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

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The authors of this submission are widely regarded as experts on the issues related to parenting by people with intellectual disability. We have extensive practice and academic backgrounds in the disability and child welfare fields, undertook PhD research in the area of families headed by parents with intellectual disability and have co-authored highly cited publications and collaborated on several studies to examine support needs, service barriers and professional attitudes toward parenting with disability. Our research has influenced knowledge, policy and practice in Australia and elsewhere. We both serve on an international research committee – the International Association for the Scientific Study of Intellectual and Developmental Disability (IASSIDD) Special Interest Research Group on Parenting and are also members of the United States National Research Centre for Parents with Disabilities.

This submission draws on a substantial body of existing knowledge about the social, structural, and attitudinal barriers faced by parents with intellectual disability and how these contribute to their overrepresentation in child protection statistics both here in Australia and internationally. The evidence is stark. Parents with intellectual disability are not only more likely to be involved in child protection matters than other parents but, when investigations result in care proceedings, they are also more likely to have their children removed than other parents (Llewellyn & Hindmarsh, 2015; Llewellyn, McConnell & Ferronato, 2003; McConnell, Aunos, Pacheco & Feldman, 2020).

We submit that the underlying factors that lead to these adverse outcomes for parents and their children are tied to pervasive discrimination and systemic failures that represent serious breaches of our obligations as a signatory to the United Nations Convention on the Rights of Persons with Disability (CRPD, 2006). We briefly highlight the relevant articles by way of context.

Articles 13 states that

1. States Parties shall ensure **effective access to justice for persons with disabilities** on an equal basis with others**,** including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate **training for those working in the field of administration of justice,** including police and prison staff.

Article 23 states that

1. States Parties shall take effective and appropriate measures to **eliminate discrimination** against persons with disabilities **in all matters relating to marriage, family, parenthood** and relationships, on an equal basis with others (and)
2. …. Shall render appropriate **assistance to persons with disabilities in the performance of their child-rearing responsibilities**.

4 **In no case shall a child be separated from parents on the basis of a disability** of either the child or one or both of the parents.

We submit that child protection systems in Australia are both discriminatory in effect (i.e., leading to poorer child protection interactions and outcomes) and professionals representing the system act in ways that can be characterised as abusive, which we label 'systems abuse'. There is clear evidence that the traumatic loss and grief that surround child removal for every parent are compounded for parents with intellectual disability by experiences of institutionalised injustice and prejudice (Collings et al, 2017; Tarleton 2007).

We draw on local and international research to provide the evidence upon which we base our claim that parents with intellectual disability are subject to systems abuse which is inextricably linked to their disability.

The three main ways that discrimination operates at a systemic level are:

1. **Mainstream state-based systems that provide services to enhance child safety and reduce child protection involvement routinely fail to provide parents with intellectual disability with support that is adapted to their disability-related needs**

Evidence suggests that most parents with intellectual disability fall in the 'low-borderline' intellectual functioning range; as such, they may never have had a formal diagnosis, received additional learning support or accessed to disability services prior to parenthood (IASSID Special Interest Research Group on Parenting, 2008). Crucial implications follow when pregnancy or childbirth is the first time a woman with intellectual disability comes to the attention of health and community services. Firstly, fear of negative judgment by healthcare and other professionals can make new or expectant parents with intellectual disability reluctant to seek help (Mayes, Llewellyn & McConnell, 2006). If an expectant mother does not seek or is unable to access suitable maternity services, unmet needs can lead to complications that jeopardise her or her baby's health. Evidence shows that pregnancy birth, and postpartum complications that may contribute to adverse child outcomes are higher among mothers with intellectual disability (Feldman & Aunos, 2020). As such, pregnancy is a critical time for additional needs to be identified and coordinated supports put in place. When services are deployed during a crisis, they are less likely to be suitable and acceptable to parents, or effective in preventing adverse outcomes, including child protection intervention (Booth, Booth & McConnell, 2006; Collings et al, 2017; Tarleton et al., 2006).

Extensive evidence shows that parenting skills training is highly effective when it is matched to the learning needs of parents with intellectual disability and delivered in the home (for a review of studies see Wade, Llewellyn & Matthews, 2008). Despite this, research shows that social workers are more pessimistic about their ability to keep children with a parent with intellectual disability and assume that a greater risk of harm exists for

these children (Lewis, Stenfert-Kroese & O'Brien, 2015; MacIntyre, Stewart & McGregor, 2019; Proctor and Azar, 2012). In 2005, Australia was a world leader in the provision of evidence-based practice development through a national initiative called Healthy Start. In the decade since it ended, capacity for national consistency, collaboration and knowledge exchange has been seriously eroded (Wedgwood, Collings, Spencer & Hindmarsh, 2021). In the NDIS era, new fault lines have appeared and created new service and system silos and gaps that prevent early identification of, and effective and integrated response to, support needs that are indivisibly disability *and* parenting-related (Collings, Spencer, Hindmarsh, & Wedgwood, 2022). Failure to provide parents with intellectual disability with accessible, coordinated and timely parenting supports delivered by workers who understand them propels many of these families into a child protection system. It is a form of system abuse by omission.

2. **Court decisions about the best interests of children are influenced by parenting capacity assessments which are biased against persons with intellectual disability**

International studies have found that parenting capacity assessments are often completed by professionals who hold negative or prejudicial views of disability and who lack experience in engaging parents with intellectual disability in support planning (Aunos & Pacheco, 2020; Lightfoot et al., 2010). Psychometric instruments are designed to diagnose cognitive functioning not to assess parenting quality (Spencer 2001). There is no sound evidence that good parenting is equated with higher IQ (IASSIDD Special Interest Research Group on Parenting, 2008). The persistent reliance of courts on the results of cognitive tests to decide whether a person is capable of being a good enough parent is grounded in unconscious bias. The use of a normative standard of intelligence as the basis for decisions about parenting quality sets parents with intellectual disability up to fail. The legal system can justify decisions to permanently remove children from a parent because bias is hidden under a veneer of scientific objectivity. This is a form of systems abuse because the odds are stacked against these parents when the terms upon which they are judged are fundamentally flawed and discriminatory.

3. **Courts fail to make procedural adjustments to accommodate a parent's disability so they can receive equal access to justice.**

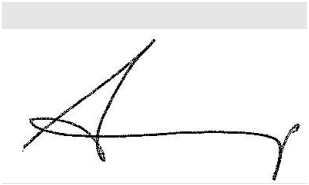
Evidence strongly indicates that differential (and worse) child protection investigation, substantiation and court outcomes based on parental disability status is likely to be explained by professionals' unconscious bias (McConnell et al, 2020). Several studies have reported on the discriminatory attitudes and beliefs toward parenting with intellectual disability held by judges and lawyers working in care and protection (Cox, Stenfert-Kroese & Evans 2015; McConnell & Llewellyn, 2000). Negative attitudes inevitably influence legal decision-making and legal representation, including taking instructions from a parent with intellectual disability (Sigurjónsdóttir & Rice, 2017). The authors highlighted these issues and the importance of providing specialist, independent advocacy for every parent with intellectual disability during legal proceedings to correct for the presence of

professional bias and lack of disability knowledge and awareness (Collings et al., 2017; Collings et al, 2022).

Mandatory timeframes for legal decisions in care proceedings are in place across many Australian jurisdictions today. Parents with intellectual disability are disadvantaged by timeframes relative to their non-disabled peers because it will take longer to access appropriate services and learn skills to overcome child safety issues (Cox et al 2015). Unless timeframes are adjusted in recognition of parental disability, this is another form of structural discrimination and systemic abuse.

We have recently concluded two studies in New South Wales that have explored barriers to equity for parents with intellectual disability. The final reports are publically available from the University of Sydney's website for the Research Centre for Children and Families. We welcome the opportunity to provide additional details or clarification about any of the points made in this submission at the request of the commissioners.

With kind regards



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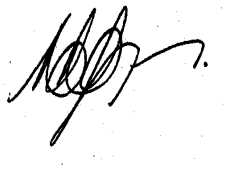

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