to properly discharge the duties of a juror because they either have an insufficient understanding of English or have a mental or physical disability, the judge must consider if supports that would enable the person to properly discharge the duties of juror can reasonably be given, and if satisfied must make a direction that support be given. Such supports may include an interpreter, including an Auslan interpreter, assistance animal or disability support person. This makes the ACT one of the first Australian jurisdictions to facilitate people with disability to participate in this civic duty.

The ACT Courts and Tribunal Service has appointed its first Courts and Tribunal Assistance Officer, focused on ensuring the courts and tribunals are more accessible to all people including people with disability, by making essential adjustments such as hearing loops, support services and reasonable accommodations made available responsive to individual need. Court and tribunal staff will be trained to improve their awareness of the needs of people with disability through accessing an eLearning suite. These are important steps in the right direction but much more needs to be done across the system.

The ACT Government has begun piloting key activities in advance of the formal strategy to maintain the momentum from discussions and in light of the urgency and evident need. This includes piloting training for key areas and workers with the assistance of the NSW Disability Justice Project over the coming months, starting with corrections officers and care and protection workers. We are also working in partnership to ensure that appropriate consideration of disability is included in other related initiatives such as consultation on a Charter of Rights for Victims of Crime, the Government’s response to the Royal Commission into Institutional Responses to Child Sexual Abuse (including a proposed pilot of an intermediaries scheme for victims and witnesses being led by the Victims of Crime Commissioner), the revision of the Youth Justice Blueprint, Family Safety Hub, justice reinvestment, reducing recidivism and broader work on early intervention and supports.

**WHAT COULD THE FUTURE LOOK LIKE AND WHAT COULD WE DO TO GET THERE?**

Through consultation and research, the views of people with disability were made clear about what they wanted to see in a disability responsive justice system. They want:

- to be listened to, treated with respect and to be believed; not ignored, judged and treated as unreliable because they need assistance or may communicate differently
- justice agencies, including police, lawyers, courts and corrections officers to use styles of communication and questioning techniques...
that enable them to understand rather than confuse them
• to be supported by a person as their advocate to assist in navigating the system and communicate effectively to ensure their views are heard and understood
• information on their rights and how to access their rights in a range of formats and channels that are accessible and meaningful to them
• the justice system to join the dots for them so they know what is happening to them and why
• to have a say in their own lives and with full respect for their human dignity.

As the Disability Justice Strategy is developed we will endeavour to ensure that these views stay central to its goals and will ensure that we continue to engage closely with people with disability and their supporters to achieve these goals.

Given this, it is important to acknowledge that the primary vehicle for change is for the justice system to adapt and positively respond to the needs and wishes of people with disability; not the other way around. This is consistent with the social model of disability reflected in the Convention on the Rights of People with Disability which Australia ratified in 2008 and, as a human rights jurisdiction, the ACT supports.

A social model perspective does not deny the reality of impairment nor its impact on the individual. However, it does challenge the physical, attitudinal, communication and social environment to accommodate impairment as an expected incident of human diversity.

The social model seeks to change society in order to accommodate people living with impairment; it does not seek to change persons with impairment to accommodate society. It supports the view that people with disability have a right to be fully participating citizens on an equal basis with others. To change how the justice system reduces barriers will take time, commitment and a variety of approaches. This will involve a cultural shift, new and better service delivery methods, better tools to identify and support people with disability in the system, and most importantly willingness for the system to work as an integrated whole with the person with disability at the centre of its actions.

To make these changes there will need to be tailored responses designed to address the issues of specific need groups (such as children, young people, women, Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial and cognitive disabilities) and to address particular issues such as secure accommodation, early identification and intervention, diversion, and life transitions. Each chapter of this report seeks to examine key aspects in more detail and put forward suggested responses.

WE HEARD:

“...we want the justice system to work with us not to do things to us.” Consultation participant

“It is the system that is disabled, not us.” Consultation participant

“The system still requires a diagnosis as ‘evidence’. Could we create circumstances for a non-adversarial approach?” Consultation participant

“A person who is deaf and non-verbal can’t engage with an adversarial system.” Consultation participant
Our research and feedback from consultations has identified five themes or priorities which an ACT Disability Justice Strategy should address. These are:

1 **Information and communication** — Improving the provision and accessibility of information to support people with disability to understand better how to navigate justice issues as well as ensuring the system is accessible and communication needs are met.

2 **Training and guidance** — Improving the general awareness of the justice needs of people with disability and how the justice system could respond, particularly through specific guidance and training.

3 **Data, research and review** — Improving the knowledge and data on disability and justice across the ACT Government services sector to shape future action and improve access to appropriate supports for people with disability.

4 **Identification and screening** — Ensuring that disability can be identified (and appropriate responses made) at particular points and have this information travel with people across agencies and service providers to improve early intervention (where appropriate, and with appropriate safeguards in place) and remove the need for people to constantly retell their story.

5 **Service gaps and linkages** — Early upstream and timely interventions to improve the lives of people with disability, to identify and support their needs and to provide appropriate options, can help to provide necessary protections and to avoid (for some) contact with the justice system. Feedback has consistently suggested that diversionary options for people with disability could be improved.
WHAT HAS WORKED ELSEWHERE?

Our research has indicated that there a number of successful responses to the needs of people with disability in accessing justice from across jurisdictions including the ACT, which have been evaluated as to their effectiveness. These include:

- **Health justice partnerships** where legal services are made available in health settings such as hospitals to improve access to legal services and help resolve issues which may be impacting on a client’s health.

- **Blended legal service models** bringing legal professionals and allied professionals, such as social workers, together to complement each other to the benefit of clients.

- **Communities of practice** where networks of key workers are established to improve the linkages within the system of justice and related social services to provide more seamless and timely support to people.

- **Early diversion and intervention** where programs address as early as possible the issues that may lead to people with disability coming into contact with the justice system through compounding disadvantage and to seek to divert them away from the criminal justice system where possible and provide appropriate supports.

- **Communication assistance and intermediaries schemes** where the system of justice and people with disability are assisted by intermediaries who help both the individual and the system to communicate effectively, provide support and expert assistance to ensure that the best evidence is obtained, improving outcomes to the individual and in the interests of justice.

- **Disability advocate and supporter schemes** where people with disability have access to a supporter or independent advocate who can assist and support them during legal processes such as in a court or tribunal process or in making a complaint to police.

- **Community legal education and information** where people with disability, their supporters and carers as well as the general community are provided with information and education in order to identify legal issues and to seek appropriate assistance. Such measures are particularly effective where such education is provided to ‘key issue noticers’ who may in their interactions with a person with disability be the critical intervention point for appropriate referral to legal assistance.

- **Housing first approaches** where the stability of and access to accommodation is foundational to addressing the issues that may be creating or exacerbating legal issue for a person with disability such as homelessness, bringing them into contact with the police or the lack of accommodation resulting in a refusal of bail or parole.

- **Responsive disability and trauma-informed workforce** where workers across the justice and related social service systems are given an understanding of how disability and trauma may inform a person’s interaction with the system as well as their life experience and how people within the system can modify their interactions with clients to ensure appropriate outcomes and approaches. Such responses are particularly important in working with young people with disability in touch with the criminal justice system, Aboriginal and Torres Strait Islander people, and people from refugee backgrounds.

WHAT IS HAPPENING IN OTHER AUSTRALIAN JURISDICTIONS?

Disability justice is an issue of high importance and action in a number of Australian jurisdictions. Tasmania and South Australia have in place formal disability justice strategies/plans and other states and territories have addressed the issues through program reforms, information and education strategies, and disability action and inclusion planning by their justice stakeholders.

Action plans are a mechanism to achieve attitudinal change and create communal ownership through consulting and collaborating with people with disability. The Justice and Community Safety Directorate has made a commitment, following the example of justice agencies in other Australian jurisdictions, to expand upon its existing Disability Employment Action Plan to implement a Disability Action and Inclusion Plan for its functions.

Other justice organisations are being encouraged to undertake similar activity. ACT Corrective Services is developing a disability framework to improve its response to disability issues for detainees.

The experience of other jurisdictions has been examined and, where applicable, the lessons are being applied to the development of the ACT Disability Justice Strategy.
Community feedback has consistently urged action to be taken now to address the barriers to accessing justice for people with disability, but also acknowledges that many of the issues are cultural in nature and will require sustained effort over a considerable time to shift attitudes, build capabilities and change the nature of the justice system and wider community attitudes. A Disability Justice Strategy is an important step towards initiating change and preparing the foundations of the adaptive change required over the next decade and beyond to meet the challenges of more diverse and inclusive communities. With an aging population, rising incidence of dementia and increasing diversity it is necessary and increasingly urgent to make reasonable adjustments in services, attitudes and information delivery. Improving access to justice is an important step toward breaking the chain of social exclusion through reasonable adjustments to create better access benefits the whole community.

The thinking and action necessary to create better access needs to be long-term and open to innovation, opportunity and change. The outcomes that a Disability Justice Strategy must seek are:

- a disability responsive justice system which understands and respects the rights and views of people with disability
- a joined up service and justice system that provides the best, most appropriate supports or interventions as early as possible
- a system which enables people with disability, their supporters and people within the system to make the best choices for people with disability and the community
- clear, measurable outcomes and a rigorous approach to learning from what works and to build upon success
- ensuring that the voice and lived experience of people with disability is heard and acted on.

The ACT Government is drafting the Disability Justice Strategy based on what we have heard through research, consultation and synthesising all available information. We know that a cultural change in the ways justice organisations support the needs of people with disability is necessary. We know that better support for people with disability is also necessary to be able to identify justice issues and know how to navigate the systems.

As we develop the Strategy, we will continue to engage with people with disability and the people who support them, as well as with the people in the legal and justice organisations who have contact with people with disability. We will work with the community and our partners across government to identify the key points of influence and the key activities that will have the most impact on people’s lives.

We will continue to make the conversation publicly available and be advised by the members of the Disability Justice Reference Group. The Disability Justice Strategy will be finalised in mid-2019.

To register to receive project updates, please email ACTDisabilityjustice@act.gov.au, or to find out more about the Disability Justice Strategy and other initiatives, policies and projects in Canberra, please visit <www.yoursay.act.gov.au>.
PART 2

THE ACT JUSTICE SYSTEM AND THE NEEDS OF PEOPLE WITH DISABILITY
PART 2—CHAPTER 1
THE JUSTICE SYSTEM—WHOLE OF SYSTEM ISSUES

IN THIS CHAPTER
DATA, PERSONAL INFORMATION AND PRIVACY
SERVICE MODELS AND SUPPORT WORKERS
COMMUNITY LEGAL EDUCATION AND INFORMATION
AWARENESS RAISING AND TRAINING FOR THE SYSTEM
COMMUNICATION AND INTERMEDIARIES
WHAT WE KNOW

Data on the involvement of people with disability in the ACT Justice system, whether criminal or civil, is scarce. The primary reasons for this are:

• lack of systematic collection and sharing of such information by institutional stakeholders
• people’s reluctance to self-identify as having a disability for a range of personal and systemic reasons
• limited points at which data can be collected about a participant’s legal issues and proceedings.

This is not an issue for the ACT alone. Other jurisdictions also do not have systemic institutional data on the extent of interaction of people with disability with the justice system and have sought to overcome this through targeted research.

The data that is collected by non-government stakeholders, for example Legal Aid ACT and Canberra Community Law, is done on a self-reporting basis and therefore may underrepresent the number of people with disability to whom they provide services.

The IT systems of the justice stakeholders are not connected and cannot share information from one actor to another. IT systems are also not designed to collect and report on information in relation to disability, whether self-reported or otherwise identified.

Should a person indicate they have a disability there is no current mechanism by which that person’s details and story could travel with them across the system. They are required to self-identify and explain at every point in the system.

Information collection and exchange appears to be better in the health and education sectors but there are considerable limits on how such information is shared with the justice sector.

What we know is that if you can’t identify people’s needs in a system, their needs will not be met, and there is no motivation to accommodate their needs. Without identifying a requirement there is no accountability to meet a need.

WHAT WE HEARD

People with disability indicated that they wanted the system to better coordinate its interaction with them and in particular to ensure that, where appropriate, they only have to tell their story once and to have the information travel with them in their interactions with the justice system. Numerous examples were relayed as to the lack of recording of needs, such as necessary reasonable adjustments, which meant that the needs of people with disability were not met and service delivery was compromised. The heavy reliance on written material without regard to the recipient’s needs and despite requests and reminders as to their needs featured heavily in consultations.

Frustration was expressed by some as to why the system did not record key information and share it with others, often resulting in errors and misunderstandings between entities which could have been avoided if they had shared information appropriately. When asked if they had ever been given the option of agreeing to share their information with other organisations by consent participants indicated they were never asked.

In consultation with justice institutions, they highlighted that current IT systems were not designed to collect information on disability per se and changes to systems would be expensive and take some time. It was further highlighted that they were often dependant on people self-identifying as having a disability. It was acknowledged that changes to IT systems may assist in data collection but would not necessarily resolve the portability of personal information. Justice entities also raised privacy concerns about sharing personal information. However, this may be due to excessive caution rather than legal barriers to sharing. It is noteworthy that there are few information sharing protocols or memoranda of understanding in relation to people with disability and the justice system.

WE HEARD:

“We want continuity and consistency.”
Consultation participant
WHAT COULD WE DO?

Ideally, there would be a simple, cost-effective solution for collecting a person with disability’s personal information at any point of contact with the justice system, which they could then choose to have shared with other entities. Such a solution would allow a person’s information, needs and wishes to travel with them across the system, with additional information included at each point and the system acting to join the dots. Such a solution would also allow for data analysis to develop a systemic view of interaction with the justice system by people with disability.

Currently, there does not appear to be such a solution on the horizon, although this should remain under review as technology changes and new opportunities become available. However, there are a range of potential measures which could be pursued that may over time improve both the collection of data and the portability of personal information to improve service delivery. These include:

• Better case management within justice entities to ensure a person’s disability needs and reasonable adjustments are recorded and acted upon. By using existing system flags and note functions, better service can be achieved. With increased use of disability justice workers/liaison officers within justice entities, improved case management may also be achieved and result in better sharing of information between entities.

• There are also emerging opportunities to improve case management IT functionality within ACT Government with the introduction of the Resolve case management system in the ACT Human Rights Commission, in addition to improved data analysis capabilities, which may lay the ground work for expansion of some form of case management function to all justice entities in touch with people with disability.

• Targeted research which focuses on critical points in the system or the lives of people with disability to identify needs and the scope of issues. They could include incident studies, point-in-time assessment, surveying and sampling. For example, legal needs surveying is the only way to assess unmet legal needs. Another opportunity may be expanding any future Alexander Maconochie Centre Inmate Health Surveys to cover disability in a comprehensive way not just intellectual disability.

• Information sharing protocols which allow entities to share vital information obviating the needs for people with disability to repeat their stories, and ensuring that where they come into contact with another justice entity their needs and reasonable adjustments are already recognised and the new entity can act in a responsive manner.

• Mapping the key contact/intervention points and targeting them for improvements in data collection and personal information collection. For example, the police as the first point of contact with the criminal justice system and entry and exit from incarceration or guardianship applications, are examples of critical intervention points.

• Increase self-identification and self-reporting of disability by implementing measures to help inform people with disability of their privacy rights and how they can consent to the sharing of their information and be confident their information will be appropriately handled.
SERVICE MODELS AND SUPPORT WORKERS

WHAT WE KNOW

Legal professionals, police officers, corrections officers, court staff and other professionals in the justice system are often pressed for time and it is difficult for them to spend the time to address the adjustment needs of people with disability.

Liaison and support worker models, such as CALD community workers, have been successful in increasing the reach and supports for people with specific needs. A study by the University of Melbourne on appropriate supports for persons with cognitive disability involved in unfitness to plead proceedings found that support workers were critical facilitators of the justice system for the client.

The Law and Justice Foundation LAW Survey highlighted the importance of non-legal advisers in providing advice and helping to resolve legal issues for people with disability.

There are a number of emerging service models that enable access to justice for disadvantaged groups, which include health justice partnerships, social worker support models and communities of practice. These models increase outreach, are responsive, free up legal resources by providing support to help resolve whole of life issues as well as provide more time and are more responsive to individual needs.

A number of specialist service models exist which provide support persons or advocacy to assist people with disability to navigate interactions with the justice system. Examples include: interview friend schemes; volunteer court guides; and specialty disability advocacy services, which aim to support the person with disability by both advocating on their behalf and building the individual’s capacity for self-advocacy.

Support persons can also play an important role in:

- coordinating across the system in support of people with disability
- supporting and educating colleagues on the impact of disability and trauma to build a disability and trauma-informed workforce
- providing a central point to advocate for the needs of people with disability from within their organisations.

Some other jurisdictions have more mature service delivery arrangements to ensure support, advocacy and coordination for people with disability in touch with the justice system, particularly the criminal justice system. These include:

- NSW Disability Justice Project, which created communities of practice across the state supported by training and awareness programs on specialist topics to assist and inform key workers and issue noticers on how to seek assistance for people with disability
- NSW Intellectual Disability Rights Service, a specific legal service that provides advocacy and support to people with intellectual disability
- Victorian Disability Criminal Justice Service, which provides specific support to persons in the criminal justice system including supervision and support for disability action plans arising from diversion from the criminal justice system.

Law Council report findings included that:

- People with disability face a wide range of systemic and structural barriers to accessing justice, such as inaccessible legal information, physical inaccessibility, inflexible court procedures, negative attitudes and stigma towards people with disability, lack of understanding of disability by those who work in the justice system, lack of critical supports at all stages of the justice system, and an under-resourced legal assistance sector.

- The system’s emphasis on expediency, minimising costs and fast resolution of disputes can place additional pressures on people with disability who require adjustments, such as longer appointments, regular breaks in court to maintain concentration or Auslan interpretation.

- Some support services, such as disability advocates and support persons, may be required at every stage of the legal process to enable people with disability to participate in the justice system on an equal basis with others. Other supports, such as accommodation, rehabilitation and diversionary programs, and health and allied health services, play an important role in early intervention and prevention of legal issues and/or diverting people with disability away from the criminal justice system to prevent escalating or re-occurring legal issues.

WE HEARD:

“We are picking people up from the bottom of a cliff and just putting them back up again.”
Consultation participant

“We need to build a partnership capability.”
Consultation participant

“We need to incentivise collaboration.”
Consultation participant
Disability advocates and non-legal support persons play an important role in facilitating access to justice for people with disability at all stages of the justice system.

People with disability required additional non-legal support to navigate the system effectively, such as assistance to fill out forms and attend appointments.

Lack of support persons or disability advocates to assist people with disability following a period of institutionalisation or imprisonment can increase the risk of recidivism and reduce the prospects of effective reintegration into the community.

WHAT WE HEARD

A consistent issue raised at all public consultations and in targeted consultations was that people with disability and their supporters did not understand what was happening during their interactions with lawyers, police, courts and tribunals amongst others. Central to this was a lack of time, use of technical language that people did not understand and not having a consistent person who would join the dots for them.

When asked what would have made a difference, almost all respondents said someone to explain things, a consistent presence and someone they felt was on their side. Some expressed the view that such support workers should not be volunteers. While acknowledging the enormous contribution of volunteers, it was felt that volunteer arrangements did not recognise the specific knowledge and skill sets necessary to provide appropriate support.

Local ACT examples where doing something differently was seen by peoples with disability and their supporters to be making a difference were:

- **Canberra Community Law’s Socio-Legal Practice Clinic** where the combination of a social worker with a lawyer was making an important and at times dramatic difference to helping people deal with life issues, avoid homelessness and resolve housing issues.

- Outreach initiatives such as the **ACT Civil and Administrative Tribunal** undertaking guardianship hearings at hospitals allowing people with psycho-social and mental health disabilities to attend hearings, increasing hearing attendance to approximately 95 per cent, reducing the time between lodgement of an application and a hearing, and where appropriate allowing earlier discharge from hospital.

- The **ACT Courts and Tribunal** establishing a Courts and Tribunal Assistance Officer who is available to provide information and assistance to people with disability, including reasonable adjustments, to help ensure the courts and the ACT Civil and Administrative Tribunal are accessible.

- Piloting of **Health Justice partnerships** by Legal Aid and the Women’s Legal Centre with the Family Safety Hub.

- The critical role of the **ACT Disability, Aged and Carer Advocacy Service and Advocacy for Inclusion** (plus a range of other support organisations) play in providing advocacy and support to people with disability in many instances.

- **Koomarri’s Forensic Disability Service** to support people with disability with multiple and complex needs with aims including to reduce the risk of re-offending and increase opportunities for community reintegration.

Consultations confirmed that often legal issues went unrecognised and that the critical point of advice/intervention may be a carer, support worker, doctor or teacher. Such ‘issue noticers’ often did not know where to go to seek help and also felt they could not adequately navigate the system themselves. They emphasised the critical importance of key workers within the system to whom they could refer and seek assistance.

Consultation participants also highlighted the importance of having someone on their side — as well as formal supports from the system such as intermediaries. Consistency of support was a strong desire for people with disability.
From our consultations with stakeholders we heard that they would like to do more and provide better services but felt constrained by a lack of expertise, time and a frustration that they had no one to refer people with disability to assist with wider life and communication issues.

In the criminal justice system stakeholders expressed frustration at the difficulty in obtaining disability services that would help to divert or provide services to people with disability who may be offenders or had difficult behavioural issues. It was suggested that the ACT should consider a forensic disability service to provide services to people in such situations. Previously there was a team working within Disability ACT who focussed on the interface between people with complex intellectual disability who were engagement with the justice systems, and provided some training to justice based organisations. This service closed in transition to the NDIS and has not been replaced.

Both the ACT Law Society and ACT Policing noted that they would appreciate a contact point where they could seek advice about disabilities and how to improve their handling of matters.

**WHAT COULD WE DO?**

Services specifically focused on meeting the justice needs of people with disability appear to be necessary and urgent. Some responses could be implemented quickly and cost effectively, such as:

- organisations establishing disability key workers to support, coordinate and broker on behalf of people with disability
- expanding service models which have been found to work effectively with people with disability and to provide a secure, long-term funding base
- supporting outreach arrangements which put legal service provision together with other services in locations where people with disability can best access those services.

**KEY WORKERS AND A COMMUNITY OF PRACTICE**

The justice system involves a range of stakeholders who interact with one another depending on the circumstances of a client, the type of matter at issue and whether the criminal or civil system or both is involved. This report has highlighted the disjointed experience of people with disability seeking legal redress, particularly when they come into contact with the criminal justice system. The Data, personal information and privacy section (above) also outlines the issues with information not travelling with a person as they move across the justice system.

In the longer term there may be ways in which such lack of connectivity can be addressed. In the short term, the likely most effective way to improve responsiveness and connectedness may be to create a network of key workers or a community of practice with disability justice at its core. With the placement of liaison positions within each of the key justice entities combined with a supporting structure, a foundational network could be created to warm refer people from one organisation to another, provide points of contact to assist with navigation, offer a professional support service to fellow key workers and create a mechanism for the resolution of issues on behalf of people with disability within their organisations.

Such a community of practice would provide the necessary key personnel to help their organisations develop training and awareness of disability issues, reform their procedures in order to support reasonable accommodations as well as provide linkages to external support services.

**ADVOCACY AND SUPPORT PERSON ROLE**

Given the strong voice of people with disability as to the pressing need for independent support persons, careful consideration could be given to funding over a number of years the key advocacy bodies in the ACT to broker and manage advocacy in justice situations and to evaluate those arrangements to provide an evidence base to support future service funding.
Larger jurisdictions have the advantage of economies of scale. Standalone service provision can be expensive in a small jurisdiction such as the ACT. However, the ACT has the advantage of size in that personal linkages and the flexibility can help deliver services more responsive to need and without undue overheads. Currently in the ACT there is strong good will and the building blocks for better services to ensure that the legal needs of people with disability are met and, most importantly, that such access to justice can divert people from contact with the criminal justice system. However, these foundations need to be fostered and developed in order to build a responsive and holistic system.

In the medium- to long-term consideration could be given to the feasibility of establishing a formal disability justice service either as a function of government or as a funded service provided by the private/NGO sector. Such a service could provide, as an example, the following:

- coordination of screening and assessment services to the justice system
- case management and support for people with disability in contact with the criminal justice system or at risk of this, for example through homelessness
- consultation services to justice organisations in relation to training, awareness raising and service changes to ensure reasonable adjustments are made
- advocacy and independent support persons to people in need, such as for police interviews or court appearances
- management of volunteer programs to support the justice system
- leading community legal education and information on disability justice issues.

The Disability Justice Strategy could ensure that local services are supported and built whilst also looking at what would be the best longer term services arrangements for the ACT.
COMMUNITY LEGAL EDUCATION AND INFORMATION

WHAT WE KNOW

There is strong evidence that many Australians have limited understanding of their rights, have difficulty identifying legal issues and do not know where to go for advice and assistance. This is even more so for disadvantaged groups such as people with disability. As the Productivity Commission observed ‘a lack of knowledge and capacity contributes to legal issues going unresolved, which in turn can lead to more severe issues in the future’. The Law Council Justice project identified a lack of legal awareness as an ongoing critical barrier for most disadvantaged groups such as people with disability.

Legal capability comprises three elements:

1 Basic legal knowledge: individuals require the rudimentary legal knowledge to recognise that they have an issue that is legal in nature, that there are potential legal solutions, and where to obtain assistance.

2 Non-legal skills: adequate literacy, language, communication and information processing skills are required to manage a claim/issue and to interact with the legal system.

3 Psychological readiness: individuals need the confidence in the legal system and its various players, as well as self-efficacy, readiness to act and determination to see an issue through.

The Productivity Commission identified that community legal education and information could improve legal capability by assisting people to:

• be aware of how the law affects them
• better identify legal issues
• better understand which avenues for recourse are appropriate given the nature and severity of their legal issue
• have the confidence to deal with their issues.

A number of studies have highlighted that self-help tools are often an ineffective strategy for people with poor legal knowledge, literacy and communication skills, and people with multiple and complex legal and non-legal needs — characteristics of many people with disability. However, community legal education and information can be critical for a person with disability’s family, carers and supporters as well as those people with disability with good legal capability.

It is also recommended that for disadvantaged groups, less capable groups, legal education and information strategies may be more effective as complementary strategies to connect them with more appropriate forms of service, such as legal advice, minor assistance and representation.

Information and education can act more as an access strategy than an education strategy, allowing issue noticers in key settings — e.g. accommodation, healthcare, schools — to identify possible issues and to make appropriate referrals or seek assistance.

The lack of legal information in plain English and other accessible formats makes accessing the justice system especially difficult for many people with disability, such as those with visual, hearing, intellectual or cognitive impairment. For many people with disability, legal language can be confusing, difficult to understand and overly technical.

WHAT WE HEARD

People with disability, their carers and supporters acknowledge that they were frustrated in dealing with the justice system as they did not understand how it worked, how they could obtain accessible information on legal issues or how to get help. Carers and supporters felt poorly served as there was little information available to them. This compromised their capacity to notice issues and seek appropriate resolutions.

Detainees described their incomprehension and fear of what was happening to them in court proceedings, acknowledging that without someone to support them they effectively had no idea of what was happening and why.

Participants in consultations expressed that they did not know what their rights were, how they should be treated and found language too complex.

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WE HEARD:

“There are so many websites but no real help.”
Consultation participant
All sectors of the justice system were noted as needing to develop easy-read materials for distribution and online to explain to people with intellectual disability/cognitive impairments what to expect when they come into contact with the police, what to expect in court/ACAT, how complaints processes work, what community legal centres do, etc. A good example of easy-read materials cited in NSW was the NSW Intellectual Disability Rights Service website, <www.idrs.org.au/home/index.php>.

**WHAT COULD WE DO?**

Based on the views of the community and the available research there is strong evidence of a need to improve the information available to the community on legal issues and the justice system especially for people with disability and their supporters.

Suggestions as to possible initiatives include:

- The use of video material has considerable support to assist people with disability, particularly young people, to understand issues and processes.
- A disability justice website — there was a degree of support for a disability justice website providing up-to-date materials for anyone seeking information on the justice system. An example of such a website is the Irish Criminal Justice Disability Network, <http://icjdn.ie/>.
- Support for existing websites being upgraded to include accessible information and provide links to other resources.
- A plain-English guide for carers who may be supporting people with disability who are in contact with the justice system and people with learning disabilities in the criminal justice system. An example is the guide for carers and learning disability services produced by the English Association for Real Change in March 2016 which provides explanations of legal terms and processes, <https://carers.org/sites/files/carerstrust/media/people_with_learning_disabilities_in_the_criminal_justice_system_a_guide_for_carers_and_learning_disability_services_.pdf>.
- A dedicated funding pool to pursue technical innovation to provide information and supports co-designed with people with disability and their supporters.
- A community awareness campaign to overcome stigma and discrimination against people with disability and to inform the public, business and other sectors on the rights of people with disability to equal treatment and reasonable adjustments.
- A public information and outreach campaign for people with disability, their carers and supporters to understand their rights and how to access justice options available to them.

There are positive initiatives on which to build, including the ACT Legal Aid Law Handbook and the improvements the courts are making to their web material on access to the courts and how they work. Legal Aid, Community Legal Centres and Advocacy Groups such as ADCAS and AFI provide community legal education and information. Their efforts could be assisted by focused attention on the specific needs of people with disability supported by government. The Office for Disability is providing training to a number of justice organisations in the preparation of easy-read material to improve their legal information offerings through the disability inclusion grants.

Until further steps can be implemented as part of the Strategy, a disability justice webpage is being created as part of the ACT Disability Commitment webpage INVOLVE — on to which relevant material will be posted to help inform people with disability, their carers and supporters.
AWARENESS RAISING AND TRAINING FOR THE JUSTICE SYSTEM

WHAT WE KNOW

The legal profession receives little (if any) training on disability and so has limited understanding of the impact of disability and how to make reasonable adjustments for a person’s disability in the context of their work.

Lawyers are often time constrained, are trained to use language that is complicated and technical in nature, and make assumptions about people’s capabilities which reflect the same prejudices and lack of awareness as the general public.

Courts and tribunals are often geared more toward people with a greater degree of legal capability (see explanation on page 24).

A number of jurisdictions have some training for people within the justice system to assist professionals to increase their awareness and responsiveness to people with disability. However, there has been little in the ACT.

A number of jurisdictions have developed aids to assist the profession and the judiciary to increase their knowledge and awareness including bench books, practice directions, guidelines and training material on topics such as capacity, communication, identification of disability and supported decision-making.

The most comprehensive training and awareness raising project reviewed has been the NSW Disability Justice Project which supported a range of workers within the justice and disability sectors to enable people with disability in the justice system.

The piloting of intermediary schemes in a number of jurisdictions has been supported by training and development programs as well as guidelines for participants which are helping to raise understanding of communication needs for people with cognitive and intellectual disability.

Training and awareness raising measures need to extend to the broader justice system and include police, court and tribunal workers and corrections workers.

WHAT WE HEARD

People with disability, their carers and supporters frequently raised their frustration at the complex and technical language used by members of the justice system including police, legal professionals, magistrates and judges. It was also expressed that stakeholders within the justice system didn’t appreciate how bewildering and disempowering the system was, and some consumers felt they demonstrated little empathy for people with disability. In addition, consultations identified a lack of understanding that with reasonable adjustment and support, people with disability had capacity to be credible witnesses, express their views and wishes and make decisions of their own.

Members of the legal profession, police, corrections officers, who participated in consultation all expressed a willingness to better support people with disability. Like many others consulted, they also expressed their frustration that they did not always know where to get help to better support people with disability. Many also commented that resource constraints often made it difficult to make the necessary adjustments, such as taking more time to support people appropriately.

Workers in the justice system also indicated that they felt ill-equipped to identify whether a person had a disability and what adjustments should be made. Practical guidance was needed to enable effective communication and identification and to ascertain support pathways as means to help improve their responsiveness to people with disability. In addition, stakeholders saw merit in the role of supporters for people with disability.

Workers in the justice system felt that training was best when integrated into their work. As an example, police spoke positively of initiatives to improve their understanding of people experiencing mental health issues when supported by practical guidance material as to how to use such knowledge in operational situations.

WE HEARD:

“About one third to half of people being evicted on the day [before the ACT Civil and Administrative Tribunal] have no supports.”
Consultation participant

“Police are good people but they speak a different language.”
Consultation participant

“We need to understand disability better and have better skills. Our default to behaviour issues is to call the police.”
Consultation participant
WHAT COULD WE DO?

The need to improve the understanding and awareness of the justice system of people with disability and to make reasonable adjustments was recognised early in the consultation period and as such steps have been taken to seek to improve the opportunities for training for the justice system in advance of the formal Disability Justice Strategy. Pilot training programs, based on the work of the NSW Disability Justice Project, are being conducted in partnership with members of the justice system. The first program was delivered to new corrections officers in October 2018. Over the coming months additional programs will be piloted for child and youth protection staff as well as on general themes for people from across the justice system — for example, working with young people with disability who are in touch with the justice system.

To achieve systemic cultural change such training and awareness raising measures will need to be provided regularly over time and will need to be an important feature of the future strategy.

Suggestions from consultations and from within the justice system included:

• support for the completion of a capacity handbook by Legal Aid ACT
• possible mandatory continuing legal education for the legal profession on disability
• training and information on how to identify cognitive, intellectual and communication disabilities across the justice system
• an ACT Bench book on disability issues such as fitness to plead, use of communication assistance and supported decision-making
• a continuing, regular focus on disability justice for the system through existing or new forums
• training programs for police, corrections officers, courts staff, youth workers as well as programs on specific themes such as legal capacity.

During the course of research, a number of resources were identified that could be adapted to ACT laws and procedures.40 With the assistance of the relevant professionals we will seek to develop similar materials for the ACT as part of the Disability Justice Strategy.

An important instrument of cultural change is the process and completion of Disability Access and Inclusion Plans (DAIPs)41 for justice organisations. In consultations, the majority of justice organisations and agencies expressed their enthusiasm for the development of DAIPs at their agency or directorate. This will assist justice agencies and their staff and members to better understand disability issues and work through how disability can affect a person’s access to their services. The Strategy will seek to ensure that DAIPs become a key part of the journey toward disability justice.
COMMUNICATION ASSISTANCE AND INTERMEDIARIES

WHAT WE KNOW

One of the fundamental structural barriers to equality before the law and equal access to justice for people with disability is difficulty in communicating with the system. This includes both being effectively understood by the system and understanding what the system needs or identifies. Communication assistance and Intermediary schemes have been piloted and are being implemented in a number of Australian jurisdictions in relation to the criminal justice system. An intermediary scheme has been in place in the United Kingdom for more than ten years.

A registered intermediary scheme could see support provided for people from the first point of contact with the justice system (usually police) through to communication with lawyers, the Director of Public Prosecutions, the courts and beyond.

In response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (see recommendations in the Criminal Justice report)\(^{42}\) the ACT Attorney-General has committed in principle to implementing an intermediaries scheme for the ACT.\(^{43}\)

All the relevant reports and inquiries on access to justice for people with disability have identified communication difficulties as among the most important barriers to justice. Currently, without intermediaries in the criminal justice process, the court and other justice players do not understand what is required to allow a person to communicate effectively, and evidence obtained from people with disability is not as good as it could be. This results in inadequate outcomes in both the interest of justice as well as people with disability.

The Tasmanian Law Reform Institute in its issues paper *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania (no. 22, May 2016)*\(^{44}\) canvassed options for the introduction of a scheme in Tasmania and noted:

Intermediaries/communication assistants perform a variety of functions at different points throughout the criminal justice process. They may act as quasi-interpreters, whose role is to reformulate questions into language that people with complex communication needs can understand and where necessary translate those people’s responses to the police and or the court. Additionally, communication assistants/intermediaries may be communication specialists who are able to assess and report to courts on the cognitive abilities of people with complex communication needs, an advisory function. Their reports make recommendations on how best to meet these people’s specific communication needs and they may provide advice to courts and counsel before and during proceedings about the appropriateness of questioning in a general and specific sense. They also facilitate communication at investigative interview and trial.

Intermediaries and communication assistants may also have an interventionist role, intervening in proceedings to prevent inappropriate questioning and advising courts and questioners about appropriate forms of questions.

The South Australian scheme began with the *Statutes Amendment (Vulnerable Witnesses) Act 2015*, which incorporated major changes to the *Evidence Act 1929*. The reforms followed a decision in the state to discontinue prosecution of a bus driver who was accused of sexually assaulting a number of people with intellectual disability on the basis that they would be unreliable witnesses. The reforms sought to:

- give people, whether victims, witnesses or defendants, with complex communication needs a general entitlement to have a communication assistant present for any contact with the criminal justice system
- minimise the number of times vulnerable witnesses have to recount their experiences by providing alternative measures for their evidence to be presented to the court, including the use of pre-recorded evidence and investigative interviews at trial
- tackle the misconception that disability denotes ‘unreliability’
- enhance the supports available for vulnerable victims, witnesses and defendants, both in and out of court
- allow the evidence of vulnerable witnesses to be taken in informal surroundings
• extend the priority listing of sexual assault trials where the complainant is a child to those where the complainant has a disability that adversely affects their capacity to give evidence.

The Child Sexual Offence Evidence Pilot in NSW commenced on 31 March 2016 and underwent a process evaluation in July 2017. The evaluation found that the strengths and skills of the intermediaries were highly valued. It also found that there was overwhelming support for the objectives of the pilot which are to lessen the stress and duration of court proceedings for child witnesses without unfairly impacting the defendant’s right to a fair trial. A pilot commenced in Victoria on 1 July 2018 offering intermediary assistance to child victims and adults with a cognitive impairment who are either victims in sexual offences or witnesses in homicide matters.

WHAT WE HEARD

In each of our community consultations there was a strong plea for better assistance to enable people who experience communication difficulties to be confident that they are effectively communicating with the justice system. A particular concern was that people with communication difficulties, including language, cognitive, physical and sensory disabilities, were not treated with respect and were often not listened to, were disbelieved and not seen as being able to provide evidence which would stand up in a court.

There was a strong view that with appropriate supports, such as extra time, regular breaks and intermediaries to help manage questioning and provide advice on communication, people with disability could and should participate in matters. Without such supports they were being denied access to justice.

Examples were given where people with disability were discouraged from reporting, often out of a sympathetic (but perhaps misguided) belief that the process of complaint and evidence taking would be too onerous for the person and matters would not go forward because of the person’s disability. However, examples were also provided where, with appropriate support and time, evidence could be obtained.

Views from the community were that communication supports — such as Auslan interpreting; use of alternative communication devices, support persons, assistance animals, extra time and breaks — should be available as of right. Formal intermediaries should be widely available in adversarial matters such as court and tribunal hearings to assist the courts and tribunal as well as the parties, including the person with disability.

In discussions with justice stakeholders there was general support for an intermediaries scheme for the ACT in criminal matters to ensure that the best evidence could be obtained. Stakeholders recognised that they could be assisted by having expert support to aid communication and to advise on the necessary adjustments to be made to support people with disability.

There was relatively unanimous agreement that such a scheme requires a legislative base and that requirements must be mandated in legislation if it were to be successful in achieving its aims, as well as cultural change.

WHAT COULD WE DO?

The ACT Government has committed to exploring the implementation of an intermediaries scheme for the ACT following the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. The scope and coverage of such a scheme is yet to be determined. The ongoing examination will inform the Disability Justice Strategy.

Other measures to improve communication could include:

• Seeking to expand the pool of Auslan interpreters that can assist in legal matters given the demands of interpreting in such a technical field. There are currently only two local Auslan interpreters with the appropriate professional accreditation for court work in the ACT.

• Education and training for the justice system and key workers in reasonable adjustments that could be made to assist people with disability, such as extended time and use of plainer language.

• Working with all justice organisations to identify actions they need to take to find out ways they can be more responsive to communication needs.

• Inclusion of communication as a key focus area in agencies’ DAIPs.

• Strategies to assist people with disability to alert people to their communication needs.
PART 2—CHAPTER 2

GROUPS WITH ADDITIONAL NEEDS AND VULNERABILITIES

IN THIS CHAPTER

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE
WOMEN
VICTIMS
CHILDREN AND YOUNG PEOPLE
MENTAL HEALTH AND PSYCHOSOCIAL DISABILITY
PEOPLE WHO IDENTIFY AS LGBTQI
PEOPLE WITH CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS
WHAT WE KNOW

Aboriginal and Torres Strait Islander communities and cultures are diverse. There is no single world view or unanimous experience. There is a lot of good work being achieved by, and alongside, Aboriginal and Torres Strait Islander people, however the focus of this paper is on the barriers experienced by many Aboriginal and Torres Strait Islander people in accessing justice. It is recognised that much of the experiences of inequality in access to mainstream systems are as a direct result of our shared history. The intersectionality of disability and Aboriginal and Torres Strait Islander identity increases the experience of these barriers.

Aboriginal and Torres Strait Islander people experience higher rates of disability compared to other Australians across all age groups. In 2017 the Australian Bureau of Statistics (ABS) reported that Aboriginal and Torres Strait Islander people were 1.7 times as likely to be living with disability (27.6 per cent compared to 16.5 per cent) and 1.5 times as likely to be living with a disability at the most severe end of the spectrum (7.8 per cent compared to 5.2 per cent).46

Examples of additional tiers of disadvantage experienced by Aboriginal and Torres Strait Islander people with disability are that they are:

• nearly three times as likely to be unemployed as non-Aboriginal and Torres Strait Islander people (23.3 per cent compared with 9.0 per cent)47
• over-represented in the criminal justice system with studies indicating that the higher rates of mental illness and cognitive impairment experienced by Aboriginal and Torres Strait Islander people generally compared to non-Aboriginal and Torres Strait Islander detainees is reflected in the criminal justice system.48

As at 30 June 2018, 257 ACT participants in the NDIS identified as being from Aboriginal or Torres Strait Islander background. This equates to 3.4 per cent of the 6,141 active participants in the ACT with an approved NDIS plan. Aboriginal and Torres Strait Islander people make up 1.6 per cent of the ACT population.49

A notable barrier to Aboriginal and Torres Strait Islander people with disability accessing justice is a lack of identification of disability. To a large extent the justice system relies on people with disability identifying as such and there is evidence of underreporting by Aboriginal and Torres Strait Islander people due to a range of factors including: a cultural conflict between the Western concept of disability and the diverse approaches to recognising and responding to disability within Aboriginal and Torres Strait Islander communities; a lack of trust due to inter-generational trauma; a lack of culturally appropriate disability services; and multiple involvement in service interventions.50

The ACT launched a Bail Support Trial (Ngurrambai) in December 2017 to support Aboriginal and Torres Strait Islander people to achieve bail and comply with bail orders. The trial includes two bail support officers employed by the Aboriginal Legal Service (ALS) who attend court to assist clients. ALS reports that key to the success of the program is helping clients understand their bail conditions clearly. This is achieved using helpful and innovative methods such as an infographics bail form to clearly outline bail conditions and help clients manage their responsibilities. Clients are also supported by a suite of programs to help address any other issues that may affect their bail. Of the 43 trial participants (as at September 2018), none have re-offended and only eight have breached bail (with four being re-admitted to bail). The trial provides an example of how applying an approach which is appropriate for people with intellectual disability across the client-base can achieve positive outcomes.

WHAT WE HEARD

One of the general themes emerging from consultations was the significant over-representation of Aboriginal and Torres Strait Islander people in detention, particularly those with a disability. Another theme was the lack of appropriate, supported accommodation for this cohort, which stakeholders argued results in imprisonment by default. The ALS (NSW/ACT) raised the high prevalence of mental illness and other comorbidities among its clients, with foetal alcohol syndrome and methamphetamine (ice) usage a particular concern.
The 2012 Aboriginal Disability Justice Campaign report, *No End in Sight: the imprisonment and indefinite detention of Indigenous Australians with a Cognitive Impairment*, states:… within what should be a fair and just criminal justice system, the endemic over-use of imprisonment sees a group of Indigenous Australians with impairments, who are often not able to comprehend criminal justice processes, cycle in and out of various forms of custody with devastating frequency. This population becomes more damaged and disconnected from their communities and support services as a result.

Research also shows there is a high rate of unmet legal need in civil law matters for Aboriginal and Torres Strait Islander people. The Law Council of Australia reports that interaction with child protection is a particularly urgent legal need for this group and references the submission by Legal Aid ACT which states:

There is an increased need in the care and protection space. Legal assistance can make a big difference in these cases. In every case there is a possibility of restoration with the children.

Other areas of legal need include: family law; tenancy and housing; discrimination; social security; and credit, debt and consumer issues.

There are a number of barriers which work to prevent Aboriginal and Torres Strait Islander people from accessing justice.

The Law Council of Australia’s *The Justice Project* report on Aboriginal and Torres Strait Islander people lists and discusses the following:

- alienation from the legal system due to the fundamental divergence between Aboriginal and Torres Strait Islander cultures and the Australian legal system
- distrust of the legal system due to criminalisation of communities, deaths in custody and the denial of political rights
- communication and language difficulties
- limited awareness of the law and unrecognised legal need.

These barriers are compounded for Aboriginal and Torres Strait Islander people with disability who face additional difficulties of accessibility including physical accessibility and accessible information, communication, barriers related to the adversarial system and negative attitudes and a lack of understanding of disability.

In 2017 Baldry et al. made an examination of disability, pathways into the criminal justice system, and the need for transformational reform in relation to Aboriginal and Torres Strait Islander people and their experience of the criminal justice system. Their subsequent recommendations suggested applying the principles of self-determination, person-centred support, holistic and flexible support, integrated services, and culture, disability and gender-informed practice. These principles could be used to inform the development of the Disability Justice Strategy and its action plans.

**WHAT COULD WE DO?**

While steps taken to improve access to justice for people with disability should have a positive impact for Aboriginal and Torres Strait Islander people, the Disability Justice Strategy should aim to make specific provision for this group. This could include ensuring that all actions under the Strategy are considered from a culturally-sensitive perspective and in consultation with the Aboriginal and Torres Strait Islander community. Noting that this group is particularly vulnerable when in contact with the criminal justice system and the care and protection system, consideration could be given to developing actions which specifically seek to address the needs of Aboriginal and Torres Strait Islander people.

In 2017 Baldry et al. made an examination of disability, pathways into the criminal justice system, and the need for transformational reform in relation to Aboriginal and Torres Strait Islander people and their experience of the criminal justice system. Their subsequent recommendations suggested applying the principles of self-determination, person-centred support, holistic and flexible support, integrated services, and culture, disability and gender-informed practice. These principles could be used to inform the development of the Disability Justice Strategy and its action plans.
WHAT WE KNOW

Women with disability are particularly vulnerable to crime and abuse. For example, women with intellectual disability are 50–90 per cent more likely to be subjected to a sexual assault than women in the general population. The National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan) recognised that women with a physical or intellectual disability are more likely to experience domestic violence and the violence is likely to be more severe and continue for longer compared to other women. Poverty is another significant disadvantage with over 50 per cent of women with disability living on less than $200 per week.

In the ACT, there is no gendered data to compare women’s experience of the justice system against that of men. However, there is strong anecdotal evidence that barriers to accessing justice for women with disability include: difficulties in accessing pathways to support; access to information; and a lack of understanding of their legal capacity and rights.

Australia’s National Research Organisation for Women’s Safety (ANROWS) reported in April 2018 the following key findings on access to justice for women experiencing violence:

• we need to listen to the voices of women with disability, believe them and act on what they tell us
• women with disability face particular and sustained challenges in achieving everyday safety and security
• possible pathways to just outcomes must be better articulated and supported
• service challenges continue to exist across and between specialist violence and disability service sectors
• the impact of ‘siloed’ knowledges is deleterious and must be ameliorated if women with disability are to live free from violence.

WHAT WE HEARD

Consultations revealed concerns about the issue of violence and sexual assault of people with disability, particularly women. There was also some suggestion that women with disability were not approaching the available services in the ACT for people seeking to escape family violence. The issue of the incarceration of women was also raised with the view expressed that too many women in prison have mental illnesses and borderline intellectual disability, and who have committed relatively minor offences, who should be diverted into more appropriate supports but options were not available.

The second public consultation was held jointly on the Disability Justice Strategy and the Charter of Rights for Victims of Crime and in collaboration with Women with Disability ACT (WWDACT). Specific issues raised in relation to women were:

• women in prison are frequently victims of sexual abuse and imprisonment reflects ingrained abuses and discrimination
• the lack of alternatives to prison for women with disability
• the perception of women with disability as unreliable witnesses and insufficient supports and adjustments by the system to allow them to tell what has happened to them
• the challenge of getting information about civil law issues
• women who are from the CALD community face additional barriers to accessing information and services including civil law matters where interpreters are not always provided.

Consultation with the Office for the Coordinator-General for Family Safety (OCGFS) highlighted the challenges of reaching women with disability and the importance of trusted people such as GPs and carers as a point of contact. The OCGFS indicated that mandatory reporting of domestic violence was seen by some women with disability as removing their decision-making capacity and that they would prefer non-statutory responses in some instances. People with disability were one of the target groups for the OCGFS in developing the Family Safety Hub and the paucity of data presented difficulties. A community of practice and a frontline worker strategy were central to the development of a response to family violence which aligns with suggested approaches for the Disability Justice Strategy we heard about in other consultations.

We heard from women with disability concerns in connection with issues of care and protection of children and that women felt unsupported in this area.

Consultations also revealed that there are currently around fifty women detainees in the
AMC. Male detainees with complex needs may be placed in the Assisted Care Unit but there is no similar facility for women due to the relatively low numbers who would benefit from such unit.

**WHAT COULD WE DO?**

The OCGFS in the Community Services Directorate is undertaking a wide range of work to improve justice responses for people who are experiencing family violence. The Disability Justice Strategy will need to supplement this work rather than duplicating by ensuring an appropriate level of focus for women with disability.

The Disability Justice Strategy could examine the potential for women-specific diversions from imprisonment in collaboration with the ongoing work to meet the ACT Government’s commitment to reduce recidivism by 25 per cent by 2025. In the UK, and more recently in NSW, an innovative, gender specific approach to crime prevention has been used which targets women with complex needs who are at risk of offending and reoffending. The Miranda Program (part of the broader Miranda Project) now operates in NSW and functions as a diversionary program and provides post-release support.58

The Disability Justice Strategy could explore, in partnership with ACT Corrective Services, how meeting the needs of women with disability could be improved given there is no specialised facility for those with complex needs.

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**WE HEARD:**

“The system mixes up safety with security. I just want to feel safe.”

Consultation participant

“Removal of a child with disability has become perceived wisdom and is discouraging people from seeking early supports. We need to turn this around.”

Consultation participant
WHAT WE KNOW

People with disability have a high level of interaction with the criminal justice system as victims. It is important to note that victims may also be offenders. The Australian Human Rights Commission (AHRC) has stated ‘many offenders with disability have themselves been victims of violence and this has not been responded to appropriately, contributing to a cycle of offending’. Research in NSW suggests that people with disability are 3.03 times more likely than a person without disability to be the victims of assault and 1.43 times likely to be the victim of property crime. It is also likely that the level of trauma caused as a result of a being a victim of crime is exacerbated for people with a cognitive or mental health impairment.

In the ACT, there is no specific data which demonstrates the numbers of people with disability as victims of crime. However, in consultations for the Charter of Rights for Victims of Crime, 16 per cent of community member respondents identified as a person with disability. In addition, it is likely to assume that the situation in the ACT is likely to reflect the position in other jurisdictions.

Accessibility at all points in the justice system is a significant barrier for people with disability. The system is just not well adapted to meet their needs. The AHRC reported in 2014 that there is ‘widespread difficulty identifying disability and responding to it appropriately’ among police, custodial officers, lawyers and courts.

WHAT WE HEARD

Consultations reflected the findings of national research including:

- People with disability fear they will be seen as lacking in credibility if they report a crime
- Building cultural change and capability is a priority
- Identification of disability and how to make adjustments is a major challenge
- Services where violence and abuse is normalised are more likely to treat crimes against people with disability as an ‘incident’ (requiring an internal investigation) rather than reporting to the police.

A frequent theme of consultations was a need to ensure that services, particularly the police as first responders, act appropriately towards victims with disability and that this requires an understanding of disability and the provision of supports. ACT Policing are supportive of the Disability Justice Strategy and open to considering additional training.

A trauma-informed approach with responsive and ongoing supports was also considered to be necessary to assist victims of crime with disability.

WHAT COULD WE DO?

Education and awareness is likely to be a key feature of the Disability Justice Strategy and this could include focused training and information resources, particularly for first responders such as ACT Policing and at all other points in the criminal justice system. The aim would be to ensure that a level of understanding and expertise is developed to provide good service responses to victims with disability.

The Disability Justice Strategy will need to align with the Charter of Rights for Victims of Crime which will begin implementation in a similar timeframe. Both programs of work are part of the broader program to improve access to justice in the ACT and are being developed collaboratively.

Similarly, the Criminal Justice Reform program of work responding to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) has overlaps with the Disability Justice Strategy. The ACT Government response to the recommendations of the Royal Commission supported the intent of the recommendation to adopt an intermediary scheme and has commenced consultation on the introduction of a scheme in the ACT.

The role of an intermediary is necessary to assist victims of crime with disability. ACT Policing are supportive of the Disability Justice Strategy and open to considering additional training.

A trauma-informed approach with responsive and ongoing supports was also considered to be necessary to assist victims of crime with disability.
**Children and Young People**

**What We Know**

Children and young people with disability are another group which is over-represented in the criminal justice system, particularly those with an intellectual impairment. In 2014, a study of young people in NSW Custodial Centres revealed that of the 65 per cent of youth detainees who were assessed, 45.8 per cent had borderline or lower intellectual functioning. International research suggests that young people with foetal alcohol spectrum disorder (FASD) are 19 more times likely to be incarcerated.

A particularly vulnerable group amongst this cohort are Aboriginal and Torres Strait Islander children and young people. Of 800 young people on community orders in NSW, 20 per cent were Aboriginal and Torres Strait Islander with a comorbid intellectual disability that was considered to contribute to the risk of re-offending in this cohort. One study found that rates of incarceration were ten times higher for Aboriginal and Torres Strait Islander young people with an intellectual disability compared to young people in the general population, and three times the rate of other Aboriginal and Torres Strait Islander young people in the community.

Children and young people with disability are also significantly more vulnerable to becoming victims of abuse and due to their disability are less likely to be asked and believed about, or to initiate, a disclosure of violence. There are multiple reasons for this that include non-familial adults providing personal support to children with disability away from public scrutiny; many supports are provided in segregated settings and children with disability miss out on programs designed to develop child safety and how they can be personally safe.

Research identifies that young people with disability experience mental health issues at a rate of approximately three to four times higher than comparable groups of other children. These mental health issues are frequently not well-managed and the associated emotional and behavioural difficulties can create greater family stress and impact on the child’s ability to achieve their potential and engage with community and peers.

In NSW one quarter of all matters that engage child protection are about people with disability and 30 per cent of the Ombudsman’s investigations are into the maltreatment of people with disability. In the ACT, the former Children and Young People Commissioner has stated: ‘a significant proportion of young people in detention are living with a mental health disorder, cognitive impairment or intellectual disability’. The ACT Human Rights Commission reported in 2011:

> Although statistics on the number of all young people in the ACT youth justice system are difficult to gather, participants expressed the view that as many as one-third have a cognitive impairment, are on the autistic spectrum or suffer from foetal alcohol syndrome. Teachers at Bimberi told us that most of their students experience learning difficulties, and that this influence their ability to positively engage in the classroom.

A child or young person with an intellectual disability is also particularly disadvantaged as a victim or witness in the criminal justice system because there is often a concern about whether they will be able to describe what has happened sufficiently and be believed by a jury or other trier of fact. They are also vulnerable to high rates of victimisation because perpetrators may view them as ‘easy prey’. The report of the Royal Commission into Institutional Responses to Child Sexual Abuse states that the Commission found that children with disability appear to be more vulnerable to sexual abuse in institutional settings, with girls being significantly more likely to be victims of abuse.

Early identification of children with disability is crucial to achieving the best outcomes for the child and allowing them to reach their full potential. The benefits of early intervention include: enhanced school achievement; better parenting skills; greater independence; lower criminal activity; and higher earnings. Disability is an accepted risk factor for engagement in criminal behaviour, as is being a victim of abuse or neglect.

A significant barrier for children and young people with disability in accessing justice is that the stakeholders in the justice system do not recognise their disability nor know how to respond to them effectively.
WHAT WE HEARD

Concerns identified were that:

- There are insufficient diversions from the criminal justice system for young people and that options should be developed which included education, accommodation and family violence.
- Release planning for young people from Bimberi should include long-term (as opposed to temporary) accommodation.
- Screening and assessment for intellectual disability and other cognitive impairments should be introduced at appropriate intervention points.
- A trauma-informed approach should be adopted towards young people in detention.
- Speech, communication and language difficulties are common among young offenders and speech pathology services can work effectively to address this need.
- Raising a child with disability can be complex for parents and managing behaviours of concern and emotional regulation more difficult due to lack of structured/tailored programs to support them.
- Parents of children with disability are more likely to be raising their child in single parent families, have a reduced income, have high stress levels and are more likely to experience social isolation.
- Children with disability are more likely to utilise out of home respite with non-familial carers and are accordingly more vulnerable to abuse.
- The NDIS has changed how some families are supported around behavioural and emotional regulation, consultation indicated this has made it more difficult for some families to seek and access the appropriate supports in a timely way.

In March 2018, the Blueprint for Youth Justice in the ACT 2012–22 Progress Report 2012–17 was released and noted the need for better support for young people with disability and mental health concerns who come into contact with the justice system.

The report links the blueprint with the Disability Justice Strategy and reports on actions already taken for young people with disability. In July 2018 the Blueprint Taskforce held a workshop to discuss key issues, including how to respond to young people with disability, and a work program for the next five years is in development.

In consultations with the Community Services Directorate, including Bimberi Youth Justice Centre, there was recognition of the need to develop more expertise in identifying and supporting young people with disability.

There are a currently a range of ACT Government policy and reform agendas across the human services directorates that have identified the need for transformational change to increase the efficacy, coherence and integration of government and non-government services and deliver better life outcomes for disadvantagedCanberrans.

These reforms include Early Support by Design, the Family Safety Hub, the Blueprint for Youth Justice, Justice Reinvestment, the Office for Mental Health and Wellbeing, the Future of Education, the Territory-wide Health Services Framework and the ACT Housing Strategy. Each of these key reforms include the need to alleviate compounding disadvantage which exacerbates the experience of disadvantage.

Speech Pathology Australia submitted that speech pathology intervention in the custodial setting has been shown to be beneficial to both the young people and youth justice staff and that indirect speech pathology (through staff education and training) has been shown to have a positive impact on the knowledge and confidence of custodial and community-based justice staff in working effectively with people with communication difficulties.
WHAT COULD WE DO?

The Disability Justice Strategy will seek to support work in the early intervention space where the most opportunity exists to alleviate the compounding disadvantage that leads to young people’s engagement in the justice system. There are a range of reforms currently occurring and the Strategy will seek to align with these reforms to better identify and support people with disability who are vulnerable and to prevent engagement with the justice system.

The Disability Justice Strategy will continue to work in association with the Blueprint for Youth Justice to ensure a cohesive approach to developing better supports for young people with disability and seek to provide programs that support parents to manage behaviours of concern and emotional regulation such as the evidence-based parenting program Stepping Stones Triple P program. This work will also seek to identify and communicate information about programs that support enhanced personal safety based behaviours such as the So Safe program which is developed for people with intellectual disability.

Disability education for the justice system could include a specific emphasis on issues affecting children such as:

- access to communication assistants
- early identification at school and sharing of information
- the credibility of child witnesses when interviewed promptly and effectively.
**PEOPLE WITH MENTAL ILLNESS AND PSYCHOSOCIAL DISABILITY**

**WHAT WE KNOW**

The interaction between mental health concerns, disability and the justice system is complex. We know that people with mental illness have high levels of interaction with the justice system and are particularly vulnerable members of society. To a large extent, people with mental health issues fall under the care of health care services but they may also require adjustments by the justice system not only due to their mental health but also due to associated or co-existing disability.

Psychosocial disability is a functional impairment which may arise from a mental health condition. Not everyone who experiences mental ill health will also have a psychosocial disability but those who do may experience severe challenges in day to day functioning and social disadvantage. This is because impairments arising from a mental health condition can include altered thinking, cognitive impairments and reduced ability to meet the functional demands of living in the community. Psychosocial disability contributes to the gaps identified in relation to physical health outcomes and the social and emotional wellbeing aspects of people’s lives.

The complex interactions and frequent co-morbidity between mental illness, psychosocial disability, other disability and other vulnerabilities makes it important that the justice system operates in a way that is inclusive of all types of disability.

It is also the case that the psychosocial stresses associated with interactions with the justice system and unresolved legal issues can be a trigger for mental health issues as well as a factor contributing to contact with the justice system.

There is little data in the ACT about people who experience both mental health concerns and disability as this data is not consistently collected. In addition, it is likely that in some cases disability in a person who is mentally ill is not being identified.

We do know that:

...on the basis of available data [in NSW], the representation of people with cognitive and mental health impairments in the criminal justice system is disproportionately high.79

We also know that the prevalence of female detainees with mental health concerns is high. A recent study found that up to 90 per cent of female detainees had experienced a mental health issue in the 12 months before they were incarcerated.80 The mental health needs of women in prison are significant. These relate to mental health conditions that were present prior to detainment, and the exacerbation of mental health problems as a result of detainment. Studies have indicated that compared to males, females are more likely to have mental health conditions including PTSD, BPD, and prior psychiatric hospitalisation.81

In some ways it is not helpful to differentiate between the general experience of mental health issues and disability, noting that access to justice is important for vulnerable people whatever their diagnosis. While the focus of the Disability Justice Strategy will be people with disability, the extent of overlap with experiences of people with mental health issues more broadly makes it reasonable to consider actions in the Strategy that will enable mental health services to support people more effectively in their interactions with the justice system.

The legislation in the ACT on the issue of whether a person is fit to stand trial is an example of where mental illness and cognitive impairment coincide. The essence of Part 13 of the Crimes Act 1900 is whether the person is capable of defending themselves and understanding the court process. It is for the defence to establish that, on the balance of probabilities, a person is unfit to plead.

While unfitness to plead laws are not based on the concept of punishment but rather aim to strike a balance between the safety of the community and the rights of the individual charged, there have been calls for the reform of these laws Australia-wide.
The Australian Law Reform Commission has stated: the current legal test for unfitness to stand trial needs to be reformed to avoid unfairness and maintain the integrity of criminal trials, while ensuring that people with disability are entitled to equal recognition before the law, and to participate fully in legal processes.\textsuperscript{82}

Also, the AHRC has stated that one of the barriers to access to justice for people with disability is that: Specialist support, accommodation and programs may not be provided to people with disability when they are considered unable to understand or respond to criminal charges made against them (‘unfit to plead’). Instead, they are often indefinitely detained in prisons or psychiatric facilities without being convicted of a crime. This situation mainly happens to people with intellectual disability, cognitive impairment and people with psychosocial disability.\textsuperscript{83}

It should be noted that in the ACT the period of detention ordered by the court cannot exceed the term of imprisonment the person would have received if they had not had a mental impairment. ACT legislation also provides that the ACT Magistrates Court may, if satisfied the person charged is mentally impaired, dismiss the charge altogether or require that the accused is to submit to the jurisdiction of ACT Civil and Administrative Tribunal (ACAT) to enable the making of a mental health order or forensic mental health order. However, the consent of the Director of Public Prosecutions is required for this to occur.\textsuperscript{84}

There is already work underway in the ACT which aims to respond better to people with mental health concerns and, where possible, divert them away from the criminal justice system. An example is the collaborative approach between ACT Policing and Canberra Health Services where both organisations work as a team to ensure appropriate responses to incidents involving people with a mental illness. ACT Policing has also invested significantly in mental health training for staff.

In addition, ACT Health has commenced work which aims to improve mental health services for people with an intellectual disability and which will include relevant considerations identified by the Disability Justice Strategy.

**WHAT WE HEARD**

During consultations we heard some concerns voiced about the operation of the unfitness to plead and mental impairment provisions in the Crimes Act 1900 and the potential for adverse outcomes for the most vulnerable. In particular, we heard criticisms of the need for the consent of the Director of Public Prosecutions where the ACT Magistrates Court has determined that dismissal of the charge or referral to the ACAT is appropriate.\textsuperscript{86}

We heard the view expressed that Community Care Orders, which can be made by the ACAT under the Mental Health Act 2015, were a useful tool which is perhaps under used and could be strengthened.

We also heard in consultations that many stakeholders in both the justice system and mental health sector as well as people with lived experience were concerned that wrap around supports, particularly for the most complex cases, were not consistently provided.

**WHAT COULD WE DO?**

Actions under the Disability Justice Strategy could include:

- further consultation and consideration of the unfitness to plead provisions in the Crimes Act 1900
- explore the operation of section 335 of the Crimes Act 1900
- work with ACT Health and other stakeholders to develop a picture of the interaction between mental health services, disability services and the justice system to identify gaps and options to improve services and/or legislation
- leverage relevant policy and activity occurring in response to the Fifth National Mental Health and Suicide Prevention Plan and the associated ACT Mental Health and Suicide Prevention Plan currently being developed (e.g. workforce capacity building to identify disability support needs, improved collaboration and pathways for people with psychosocial disability, the NDIS and other supports).
A group of people that did not arise during the consultation, yet often experience disadvantage are the LGBTQI community. The Justice Project final report (2012) discusses the experience of LGBTQI people accessing justice. The report recommends welcoming strategies such as inclusive language on websites, staff training, introduction of LGBTQI advocacy roles, and the recruitment of LGBTQI staff. The report further recommends that particular attention needs to be given to those at risk of additional disadvantage such as mental health, family violence and homelessness.
PEOPLE FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS

WHAT WE KNOW

This report has already highlighted the lack of data with regard to people with disability accessing justice. When disability is combined with a CALD background, the scarcity of data increases. This can be compounded by differences in cultural understandings of disability and a lack of culturally-appropriate assessment tools, can lead to no diagnosis, or a misdiagnosis.87

What we do know is that one in four Australians were born overseas. Australians come from nearly 200 different countries and speak more than 300 languages, representing over 300 different ethnic ancestries.88 The Judicial Council on Cultural Diversity (JCCD)’s 2016 report claim that almost 60 per cent of Australia’s future population growth could come from migration.89

The Australian justice system was created to serve a less diverse population than it serves today.90 The Productivity Commission’s 2014 report found a lack of data specific to people with CALD background.91 This lack of data makes it hard to develop strategies to support this group of people well. Further, many people of CALD background enter the justice systems at times when they are particularly vulnerable.92

The JCCD’s report suggests that many people of CALD background who enter the justice system, enter as a result of family violence or family breakdown.93

A lack of trust in the justice system can be a barrier for people of CALD background. In the Scanlon Foundation Social Cohesion Research annual poll,94 64.9 per cent of newly arrived migrants expressed trust in the justice system, however, only 54.6 per cent of migrants who had been in Australia ten years or more expressed trust in the system. This suggests declining trust. Beyond the Scanlon poll there is very little data about the attitudes of people of CALD background on the Australian legal system.

A further barrier is that of language. Many of Australia’s humanitarian entrants do not come from countries where English is not a predominant language. A lack of English language proficiency can be a huge barrier to people accessing and participating in the Australian justice system. Further, lack of language skills can result in increased social isolation.95 These factors in combination can lead to a lack of knowledge and awareness of the workings of the Australian justice system.96 Further, some cultural backgrounds discourage help-seeking beyond their cultural community.

When language is a barrier, access to an interpreter can be a pathway to meaningful outcomes. Under the Human Rights Act a person is guaranteed interpreters for criminal matters but not civil. There are resources available, yet a low take up of services. The Women’s Legal Service Victoria Service97 identified a number of barriers to the use of interpreters. There is a lack of clarity around whose responsibility it is to hire an interpreter. They further identified a number of issues around a lack of knowledge and skill around assessing the need for an interpreter, and a lack of skill in how to work with interpreters.

WHAT WE HEARD

We heard many of the same issues in our consultation with community. Participants highlighted issues around knowing where to seek information and support. They reiterated that in some cultures, women are not allowed to go out and seek help or advice from the community.

Language skills were raised as a barrier to accessing justice. Participants highlighted that it can be hard to navigate a new community without a language barrier. In some cultures, women are not permitted to go out without their husbands. In such cases, when women may not use a phone or a computer, and their English is limited is can be difficult for women to access information, or for services to reach them to provide information.

Participants suggested having information in simple, understandable English. They also suggested that schools could be a useful place to locate information.
WHAT WE COULD DO

Many of the barriers faced by people of a CALD background are faced by other vulnerable groups discussed in this strategy, such as Aboriginal and Torres Strait Islander people, and women. As such many of the strategies discussed above may also be useful in addressing the needs of people in this group. These strategies could include trusted non-legal workers facilitating navigation of the system, reaching out through trusted people and places to identify issues and distribute information, and plain language and visual forms of information. The JCCD report offers many recommendations to improving access to justice for people from a CALD background, especially women experiencing family violence. The Disability Justice Strategy could consider actions which implement a number of these recommendations. The themes identified as necessary to improving access to justice for people from a CALD background align with the five main themes of the Disability Justice Strategy. A strategy that seeks to address these five themes will go a long way in improving the lives of people from diverse backgrounds in Australia.
PART 2—CHAPTER 3
CIVIL JUSTICE ISSUES

IN THIS CHAPTER

ACCESS TO LEGAL SERVICES
SUPPORTED DECISION-MAKING AND GUARDIANSHIP
INFORMATION AND SUPPORT IN CIVIL JUSTICE PROCEEDINGS
WHAT WE KNOW

The 2012 LAW Survey found in relation to the ACT that nine per cent of respondents accounted for 63 per cent of legal issues reported and that people with disability had:

- a significantly higher prevalence of legal issues overall, substantial legal issues, multiple legal issues and were the only vulnerable group to feature within each of the 12 issue areas of law (being accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights) — the majority of which are in the civil law
- significantly lower levels of finalisation of legal issues (61 per cent compared to 70.4 per cent for those without disability)
- greater odds of experiencing legal issues — 2.2 times higher than other respondents (62.1 per cent compared to 46.8 per cent)
- the greatest increased prevalence of legal issues of any disadvantaged group according to the greatest number of measures.

The survey highlighted the value of holistic, integrated, multifaceted approaches to justice that address the diverse needs of different people and in particular that address the needs of disadvantaged people who are especially vulnerable to legal issues. It also emphasised that access to justice is an important route to tackling social exclusion.

Legal services need to build and maintain trust with marginalised clients to be effective and this requires long-term sustainable policy and funding frameworks which underpin certainty and continuity of service provision.

Technology is being used in some instances to help reach many people who need advice and assistance but marginalised people often experience digital exclusion.

If addressed early many legal issues can be minimised or avoided entirely. Indeed, the Productivity Commission has recognised the public benefits to the community of legal expenditure and the ‘false economy’ of not doing so, given that the costs of unresolved issues were often shifted to other areas of government spending such as health care, housing and child protection.

Self-help tools, legal information and unbundled services are generally inappropriate strategies for people who have poor legal knowledge, language or communication needs, cognitive impairment or mental health conditions, or limited technology capability. By contrast, the Law Council noted that:

Specialist services can develop strong referral networks with appropriate support services and community representatives, which inform their ongoing service delivery. They also have a strong knowledge of relevant laws against an increasingly complex and changing legal landscape. Specialist lawyers have an important role in informing other justice system actors about their clients’ needs, such as courts, which may lack expertise regarding a person’s background, their vulnerability factors, cognitive or behavioural issues or communication needs.

While single entry points into the justice system are important strategies for the general public, it is well recognised that many vulnerable groups can be reluctant to use formal single entry points. Instead, multiple, informal pathways are necessary. In particular, the role of trusted non-legal workers in facilitating side pathways into the justice system is considered pivotal, including through ‘warm referrals’, where they accompany clients to initial appointments. People experiencing disadvantage are generally more likely to raise legal issues with trusted non-legal professionals, including health and community professionals.
LEGAL AID

Legal Aid is one of the few ACT justice agencies that collects and can provide data but advises that it is not comprehensive across all its operations. The data relates to grants of legal aid, the provision of legal advice and duty lawyer services. It is collected via self-reporting when a person ticks a box on the client intake sheet to advise that they identify as having a disability. The data does not, therefore, cover the 16,000+ people who seek support through the Legal Aid Helpline. The data relates only to the numbers of services to clients with disability and does not identify what percentage these figures are from overall services to clients. Legal Aid considers that the statistics represent significant under-reporting and that the percentage of clients with disability is likely to be up to 20 per cent.

Figure 1: Legal Aid In The ACT

<table>
<thead>
<tr>
<th>Year</th>
<th>Advice</th>
<th>Duty lawyer</th>
<th>Grants</th>
<th>Total</th>
</tr>
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<tr>
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<td>185</td>
<td>131</td>
<td>98</td>
<td>414</td>
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</tr>
<tr>
<td>2017–18</td>
<td>722</td>
<td>672</td>
<td>380</td>
<td>1774</td>
</tr>
</tbody>
</table>

CANBERRA COMMUNITY LAW

People with disability accounted for 50 per cent of clients (who provided this information) of Canberra Community Law in 2015–16. Canberra Community Law’s data is collected from self-reporting as well as the solicitors/staff making an identification based on information provided to them about clients e.g. from Mental Health ACT or from a support worker. The multiple data sources may mean the data better reflects the true numbers of people with disability seeking legal assistance than the figures provided by Legal Aid.

Disability Discrimination Law (DDL) provided 337 advices in relation to disability discrimination in 2015–16, an increase of 62 per cent over the previous year. The three major areas for advice work were service provision, employment and accommodation. The major types of disabilities involved were physical and psychiatric disabilities.

Street Law works with clients with a wide range of life experiences. Its data indicates that 19 per cent of clients in 2015–16 identified as being Aboriginal or Torres Strait Islander, 47 per cent had a disability, 44 per cent were born outside Australia and 11 per cent identified as speaking a language other than English at home.

The Socio-Legal Practice Clinic (SLP Clinic) is focused on preventing homelessness by providing intensive legal and social case work for some of the centre’s most disadvantaged and vulnerable clients. Since the SLP Clinic was established, 65 per cent of clients identified as having an intellectual, physical or psychiatric disability. The ACT Government has provided $250,000 over four years to support the continuation of the SLP Clinic. The SLP Clinic was independently evaluated in 2017 and found to be highly effective at meeting the needs of clients with complex needs.

Two Health Justice Partnerships have recently begun in the ACT. One is between Street Law and the Junction Youth Health Service. The second, is a pilot under the Family Safety program, between Legal Aid ACT/ACT Women’s Legal Centre and Calvary hospital, Centenary Women’s and Children’s Hospital and the Gungahlin Child and Family Centre.
WHAT WE HEARD

Community feedback was that many people with disability did not know how to seek legal advice and assistance and presumed they could not afford it or that their issues were not really legal issues. Carers also raised that they did not feel they could seek advice and did not know where to go to do so. At times the community consultations sessions allowed for people with disability to be put in touch with a legal service provider to assist them with their issues.

Continuity and consistency were important to people with disability in their relationships with legal services providers (as well as other services). They wanted to understand what was happening and to have their legal service provider ‘join the dots’ for them.

Community consultations also raised a concern that for many important civil law issues — such as personal injury compensation — there did not appear to be publicly funded services available, which precluded people with disability from seeking redress due to cost.

The need for a specialist Disability Legal Service — like the Intellectual Disability Rights Service (IDRS, NSW) — was raised by a number of consultation participants. Existing legal services providers were felt by some to have insufficient understanding of and expertise in disability issues. However, others praised Legal Aid and Canberra Community Law for their support and dedication. The IDRS in NSW not only represents people with disability but has a model of wrapping the services of a lawyer, disability advocate and social worker around a person, so that a person’s health, financial, social and legal needs can be addressed in an integrated way.

The broader legal profession were felt to lack understanding of disability issues. Lawyers themselves felt they did not have anyone from whom they could seek advice on how to manage situations and what supports might be needed.

Legal Aid ACT has run clinics in Canberra to increase awareness among people with disability about their rights, trying to meet people in locations where they feel comfortable. They have partnered with Advocacy for Inclusion, undertaking client interviews at the Advocacy for Inclusion premises on a regular basis. Generally, Legal Aid ACT has found that clinics work best in locations where people are regularly coming through the door to services, for example the weekly outreach to aged care services at the Canberra Hospital.

Legal Aid ACT expressed the viewed that their cultural liaison officer model (for clients from CALD backgrounds) was highly successful and had played an important role in building trust and accessing hard to reach communities. They felt this may be a model to emulate for people with disability. Cultural liaison officers were described as substantially improving staff cultural competence and delivering training to address cultural knowledge gaps.

The President of the ACT Civil and Administrative Tribunal noted that Legal Aid provides an invaluable service in representing clients at Mental Health Tribunal matters and that they have generally obtained detailed instructions from clients. Legal Aid and/or the Public Advocate have also assisted clients after hearings to ensure that they have understood proceedings and decisions that have been made. ACAT has developed a process of making ‘warm referrals’ to Legal Aid which is working well.

WHAT COULD WE DO?

Suggestions from consultations and research include:
- the creation of a speciality disability legal service
- increasing the availability of models of legal service that bring together lawyers with allied support workers or services to provide more holistic solutions to people with disability concerns
- increasing outreach activities by legal services providers through measures such as Health Justice Partnerships
- exploring new service delivery points by including legal service in initiatives such as the Schools as Communities program
- establishing disability liaison officers in legal service providers to increase the providers disability competence and responsiveness
- using legal assistance funding arrangements to encourage and support innovative service solutions which improve access for people with disability.
SUPPORTED DECISION-MAKING AND GUARDIANSHIP

WHAT WE KNOW

The ACT’s Law Reform Advisory Council (LRAC) finalised its report into the Guardianship and Management of Property Act 1991 (Guardianship Act) in July 2016. The then Attorney-General released the report publicly in September 2016. The Government is considering its response to the report.

The ACT currently has a functional set of laws and systems for guardianship. However, disability rights and human rights standards and principles have evolved since the commencement of the Act, most notably the ratification of the UN Convention on the Rights of Persons with Disabilities. Current thinking calls for a less paternalistic approach, ensuring that people with disability have equal standing before the law. Legislative amendment would be required to meet these objectives, with a range of non-legislative approaches also required to contribute to broader reform.

The LRAC report made 16 recommendations across the areas of policy, principles, and legislation. The main theme of the recommendations was that the ACT move away from a ‘best interests’ model of substitute decision making towards a ‘will, preferences and rights’ based supported decision making model.

Reform of the ACT’s guardianship regime, encompassing cultural change, policy and program development, and legislative amendment, would actively support a range of government priorities:

- care when you need it (ensuring people who require decision making support receive it)
- building a better city (fostering a culture of inclusivity and equal recognition before the law)
- support when it matters (ensuring that interventions are available when required to prevent harm).

LRAC identified that substantial reform would need to include:

A The development and provision of explanatory information and education programs to promote supported decision making skills and change decision-making culture across the community.

B Support for the relational changes necessary to allow greater decision making by those who are currently under a substituted decision-making arrangement.

C Observation of, and learning from, pilot supported decision-making processes.

D Development of ways of assessing the supports someone may need to exercise their decision-making ability.

E Assistance for people with impaired decision-making abilities to become ‘decision-ready’ and learn specific decision-making skills for those decisions they see as important to their lives.

F Administrative mechanisms to help facilitate the making and implementation of supported decisions, including guidelines for the various roles in a supported decision-making environment.

G Development of appropriate registration processes, so that people can record their will and preferences and any formal arrangements they want to operate to support their decision making.

H The development and implementation of appropriate monitoring and oversight mechanisms, where these are necessary.
EXTERNAL DEVELOPMENTS
Since the preparation of the LRAC report, a number of other entities have progressed action on related issues. Cumulatively, they lessen the LRAC report’s primacy as the source of impetus and direction for change. Novel and largely untested approaches that are being contemplated locally, nationally and internationally are an evolving body of work.

Australia ratified the UN Convention on the Rights of Persons with Disabilities in 2008, signalling an intention to ensure that domestic laws and policies impacting on people with disability were consistent with the articles contained in the Convention. Article 12 provides that people with disability are entitled to equality before the law.

Advocacy for implementation of alternatives to substitute decision making, including supported decision making, started to gain significant momentum following the endorsement of general comments regarding the interpretation and application of Article 12. Paragraph seven was particularly clear in its assertion that any form of substitute decision making was non-compliant with the Convention:

States parties must holistically examine all areas of law to ensure that the right of persons with disabilities to legal capacity is not restricted on an unequal basis with others. Historically, persons with disabilities have been denied their right to legal capacity in many areas in a discriminatory manner under substitute decision-making regimes such as guardianship, conservatorship and mental health laws that permit forced treatment. These practices must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others. 104

The NSW Law Reform Advisory Commission’s guardianship review was tabled in August 2018. It recommends substantial reforms, different in detail to the ACT LRAC recommendations, but similar in scope. The NSW Government has not yet responded to the review.

Queensland introduced its Guardianship and Administration and Other Legislation Amendment Bill 2018 in February 2018. Amongst other things, it seeks to more closely align Queensland law with the UN Convention on the Rights of Persons with Disabilities.

The Australian Law Reform Commission (ALRC) issued its report Elder Abuse—A National Legal Response in June 2017. Relevant recommendations largely focus on enduring powers of attorney. The outcomes of cross-jurisdictional work being conducted for the Council of Attorneys-General, currently in progress, are likely to lead to reform in this space. The Commonwealth has committed to establishing a register of powers of attorney. Options for the harmonisation of laws are being prepared.

The Tasmania Law Reform Institute commenced community consultation on an issues paper in December 2017, and released its report in 2018. 105

International experience offers mixed evidence for Australia. Ireland’s 2015 guardianship legislation was seen as leading the way yet has remained largely dormant with inoperative and unfunded provisions. The experiences and outcomes of this style of scheme therefore remain untested, despite having been passed three years ago. Ireland has, however, now allocated funding to the Decision Support Service created under the Act and appointed a Director. This opens the way for the substantive legislation to eventually become active.

The Law Commission of Ontario’s Legal Capacity, Decision-making and Guardianship report was finalised in March 2017. This report and its related research includes valuable insights into the effectiveness of various provincial models that are sometimes proffered as model legislation. Many of those assessments are not favourable. Reform work in the ACT will need to take these developments into careful consideration.

WHAT WE HEARD

GUARDIANSHIP
Views were expressed that guardianship can be sought for the convenience of lawyers (and often parents) rather than supporting people to make their own decisions when they are capable of doing so. It was proposed that legislation should provide a presumption of support if anyone’s rights are to be taken from them. It was further suggested that when a guardianship order is in place, it is assumed to provide coverage for all domains of an individual’s life, even if that is not explicitly stated. Therefore, some people with disability report feeling that all their opportunities for decision making are removed, with service providers and institutions defaulting to guardians for all decisions.

It was also proposed that advocates be formally recognised in legislation as having a right to

TOWARDS DISABILITY JUSTICE FOR THE ACT SUMMARY OF RESEARCH AND CONSULTATIONS 2019
attend ACAT with someone in guardianship proceedings to provide communication support and advisory support. It was alleged that some advocates have been asked to leave ACAT proceedings so that the member can talk with the person with disability on their own.

ACAT members expressed that they found it difficult to encourage supported decision-making where there were few, if any, supports to parties to explore such options and little advice to the Tribunal on suitable arrangements.

LEGAL CAPACITY
The legal profession was criticised for making assumptions that people with psychosocial disability would not have capacity to make decisions, and that when someone makes a bad decision it is because of their disability, rather than accepting that many people make bad decisions. This leads to further assumptions that people with disability are unable to represent their own views or speak for themselves in legal proceedings. Some people who are perceived as ‘difficult’ have not been able to obtain legal representation, which can lead to applications for a guardian to be appointed for them, instead of supporting the person to participate in their own matters.

As people with disability are known to have poorer socioeconomic outcomes, they are more likely to access community legal support than the rest of the community. The limited time available to community legal practitioners can make it difficult to accommodate the additional time needed to work with people with communication and cognition impairments. It has been reported that this pressure can also be a factor in encouraging people to take up guardianship arrangements in order to expedite and clarify communication regarding a matter. This situation provides another example of the potential benefit of disability advocate and supporter schemes where people with disability have access to a supporter or independent advocate who can assist and support them during legal processes such as in a court or tribunal process or in making a complaint to police.

There is little guidance for lawyers in the ACT on how to assess legal capacity and issues that should be considered prior to considering substitute decision making. One model is the Queensland Law Society Queensland Handbook for Practitioners on Legal Capacity. Handbooks in other jurisdictions fail to recognise supported decision-making and proceed straight from assessment of a person’s capacity to substitute decision-making.

Legal Aid ACT has commenced work on the development of a capacity handbook for the ACT but this project has stalled due to resourcing constraints.

A University of Melbourne study found that the provision of suitable supports for people in fitness to plead proceedings improved their ability to understand and provide instructions such that the persons could proceed to test the evidence against them and avoid the sometimes adverse outcomes of being found unfit to plead.

COMMUNITY AWARENESS
Participants expressed views that indicated it was difficult to get organisations to accept anything less than guardianship and many would not act in accordance with arrangements such as Health attorney arrangements. It was felt that this was due to a cautious approach to duty of care issues and that there needed to be greater community legal education about the decision-making options available and their legal validity.

WHAT COULD WE DO?
The ACT Government supports increased decision-making autonomy for people with disability and improving communication and decision-making supports to people with disability. The Government is working through its response to the LRAC report with these values as central. The Disability Justice Strategy could also be an appropriate platform in which to articulate a commitment to a will, preferences and rights-based approach to supported decision making and to identify steps to achieving this.

The Government recognises that any proposed legislative change is, however, only part of the necessary change toward practical fulfilment of human rights obligations. That community and service attitudes are deeply embedded is broadly reflected in the experiences of people with disability. To fulfil our obligations under the Convention and to ensure that people have both opportunity and support for decision making, both awareness raising and skill development across the community are required. A cultural shift is necessary.

The ACT Government has, over many years, funded a range of projects and initiatives aimed at exploring how supported decision making can be embedded in the ACT. There has also been a commitment of funds from the Commonwealth...
through preparation for the NDIS and latterly through the ILC building fund, to establish, develop and grow resources to progress supported decision making. These consolidated programs have ranged from working with individuals to develop supported decision-making relationships, to engaging key decision makers across the justice and disability sectors, developing a tool kit, a decision-making flowchart available online, and working with services and stakeholders to change the narrative around supported and substitute decision making. There are currently two funded programs on SDM underway in the ACT. ADACAS is funded through the ILC funding to focus on the health space and how people can be supported to make decisions. ACT Government funding is enabling Advocacy for Inclusion and ADACAS to undertake education and engagement with key stakeholders and community to change the dialogue and expectations about supported decision-making. The latter project includes activities that enable people with disability to create supported decision making relationships, equip people with disability and their supporters with decision-making skills as well as provide professional development for health professionals, support workers, legal professionals, teachers and businesses.

While supported decision-making is broadly supported across the disability community, there are no precedents where it has been successfully embedded across a community, including as part of a continuum leading up to and including substitute decision-making. Cultural change on this level is complex and multifaceted, and will take time.

To this end, it will be necessary to continue to conduct action research and to trial new approaches to explore what works for people, families and services. This additional work to sustain cultural change during and after any potential legislative change is essential. Without addressing community awareness and skill development, people with disability will continue to experience discrimination based on their decision-making ability and be unable to enact their rights as decision makers.
INFORMATION AND SUPPORTS ACROSS THE CIVIL JUSTICE SYSTEM

WHAT WE KNOW

The civil justice system in the ACT includes not only the civil jurisdictions of the Magistrates Court (including the Industrial Court) and Supreme Court but also the ACT Civil and Administrative Tribunal and the Coroner’s Court.

As already stated in the section above on ‘Access to Legal Services’, we know that the majority of legal issues experienced by people with disability are in the area of civil law. This makes the provision of accessible information to enable navigation of the system and appropriate supports and adjustments critical in achieving access to civil justice for people with disability.

In the ACT, the ACT Law Reform Advisory Council is currently considering how restorative justice might be used in the coronial system.

WHAT WE HEARD

The recurring themes of information, education and supports were heard in consultations discussing civil justice issues.

We heard that for people involved in coronial processes there are number of barriers to accessing justice. This applies whether the person with disability is the deceased or a family member of the deceased.

In particular, we heard from a few families of the deceased who participated in the consultation process that they felt there was a real challenge in achieving equal status with other parties to proceedings, not least because of the cost involved in the family briefing separate legal representation if they wished to fully participate in proceedings as a party. We heard that where the deceased was a person with a disability, families wanted the Coroner’s Court to receive the best information to allow the Coroner to make their finding. The families hope was that this would lead to the possibly of positive actions following the Coroner’s recommendations, to prevent future deaths where possible. We also heard in consultation with stakeholders that families sometimes struggled to reconcile the restorative and therapeutic aspects of the coronial process with the (sometimes conflicting but overriding) duties and obligations arising from the Coroner sitting as a Court. On occasion, this has left families believing that the Court received inaccurate or incomplete information as part of receiving evidence on which findings were ultimately made. Improvement in family supports and/or publicly information on the Court and coronial process might also assist families to understand the extent of the Coroner’s powers and to manage expectations as the (often lack of) enforceability of coronial recommendations or follow-up after the death of their loved one.

WHAT COULD WE DO?

The Disability Justice Strategy could incorporate the learnings from the ACT Law Reform Advisory Council report and ensure there is an ongoing disability focus on the supports available to people with disability across all aspects of the civil justice system.
PART 2—CHAPTER 4
CRIMINAL JUSTICE SYSTEM

IN THIS CHAPTER
DATA
REASONS FOR OVER-REPRESENTATION
WHOLE OF CRIMINAL JUSTICE SYSTEM ISSUES
ARREST/INVESTIGATION
COURT
POST-SENTENCING
DIVERSION
The criminal justice system is adversarial in nature and can be extremely complex both in terms of processes and concepts. This makes it intimidating and challenging for people who come into contact with it whether as alleged offenders, victims, witnesses, or jury members, and whatever their personal circumstances.

For people with disability, the criminal justice system is particularly difficult to navigate and there are an array of barriers which make accessing justice problematic. While people with physical and sensory disability can and do experience difficulties in accessing justice, for people with a cognitive disability the situation is especially challenging. This applies to victims, witnesses and accused people.

The ACT Human Rights Act 2004 states ‘everyone is equal before the law and is entitled to the equal protection of the law without discrimination’. While this creates an obligation to address barriers for people with disability, there is a wider benefit to the ACT community in doing so because addressing those barriers will make the criminal justice system work better for everyone. If the criminal justice system continues to deal with disability as a separate issue as opposed to an aspect of what it means to be human, then it will never be fully accessible.

WHAT WE KNOW

DATA

Approximately 18 per cent of people in Australia identify as having a disability but almost 50 per cent of adult detainees have a disability and for children and young people the research indicates the position is even worse (for more see Chapter 2, Groups with additional needs and vulnerabilities). The figure for detainees with an intellectual disability is estimated to be between eight to 20 per cent and, as reported in the Law Council of Australia’s The Justice Project final report – Part 1, this would indicate that the rate of cognitive impairment is likely to be higher ‘given that a significant number of inmates report ongoing neurological effects and psychological symptoms because of a traumatic brain injury’.

In the ACT an ACT Detainee Health and Wellbeing Survey was carried out by the University of Melbourne in 2016. The survey recruited 98 individuals in the Alexander Maconochie Centre, with Aboriginal and Torres Strait Islander people being over-sampled to improve estimates for that cohort of detainees. The HASI screening tool returned positive results for 28 per cent of the detainees surveyed and 52 per cent of respondents reported having at some time experienced head injuries that caused a loss of consciousness or black-out.

In addition, 75 per cent of detainees at the AMC have been in prison before. This is the highest number of any other state or territory and compares to a national average of 56 per cent. Given the likely high rates of disability in detainees in the AMC, this could be contributing to rates of reoffending.

REASONS FOR OVER-REPRESENTATION

It is well documented that there is a strong correlation between disability and an increased level of interaction with the criminal justice system. While there are a number of theories to explain this correlation there is no doubt that an inability to interact with the criminal justice system in a way that meets societal norms is a contributor. The behaviours of offenders with cognitive impairment include being unable to recall information, express themselves verbally or comprehend what is being asked of them. Without sufficient supports in place to assist people with a cognitive disability they are at a clear disadvantage navigating the system.

Also, research indicates that the criminal justice system is being used as both a solution and a default service provider when earlier interventions, supports and services could have acted as protective and preventative measures. In a 2004 report, it was noted that ‘Prisons are often inappropriately utilised as a means of managing offenders with a disability’.

There is also the potential for legislation (for example, the introduction of new criminal offences), policies, practices and systems to disproportionately impact on disadvantaged groups including people with disability. For this reason, the Law Council of Australia’s The Justice Project recommends ‘Justice Impact Tests’ be introduced in all Australian jurisdictions to ensure the downstream impacts of new laws or policies are understood.
WHAT WE HEARD

Overall, we heard that the criminal justice system is not working well for people with disability and that those working in the criminal justice system were conscious of this and wanted to acquire the knowledge and resources to bring about positive change.

WHOLE OF CRIMINAL JUSTICE SYSTEM ISSUES

The lack of accessible information about the criminal justice system, in line with other aspects of the justice system, was the focus of comment during consultation. This included a lack of information about rights and services and the difficulty of navigating a complex system for people with disability.

A critical issue at all points in the criminal justice system we heard about was the need for people with disability to be properly identified, for their needs to be assessed and for reasonable adjustments to be made. A service advocating for the person with disability and supporting them throughout the process was identified as a need in consultations.

A further issue raised was the need for all actors in the criminal justice system to be educated in recognising both disability and communication needs, understanding the potential impact on the person and learning communication skills.

ARREST/INVESTIGATION

For ACT Policing attending an incident (often as first responders), it can be hugely challenging to identify whether they are dealing with a person with cognitive impairment and amend their approach accordingly. This applies whether the person is the accused, a victim or a witness.

Consultations (including with ACT Policing) focused on the need to acquire improved knowledge and understanding of disability, how to identify disability and the need for people with disability to be supported when being interviewed, together with the use of appropriate communication and questioning techniques. It was notable that during consultations with detainees with complex needs in the Assisted Care Unit at the AMC, all reported they had not been legally represented during police interview.

We heard repeatedly during consultations that the presence of an intermediary during police questioning would make a significant difference to people with communication difficulties and ensure that the best evidence would be gathered.

A particular issue raised by people with disability was the perception that they were treated as being less credible as victims and witnesses during the investigation stage and alleged offenders were not charged because of this. The Law Council of Australia’s The Justice Project reports that ‘negative assumptions and stereotypes about the reliability and credibility of people with disability’ caused by a lack of understanding of disability means that their evidence may not be sought.

ACT Policing has undertaken significant work to improve responses to people with mental illness, including establishing a partnership with ACT Health and providing substantial training to operational staff. This approach may provide a useful model to introduce improvements for people with disability.

COURT

Courts are generally formal places which are naturally intimidating and have processes which are notable for their complexity and legal terminology.

During consultation we heard much about the need to ensure that people with disability understand what is happening and are included in decisions. Again, the desirability of educating and up-skilling of prosecutors, defence lawyers, the judiciary and all other professionals working the court system was raised repeatedly.

In an adversarial system, the importance of the court hearing the best evidence possible from witnesses (including accused people) is critical to ensure criminal proceedings are fair. The ACT already has a suite of legislative provisions and tools designed to achieve this, such as giving evidence via an audio-visual link or from behind a screen. However, we heard in consultations that these provisions did not necessarily ensure people with disability could give their best evidence and that the provision of intermediaries was strongly supported.

We also heard that frequently a lack of suitable accommodation was a key factor in the refusal of bail. In addition, it was reported that there was sometimes a disconnect between the supports the courts wished to see in place in order to be satisfied that bail should be granted and the supports the NDIS was offering.
Consultations also revealed concerns about the way that fitness to plead provisions operate in the ACT and the interaction between the criminal justice system and the civil jurisdiction of the ACT Civil and Administrative Tribunal.

Sentencing is a complex exercise taking into account a wide range of factors which go to the seriousness of the offence and the culpability of the offender. For an offender with disability, particularly cognitive impairment, it is important for the sentencing court to receive information about that disability in order to form an informed view of the level of culpability. This again raises the issue of identification and assessment of offenders prior to sentencing.

ACT Courts and Tribunal’s (ACTCT) new court buildings are fully compliant in terms of meeting disability requirements. ACTCT is also working on improving access to information and training for staff on responding to people with disability.

POST-SENTENCING

A significant number of offenders will be placed under the supervision of ACT Corrective Services either because they are serving a community-based sentence or because they are serving a term of full-time imprisonment in the AMC. Young offenders will be supervised by the Community Services Directorate in the community or at Bimberi Youth Justice Centre.

Perhaps unsurprisingly, consultations focused in large part on the AMC and the needs of detainees with disability. It was noted that screening is inconsistent and so there is no accurate data on the numbers of detainees with disability. We also heard about the need to provide more training for staff and to ensure information-sharing worked more effectively.

We also heard about the challenges presented for prisoners who have a NDIS package prior to entering the AMC in terms of ongoing service provision during their detention and then for full service provision to be re-instated on release. This issue is being worked through by all states and territories, the Commonwealth and the National Disability Insurance Authority as part of the wider work to address all criminal justice interface issues with the NDIA at the direction of the Council of Attorneys-General and the Disability Reform Council. A related issue we heard about was the need for ongoing supports more generally to be in place for people with disability as they transition out of a custodial setting and particularly the need for appropriate accommodation.

ACT Corrective Services facilitated a consultation with detainees in the Assisted Care Unit at the AMC which houses detainees with complex needs. We spoke with a group of prisoners who shared their experiences of the criminal justice system. The key matters they talked about were:

- not understanding what was happening which they found ‘scary’ and the value of having someone to help them
- how they did not always feel involved in the legal process but more like observers when decisions were being made about them
- the impact of homelessness and unstable housing both as young people and then adults and the very close linkages they made between having no home and offending
- being victims as well as offenders
- fragmented education experiences
- despite all these issues, accepting personal responsibility for their behaviour.

ACT Corrective Services is already working to introduce a disability framework to guide its operational approach to people with disability. This is being undertaken collaboratively with the Disability Justice Strategy team (jointly staffed by the Community Services Directorate and the Justice and Community Safety Directorate). In addition, a new training program for newly recruited court transport officers which focuses on disability was piloted in October 2018.

For young offenders the issues were very similar to that of adults. In addition, we heard that:

- a more solution focused approach with appropriate supports to address offending should be applied to young people
- early identification of disability is key to diverting children and young people from the pathways into the youth criminal justice system, with the education system operating to alert other services where necessary to create a cohesive, whole-of-family-based approach.

DIVERSIONS

A common theme brought up in consultations was the shortage of diversionary options for people with disability, both in terms of diversion away from the criminal justice system and diversion from custody. We also heard of programs which had operated well but for a range of reasons were no longer doing so.

Closely allied to this issue was the lack of appropriate accommodation for people with
WE HEARD

“We need diversion options—but diversion to what?”
Consultation participant

“... We need off ramps to keep kids and people off the highway to the AMC.”
Consultation participant

disability who have been charged or convicted of a criminal offence. Consultations reported that people with disability who were homeless or not able to offer the court suitable accommodation were denied bail or received a sentence of imprisonment as a result.

We also heard that agencies would like to be able to identify and access referral services which could offer expertise in identifying appropriate diversions.

Concerns were raised in consultations that existing diversionary options were underused including: police cautions; and the process under section 334 the Crimes Act 1900 to allow referrals to the ACT Civil and Administrative Appeals Tribunal for people with mental impairment.

WHAT COULD WE DO?

There are a wide range of actions or initiatives that could be pursued over the lifetime of the Strategy to improve the way the criminal justice system interacts with people with disability. These include:

• the development of a DAIP by all organisations to identify and undertake improvements to support accessibility and inclusiveness
• exploring the introduction of justice impact assessments for all new policies, procedures and legislation on people with disability to gauge downstream effects
• embedding disability justice workers in relevant organisations to provide expertise and linkages to services
• reviewing diversion pathways and propose diversion options
• considering the services (including expansion of the Ngurrambai Bail Support program pilot) that would support the grant of bail to people with disability, including the availability of appropriate accommodation options.
• the introduction of sentencing options focused on reducing offending by people with disability including as a diversion from imprisonment, e.g. in Victoria a sentencing court dealing with an ‘intellectually disabled offender’ can attach a ‘justice plan condition’ to a Community Corrections Order which provides services designed to reduce reoffending;
• the introduction of intermediaries for people with disability in contact with the justice system whether as victims, witnesses or alleged offenders
• support workers to work with people with disability (rather than as supports to the criminal justice system which is the role of an intermediary) to assist with navigation of the system and advocate on behalf of the person with disability to ensure reasonable adjustments are made
• consideration of cards for people with disability to present (if they choose) to first responders and others in the criminal justice system which identify their disability
• work with the Blueprint for Youth Justice 2012–22 to support the commitment to enhance supports for young people with disability
• the Office for Disability continuing to work with the NDIA to ensure the interface between the NDIS and people with disability in the criminal justice system operates effectively
• explore how legal services could be enhanced to meet the needs of people with disability in the criminal justice system
• review the provisions relating to unfitness to plead and mental impairment in the Crimes Act 1900.
PART 2—CHAPTER 5

SERVICE REFORMS

IN THIS CHAPTER

IDENTIFICATION
EARLY INTERVENTIONS/SUPPORTS
HOUSING AND ACCOMMODATION
CHILDREN AND FAMILIES IN CONTACT WITH CARE AND PROTECTION
NATIONAL DISABILITY INSURANCE SCHEME
WHAT'S NEXT?
IDENTIFICATION

WHAT WE KNOW
The identification of people with disability through screening and assessment is critical to ensuring their needs are met through reasonable adjustments and supports. Without identification, it is not possible to create an accurate data picture and pin-point key areas for intervention. This is perhaps particularly important for ‘hidden’ impairments such as intellectual disability, acquired brain injury and psychosocial disability.

The Law Council of Australia’s The Justice Report states:

Many people with disability who encounter the criminal justice system have a long history of undiagnosed or untreated impairment, despite multiple previous interactions with government agencies or services.

Training is crucial in terms of a starting point for identification but there are also a range of tools to screen for disability. While these tools — such as the Hayes Ability Screening Tool for intellectual disability — tend to over-capture, they provide a useful indication and a starting point for a functional disability assessment if required.

WHAT WE HEARD
We heard that there is very little screening for disability in the justice system and any screening undertaken is not consistently systematised. We also heard that improving this situation was viewed by many players in the justice system as important to inform the development of an effective Disability Justice Strategy.

WHAT COULD WE DO?
Actions under the Disability Justice Strategy could include:

• training of all stakeholders in the justice system to recognise disability
• identification and implementation of screening tool(s) at key points in the justice system such as prior to sentence, entry to the AMC or on entering out of home care
• development of referral pathways for full assessment/diagnosis where necessary
• provision of assessment services to referring entities
• creation of a data snapshot of specific cohorts by undertaking ‘point in time’ screening
• identification of how, once assessment leads to a finding of disability, the person’s needs can be met through services, particularly in a custodial setting.
EARLY INTERVENTIONS AND SUPPORTS

WHAT WE KNOW

We know that acting at the earliest opportunity in the lives of people with disability to provide the necessary services and supports will allow people to achieve their full potential and acts as a protective measure against the range of disadvantages which lead to contact with the justice system. Conversely, we know that not providing early services and supports creates a pathway for people with disability to be in contact with the justice system. In addition, intervening at an early point when an issue arises can prevent escalation leading to contact with the justice system. Early intervention for the Disability Justice Strategy can mean an early point in a person’s life or at the beginning of an issue.

Professor Eileen Baldry has written extensively on the need to act early in order to prevent a web of complex needs (and resulting costs to governments) forming which leads to almost inevitable contact with the justice system. In addition, care and protection and early intervention do not occur in any substantial or sustained way. The evidence is stark that this early lack of adequate services is associated with costly criminal justice, health and homelessness interventions later in their lives. Millions of dollars in crisis and criminal justice interventions continue to be spent on these vulnerable individuals whose needs would have been better addressed in early support or currently in a health, rehabilitation or community space.

In almost every case discussed, significant disadvantage, vulnerability and risk factors are obvious from early adolescence and, for several individuals from childhood, yet care and protection and early intervention do not occur in any substantial or sustained way. The evidence is stark that this early lack of adequate services is associated with costly criminal justice, health and homelessness interactions and interventions later in their lives. Millions of dollars in crisis and criminal justice interventions continue to be spent on these vulnerable individuals whose needs would have been better addressed in early support or currently in a health, rehabilitation or community space.

In the ACT, the Government is currently working on a range of reforms that will impact on early identification and support of individuals to prevent a compounding disadvantage over life domains. These reforms are across government and include the Early Support by Design initiative, the Family Safety Hub, the Youth Justice Blueprint, Justice reinvestment, the Office for Mental Health and wellbeing, the Future of Education, ACT Housing Strategy and the Territory-wide Health Services framework. These reforms and strategies share a common theme of aiming to meet the needs of people before they reach crisis point and so achieve better life outcomes.

The education system provides one of the best opportunities to identify disability and provide early supports and interventions.

The ACT Government’s Future of Education Strategy was launched on 16 August 2018. ‘Inclusion’ is one of four key principles underpinning implementation of the Strategy which means ‘embracing diversity in all its forms, as well as specifically ensuring that students with disability and their families are included in a way that suits them’.

We know that people with disability have ‘significantly lower rates of education than people without disability’ which leads to a lifetime of disadvantage which in turn leads to an increased likelihood of contact with the justice system. This principle will shape thinking, planning and delivery of education for every ACT student to ensure all students can reach their full potential.

WHAT WE HEARD

Throughout consultations there was a general consensus that acting early to support people with disability was an important objective.

The Law Council of Australia’s The Justice Project notes that:

- Concerted efforts by governments on increasing resources for targeted prevention and early intervention approaches and programs for people with disability are needed.

The First Peoples Disability Network’s submission to the Law Council of Australia stated:

- The effects of [undetected and unsupported disability] carries forward into their schooling years and places them on a trajectory where they are more likely to matriculate into prison than into tertiary education.

The cycle of disadvantage faced by people with disability is a major contributor to being in contact with the justice system. Providing supports early rather than delaying until contact with the justice system is underway will act as a circuit breaker to the benefit of the individual and reduce future costs to government.
We heard that for people in the criminal justice system with disability, low education levels were common. Detainees we spoke to in the AMC almost universally reported a fragmented education, poor literacy skills and difficulties understanding and communicating.

The ACT Education Directorate is committed to effectively supporting students with disability in ACT public schools, actively engaging with parents and carers to provide inclusive, accessible and high-quality education for all students.

All ACT public schools provide reasonable adjustments to meet the needs of individual students. All students in the ACT are able to enrol in their local Priority Enrolment Area (PEA) school or can apply to access a range of programs for students who meet ACT Student Disability Criteria. This includes:

- Inclusion Support Program in mainstream classes
- small groups programs located in mainstream schools
- specialist schools
- hearing and vision itinerant support.

Additional support is available through the multidisciplinary Network Student Engagement Team that includes Allied Health workers, School Psychologists and Inclusion Officers, who can provide targeted support for individual students as well as building capacity of schools to support the inclusion of students with disability.

**WHAT COULD WE DO?**

Actions under the Disability Justice Strategy could include:

- Ensuring the Disability Justice Strategy aligns with the Early Support by Design reform and that all reforms and initiatives successfully engage with people with disability to provide a coherent approach to early interventions for people with disability.
- Identifying where early supports for people with disability could be improved and working with government and non-government services to provide those supports.
- Supporting outreach arrangements which put legal service provision together with other services in locations where people with disability can best access those services and work to ensure efficient referral mechanisms (see Chapter 1, Service models and support workers).
- Working with both government and non-government education sectors to they are informed about the Strategy and are engaged in its implementation.
- Improving information sharing to support the provision of early supports and interventions for the benefit of students with disability.
WHAT WE KNOW

The shortage of housing and accommodation options for people with disability is an issue throughout Australia. The economic, social and human costs of insufficient appropriate accommodation and other critical supports are clear from research by Professor Eileen Baldry:

Early and well-timed interventions to establish and maintain secure housing and associated support services could significantly reduce the need for the future years of criminal justice interventions.127

Housing and tenancy issues for people with disability often arise from their socio-economic disadvantage and dealing with those issues is made more difficult due to issues directly related to their disability.

There is no doubt that a lack of appropriate accommodation both contributes to cycles of offending and results in prison being used as an alternative accommodation option.128 This means that it is important for a range of housing to be available as both a preventative measure and as a support to the grant of bail and parole or to allow for the imposition of a non-custodial sentence.

The ACT Government has pledged $100 million for public, community and affordable housing over the next five years under the Housing Strategy launched on 29 October 2018. There are a range of objectives and actions under the Housing Strategy targeted at improving housing for people with disability.

WHAT WE HEARD

Through consultation we heard that housing issues are a key area of legal need for people with disability. Canberra Community Law (CCL) told us that they deal with many housing/tenancy matters for people with disability and that it is not uncommon for such matters to already be before the ACT Civil and Administrative Appeals Tribunal prior to CCL involvement because the person or family did not know how to access legal services. CCL’s socio-legal practice uses a lawyer and social worker working together to solve clients’ legal and associated issues to achieve long-term resolutions.

We heard that there is a shortage of modified housing for people with disability in the ACT and there is a need for cultural change to ensure reasonable adjustments are made. In addition, improvements could be made to how housing providers interact and communicate with clients with disability. On a number of occasions we heard that more of an individualised approach would benefit both people with disability and the housing provider by creating a more positive relationship. In particular, the view was expressed that Housing ACT’s responses to clients with disability could be improved, including by responding better to communication needs and developing a greater knowledge of disability to ensure clients were treated with understanding and more flexibility. It was raised on a number of occasions that Housing ACT are often the provider of last resort and if a public housing tenancy is terminated then homelessness would frequently be the result.

WE HEARD:

“A deaf tenant was telephoned to discuss their tenancy despite him having explained he could not hear and needed to be communicated with in writing.”
Consultation participant

“People with disability don’t report the need for urgent repairs as they are afraid of being evicted.”
Consultation participant
There was also criticism of the NDIA’s reluctance to fund support packages for individuals requiring a high level of care who were living alone. This lack of funding then forces people with disability into sharing arrangements which may not be appropriate for them or safe for the people they are sharing with. The shared accommodation also raised issues of tenancy rights as occupancy agreements often permit termination of the agreement at short notice.

In contrast, we also heard some support for residential share homes for people with disability with a high staff to resident ratio to ensure that those with complex needs could receive a level of care that would help them to progress to more independent living.

We heard concerns that people with disability were being incarcerated because of homelessness and a lack of appropriate supported accommodation options. This was a particular concern for children and young people and Aboriginal and Torres Strait Islander people. Stable and suitable accommodation is frequently a critical issue for courts considering whether a person can be bailed or serve a sentence in the community. Identifying suitable, or any, accommodation prior to release from detention at the end of a sentence or on parole is also a challenge.

Housing ACT is already working to improve information sharing with ACT Corrective Services to avoid public housing tenancy issues arising when a person is incarcerated and to develop policies to allow improved responses for detainees.

WHAT COULD WE DO?

Possible actions under the Disability Justice Strategy could include:

• reviewing procedural requirements in residential tenancy matters in terms of reasonable adjustments
• ensuring public housing information is in an accessible format and meets the needs of tenants (including use of plain or easy English)
• partnering with Housing ACT to develop knowledge and expertise in working with people with disability
• Housing ACT appointing a dedicated skilled staff member in the area of disability who is able to support a culture of reasonable adjustment
• ensuring the Strategy aligns with the ACT Housing Strategy and the respective actions under each strategy work to improve housing options and availability for people with disability
• considering bail accommodation for people with disability
• considering how people with disability in private tenancies could be better supported
• reviewing the current range of accommodation options for people with disability and consider options for improvement.
CHILDREN AND FAMILIES IN CONTACT WITH CHILD PROTECTION

WHAT WE KNOW

Available evidence and research indicate that there is a strong correlation between involvement in the child protection system, particularly out of home care, leading toward involvement in the criminal justice system. A recent report by the Australian Institute of Health and Welfare found that young people who had received child protection services were nine times as likely as the general population to have also been under youth justice supervision. There is also a strong correlation between childhood trauma and disability through exposure to violence, neglect, disadvantage and health factors such as foetal alcohol syndrome. A 2006 study found that being maltreated as a child almost doubles the probability of committing a crime.

Research from other states indicates that parents with disability — whether physical or intellectual/cognitive — are also more likely to have children removed and placed in care.

In the ACT, A Step Up for Our Kids: Out of Home Care Strategy 2015–2020, recognises that children and young people with disability are over-represented within child protection services. The Strategy also acknowledges that children of parents with disability, particularly an intellectual disability, may also be over-represented as clients of out of home care services. However, there is insufficient data to create an accurate picture.

Early behavioural issues for children and young people can be an indication of some form of disability and early support to the child and their family can assist to address such issues and help disrupt the pathway into the youth justice and ultimately adult criminal justice system.

A trauma-informed approach to providing Child and Youth Protection Services (CYPS) is important in supporting children and families to address the underlying factors for child neglect and abuse and to understand the impact of intergenerational disadvantage. A Step Up for Our Kids is seeking to move the system to take a more trauma-informed approach across the continuum of care settings and approaches.

WHAT WE HEARD

In public consultations and private face-to-face meetings, concerns were raised that people with disability are often afraid to ask for help in relation to their children in the belief that their children would be removed. Such fears were discouraging such parents from seeking appropriate supports and assistance.

We heard examples of the removal of children where those consulted were of the view that with appropriate supports, such removal would not have been necessary. Views were expressed that physical disabilities, such as being a wheelchair user, made it more likely that children would be removed.

An example was provided of a situation in which difficult adolescent behaviour caused parents to restrain the adolescent. This led to action against the parents and the classification of a different child as ‘at risk’. The lack of respite and available options to respond to violent adolescent behaviours was cited as escalating the situation leaving parents with no choice but to call the police, with statutory reporting requirements then coming into play.

Some foster parents expressed the view that they were poorly supported to understand their rights related to seeking disability supports for the children in their care, as well as in understanding the children’s possible disability needs.

Views were expressed that there needs to be a more comprehensive focus on disability in the child and youth protection system for children and young people, their families and carers. This includes identifying disability and gathering
data in a way that can be reviewed and evaluated to assist in shaping a systemic response. The rollout of the new CYPS client management system will help CYPS to better capture data on disability in the care and protection system, and to identify children, young people and parents who may need specific support as a result of their disability.

CYPS staff expressed interest in developing and strengthening their skills and capabilities in understanding how their work responds to people with disability. In particular, they expressed a need for better means by which to identify and understand needs.

WHAT COULD WE DO?

Acting in the best interest of a child and ensuring their protection is a vital task for CYPS. The child’s safety must remain at the centre of their role. In discussions with CYPS and the community, improvements were identified that may help overcome some of the difficulties encountered by children, young people and parents with disability. Central to these were helping to build a disability aware and responsive workforce.

Suggestions included:

- disability training and awareness raising for all workers CYPS and the youth justice system. A pilot program for CYPS workers is to be conducted in early 2019
- the inclusion of a disability viewpoint in the annual therapeutic assessment of all children and young people in care
- the inclusion of a developmental assessment for all children and young people coming into care
- providing specific supports for parents of children with disability to assist them to manage challenging behaviour and emotional regulation
- providing specific parenting supports for parents with disability, drawing on examples and materials from other jurisdictions, including specific advocacy supports for parents for disability engaged in the child protection system.
WHAT WE KNOW

The National Disability Insurance Scheme (NDIS) is administered by the National Disability Insurance Authority (NDIA) — a Commonwealth Government agency. All eligible NDIS participants in the ACT had transitioned to the NDIS by the end of 2016–17, although participant numbers continue to grow slowly as a result of new entrants. The scheme is still in the process of being rolled out across Australia, with NSW and South Australia having transitioned to ‘full scheme’ arrangements on 1 July 2018 and most jurisdictions to follow on 1 July 2019. The NDIS is an individual-based model (as opposed to a system-based model) and aims to provide individualised supports for people who have a permanent disability that significantly affects their ability to take part in everyday activities.

As at 30 June 2018 there were 6,141 people in the ACT with a current NDIS plan.132 However, there are approximately 62,000 people in the ACT who identify as having a disability, which means there are more than 55,000 people with disability in the ACT who are not benefiting from the NDIS.

While the NDIS has proved a success for some people, issues with the scheme are well documented.133 In terms of access to justice, the individualised approach has impacted on the overarching service system previously provided at state and territory level and there are issues about how the NDIS connects with state and territory systems such as justice, education, health and child protection.

In addition, the implementation of the NDIS has increased demand for legal advice and assistance services, particularly to support eligibility disputes and review processes.134 While the NDIA directly funds advocacy supports for people appealing a decision to the Administrative Appeals Tribunal, all jurisdictions have seen a strain placed on existing advocacy and legal support services as participants seek assistance in navigating a complex and bureaucratic system for which the NDIA does not provide funding. A number of jurisdictions, including the ACT, have provided increased funding for individual advocacy services as a result.

WHAT WE HEARD

Consultations revealed that the NDIS individualised funding model has led to an absence of support and advice services which were previously available through block funding.135 This includes a centralised intake and information agency as well as the Intensive Treatment and Support Service (ITAS) which supported people with dual diagnosis, of psychosocial and intellectual disability combined with complex needs and who were at risk of criminally offending. This gap inevitably impacts on people with disability and creates a climate for increased legal need.

We also heard that for detainees who are eligible for a NDIS plan there may be significant delays in supports under the plan being reinstated after release. While ACT Corrective Services works with the NDIA to ensure transitional supports are in place this may be crisis supports only due to delays in the NDIA’s processes. In some instances, the absence of NDIS supports may adversely impact on a detainee’s release either on bail or on parole.

For detainees without a NDIS plan at the time they enter custody, who then require a referral, the position is that their eligibility cannot be determined until they are released from custody. Making a referral just before or on release is particularly challenging for people with cognitive impairment. We heard too about difficulties for detainees contacting the NDIA from custody given the limited telephone times and often the lack of skills to communicate effectively.

Consultations also revealed that meeting the needs of people with disability in detention was sometimes adversely impacted by the reluctance of non-government service providers to provide services in a custodial setting.

In highlighting service gaps, submissions received to the consultation process stressed the need for a quality, safeguarding and oversight mechanism for any service system for people with disability to ensure their rights are supported. This concern may be addressed by the NDIS Quality and Safeguards Commission which formally commenced on 1 July 2018 and which will
become the primary channel for complaints about NDIS services in the ACT from 1 July 2019. The Human Rights Commission’s Disability and Community Services Commissioner will also continue to provide oversight of disability services, while the Human Services Registrar in the Community Services Directorate will continue to regulate eligible non-NDIS disability service providers. In addition, the ACT Senior Practitioner for the elimination and reduction of restrictive practices was established in 2018 to work with the disability, education and child protection sectors to promote positive behaviour support and reduce and eliminate the use of practices that restrict the freedom of a person with disability. Legislation has also recently been amended to ensure that the Official Visitors for Disability Services are able to visit people living in disability accommodation or reliant on services funded by the NDIS.

**WHAT COULD WE DO?**

States and territories are already working with the Commonwealth to address issues, including criminal justice interface issues, with the NDIS. The Disability Justice Strategy will continue to engage in this process.

If a Disability Justice Service were to be established (see Chapter 1, Service Models and support workers) then such a service may act to mitigate communication and other criminal justice interface issues with the NDIA/NDIS.
WHAT'S NEXT?

The development of the ACT Government’s Disability Justice Strategy will be strongly based on the synthesis of consultation, research and information on the successes of other jurisdictions. There needs to be a cultural change in the ways the ACT justice systems addresses the needs of people with disability. The better the system supports people with disability the better justice issues will be identified, and the better people will be able to navigate the system.

The ACT Government’s strategy is an aspirational document that captures the potentials of what could happen in the ways the ACT could support people with disability. The success of the Strategy depends on a range of factors to make it happen. Although formal consultation is closed we are open to receiving feedback or further information on the access to justice needs of people with disability in the ACT. We will continue to work with stakeholders across the Government and community to identify the necessary actions to improve the access to justice for people with disability in the ACT.

Progress of the ACT strategy depends on the goodwill of many people. It relies on the goodwill of justice agencies willingness to make cultural change; it relies on government to resource the necessary actions such as training and materials, and plain language versions of documents, forms and information; finally, it relies on the goodwill of people with disability, their families and allies to advise us on their experience that we may continue to seeking new and better ways of providing people with disability fair and equal access to justice in the ACT.

To register to receive project updates, please email: ACTDisabilityjustice@act.gov.au and find out more about the Disability Justice Strategy and other initiatives, policies and projects in Canberra, please visit: <www.yoursay.act.gov.au>.

FURTHER DOCUMENTS THAT MAY BE OF INTEREST

- There are already good and positive actions taking place in the ACT that increase the opportunity for fair and equal access to justice for people with disability. A list of these activities can be found at Chapter 6, Disability Justice: What is working well? (see page 72).
PART 2—CHAPTER 6

DISABILITY JUSTICE: WHAT IS WORKING WELL?

IN THIS CHAPTER
COLLECTING POCKETS OF GOOD WORK ALREADY OCCURRING ACROSS THE ACT JUSTICE SYSTEM THAT CONTRIBUTE TO BETTER ACCESS AND DELIVERY OF SERVICES FOR PEOPLE WITH DISABILITY.
This paper discusses a range of systemic gaps that contribute to the barriers experienced by people with disability in accessing equality before the law, and suggests improvements and areas of priority.

It is important, however, to acknowledge that there are pockets of work occurring across the justice system that contribute to better access and delivery of services for people with disability. Many of these examples are outlined below. A Disability Justice Strategy will provide a blueprint for reform and will create a thread that links these pockets together rather than areas working in isolation to address aspects of the bigger issue.

### A CHANGE TO JURIES ACT

A change to the *Juries Act 1967* in the ACT now ensures people with disability are not automatically exempt from jury duty. If a person may be unable to properly discharge the duties of a juror because they either have an insufficient understanding of English or have a mental or psychical disability, the judge must consider if supports that would enable the person to properly discharge the duties of juror can reasonably be given and if satisfied must make a direction that support be given.


### ACT COURTS AND TRIBUNALS

The ACT Courts and Tribunal Service has appointed its first Courts and Tribunal Assistance Officer, focused on ensuring the court and tribunals are more accessible to people with disability and essential adjustments such as hearing loops, support services and reasonable accommodations can be made available based on individual need.


ACT Civil and Administrative Tribunal undertake guardianship hearings at hospitals allowing people with psycho-social and mental health disabilities to attend hearings, increasing hearing attendance to approximately 95 per cent, reducing the time between lodgement of an application and a hearing and where appropriate allowing earlier discharge from hospital.


ACT Courts and Tribunal (ACTCT) works with court and tribunal users who have disabilities to make reasonable adjustments to ensure its services are accessible to all members of the community.


### AUDIO-VISUAL LINKS TO GIVE EVIDENCE

The ACT already has a suite of legislative provisions and tools designed to achieve the best possible evidence from witnesses such as giving evidence via an audio-visual link or from behind a screen.

ACTCT’s new court buildings are fully compliant in terms of meeting disability requirements. Also, ACTCT is working on improving access to information and training for staff on responding to people with disability.

EASY ENGLISH TRAINING
The Office for Disability, through their Disability Inclusion Grants, is providing training to a number of justice organisations in the preparation of easy English material to improve their legal information offerings through the disability inclusion grants.
www.scopeaust.org.au/service/education-training

THROUGHCARE
The Throughcare Unit is a targeted transitional project designed to break the cycle of reoffending for sentenced detainees released from the Alexander Maconochie Centre (AMC).

CANBERRA COMMUNITY LAW’S SOCIOLegalpractice clinic
The Socio-Legal Practice Clinic (SLP Clinic) is focused on preventing homelessness by providing intensive legal and social case work for some of the centre’s most disadvantaged and vulnerable clients, including people with disability.

STREET LAW AT THE JUNCTION YOUTH HEALTH SERVICE
Free legal advice is available to young people who are experiencing or at risk of homelessness. This partnership brings together lawyers, health workers and social services on-site at the Junction Youth Health Service allowing young people easier access to support.

FAMILY SAFETY HUB EARLY INTERVENTION PILOT FOR PREGNANT WOMEN AND NEW PARENTS
A pilot program under the Family Safety program, between Legal Aid ACT/ACT Women’s Legal Centre and Calvary hospital, Centenary Women’s and Children’s Hospital and the Gungahlin Child and Family Centre.
Easy access to free and confidential legal services, available to pregnant women and new families experiencing domestic and family violence at Calvary Public Hospital, the Centenary Hospital for Women and Children and the Gungahlin Child and Family Centre will have.
PRISONER’S AID ACT FINANCIAL HELP

Prisoner’s Aid ACT has a policy of providing financial help to families of AMC detainees in cases where travel to the AMC might be difficult due to disability.


WOMEN’S CENTRE FOR HEALTH MATTERS WORK WITH WOMEN IN THE AMC

In 2018 the Women’s Centre for Health Matters (WCHM) started working with the women in the AMC on Mondays, equipping them with health-related information, such as accessing help and support for borderline personality disorder. Contact: Marcia Williams ceo@wchm.org.au

TJILLARI JUSTICE ABORIGINAL CORPORATION

Tjillari have been funded by the Magistrate’s Court to offer literacy assessments in the Galambany Circle Sentencing Court. Contact: Deborah Evans deborah.evans@tjillarijustice.com.au

ACT POLICING AND ACT HEALTH PARTNERSHIP

ACT Policing has undertaken significant work to improve responses to people with mental illness, including establishing a partnership with ACT Health and providing substantial training to operational staff. This approach may provide a useful model to introduce improvements for people with disability.

ADVOCACY

There are two organisations in the ACT that provide important systemic and individual advocacy services for people with disability, including advocating for improved access to justice.

ADACAS

The ACT Disability, Aged and Carer Advocacy Service (ADACAS), is an independent, not-for-profit, advocacy organisation helping people with disability, older people and their carers. ADACAS provides free independent advocacy in the ACT.

www.adacas.org.au

ADVOCACY FOR INCLUSION

Supports people with disability in asserting their rights. They provide self, individual and systemic advocacy services in addition to disability awareness and inclusion training to the wider community.

www.advocacyforinclusion.org
ADVOCACY FOR INCLUSION \underline{POLICE WALLET CARDS}

Advocacy for Inclusion (AFI) has developed police wallet cards designed for people with disability, in consultation with the AFP. This card is to help when dealing with the police in the ACT and can also assist police in recognising when a person may require further supports. AFI have found the cards to be useful for people with disability to have something on hand to explain that they have a disability, as well as for police awareness and knowledge. They are also a great tool for people with cognitive/intellectual disability to be able to follow simple steps and not to be intimidated by police presence.

www.advocacyforinclusion.org/resources

SUPPORTED \underline{DECISION-MAKING}

Supported Decision-Making (SDM) is for people who may need support to make decisions. They may need support because their decision making capacity is impaired due to age, disability, acquired brain injury or mental illness. SDM is also for people sharing their lives with a person who has impaired decision making. It offers a way to give support that enables the person with impaired capacity to live the life they would choose for themselves, regardless of their disability.

A range of work has previously been undertaken in the ACT to: trial different approaches to SDM, provide training, develop tools and undertake awareness raising activities. ADACAS and Advocacy for Inclusion are currently undertaking a joint ACT Government project to progress cultural change, training and use of SDM across the ACT community.

www.adacas.org.au/supported-decision-making/supported-decision-making
www.advocacyforinclusion.org/events

\underline{KOOMARRI’S CAREER DISCOVERY PROJECT}

Koomarri’s Career Discovery Project will support ten young people with a diagnosed or suspected cognitive disability who are at risk of criminal justice involvement to find employment that is personally meaningful and socially valued. Priority will be given to young people who have been charged with an offence or are at risk of offending, aged 25 years or below. This is funded through the NDIS Information Linkages and Capacity Building fund (ILC)

www.koomarri.com.au

\underline{KOOMARRI’S FORENSIC DISABILITY SERVICES}

Koomarri’s Forensic Disability Service has been in operation since 2013. It began with support of one individual who had been exited from numerous disability support organisations who cited a complexity that was beyond their ability to support. The service works alongside the disability sector, but also mental health, homelessness, drug and alcohol, justice and primary health services across the ACT and Southern NSW regions.

www.koomarri.com.au

\underline{INTEGRATED SERVICE RESPONSE PROGRAM}

The ISRP is for people with disability with intensive support needs, who are participating in the NDIS or who meet the disability eligibility requirements for the NDIS, and need coordination of mainstream services because their wellbeing and stability in the community is threatened by crisis, complexity or the changing nature of their support needs, or community safety concerns.

NEW APP TO SUPPORT WOMEN WITH DISABILITY

The Sunny app is a new venture between 1800RESPECT and Medibank that supports women with disability who experience or are at risk of violence. Sunny uses interactive techniques to help women identify different forms of violence and abuse, and provides accessible information about their rights and where they can get help. The ‘Get Help’ button includes a link to 000 if the user is in immediate danger or to 1800RESPECT if they would like to speak to a counsellor.

www.1800respect.org.au/sunny

BAIL SUPPORT TRAIL

The Bail Support Trail (Ngurramba) seeks to support Aboriginal and Torres Strait Islander people to achieve bail and to understand and comply with bail orders. The trial includes two bail support officers employed by the Aboriginal Legal Service (ALS) who attend court to assist clients. Clients are also supported by a suite of programs to help address any other issues that may affect their bail.


STEPPING STONES TRIPLE P PROGRAM

The Stepping Stones Triple P program seeks to support parents to manage behaviours of concern and emotional regulation of their children.


SO SAFE PROGRAM

The So Safe Program is developed for people support enhanced personal safety based behaviours for people with intellectual disability. It provides teachers, trainers and counsellors with skills and simple visual tools to enhance the social, social-sexual and social safety training of people with moderate to severe intellectual disability.

www.shfpact.org.au/community-health-promotion/sosafe-program

ACT CORRECTIVE SERVICES DISABILITY FRAMEWORK

ACT Corrective Services is already working to introduce a disability framework to guide the operational approach to people with disability. This is being undertaken collaboratively with the Disability Justice Strategy team (jointly staffed by the Community Services Directorate and the Justice and Community Safety Directorate). In addition, a new training program for custodial officers was piloted in October 2018.

ACTEW STAYING CONNECTED

The ACTEW Staying Connected program is designed to support people experiencing financial hardship to manage their electricity, gas and water bills and stay connected. The program offers personalised service to assist with developing an affordable payment plan, keep people connected while they are on the program and ensure they are getting all the relevant concessions and rebates.

ENDNOTES


6 Ibid.


9 Law and Justice Foundation of NSW 2012, Legal Australia-Wide Survey: Legal needs in Australia.


11 See p.7 Legal Australia-Wide Survey: Legal needs in the ACT: The 12 problem areas being accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights.


13 Frohmader & Sandis T 2015, Australian Cross Disability Alliance, Submission No 147 to Senate Community Affairs References Committee, Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings, p.36.


22 The Intellectual Disability Rights Service (IDRS) is a specialist legal advocacy service for people with intellectual disability in NSW. IDRS works with and for people with intellectual disability to exercise and advance their rights, <www.idrs.org.au/home/index.php>


117 Zammit A 2004, Disability and the courts (for the Office of the Public Advocate).
120 Section 80, Sentencing Act 1991 (Vic).
121 Law Council of Australia, The Justice Project, People with Disability (Part 1) 4.
122 Professor Eileen Baldry et al 2012, Lifecourse Institutional Costs of Homelessness for Vulnerable Groups, p. 6
126 Ibid.
128 Law Council of Australia, The Justice Report, People with Disability, pp. 52–53
129 Independent review October 2017.
130 Australian Institute of Health and Welfare 2018, Young people in child protection and under youth justice supervision 1 July 2013 to 30 June 2017.
131 Currie J and Tekin E 2006, Does child abuse cause crime?
133 See the inquiry by the Joint Standing Committee on the National Disability Insurance Scheme — General Issues around the implementation and performance of the NDIS (accepting submissions as at November 2018).
135 Independent review October 2017.