

Pride and Prejudice

A Snapshot of
Parents with Disabilities
Experience of the
Child Protection System
in Victoria

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Disability Parenting and the Law Project
Disability Discrimination Legal Service

with the support of
Yooralla's Parents With a Disability Community Project
and
University of Melbourne School of Social Work

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Executive Summary

The Disability, Parenting and the Law Project developed as a result of concerns expressed by parents with disabilities who came into contact with the Victorian child protection system. The Disability Discrimination Legal Service¹ (DDLs) and Yooralla's Parents with a Disability Community Project (YPWDCP) jointly developed a project proposal to research the experiences of parents with disabilities whose children became involved with the Victorian child protection system, and to explore whether this particular group of parents were experiencing discrimination as a result of their disability. Funding was sought from, and a grant of \$16,248 provided by, the Victoria Law Foundation's Community Grants Program, with an additional contribution of \$7,500 provided by the Department of Human Services Western Metropolitan Region (DHS WMR).

This report, *Pride and Prejudice: A Snapshot of Parents with Disabilities Experiences of the Child Protection System in Victoria*, is the result of research and consultations conducted over an 18-month period. The findings and recommendations contained in this report are consistent with those of similar research being conducted around Australia and in other western countries.

The concept that many people with disabilities wish to be sexually active, to be loved and to love intimately, and to realise all the human wonder and fascination that intimate relationships provide, including having children, remains challenging to many in the community. People with disabilities share the same sense of pride in their children, relationships and families as people without disabilities – unfortunately they are also likely to face prejudice and discrimination when they become parents. This historical background of discrimination experienced by parents with disabilities is outlined in Chapter 1 along with the Project's aims and objectives, and an overview of the Project methodology.

This research supports the findings of other Australian and overseas research, particularly that parents with a disability appear to be over represented in child protection proceedings before the Children's Court. A summary of the literature and research reviewed which support the Project's findings are presented in Chapter 2.

¹ Formerly known as the Disability Discrimination Law Advocacy Service.

The audit of Children’s Court files suggests that parents with disabilities appear more likely to have concerns raised about possible sexual or emotional abuse or neglect than do parents without a disability, reflecting the view that for child protection workers and the courts, “parenthood for persons with intellectual disability is automatically beset with problems...”². The details of the methodology for and results from the audit of Children’s Court files are presented in Chapter 3.

Parents with disabilities, child protection workers, legal representatives, specialist and generic family/parenting support services all reported frustration at the apparent inadequacy of resources available for supporting parents with disabilities to maintain their family unit and improve their parenting skills. The views of parents with disabilities and professionals who work with these parents, are presented in Chapters 4 and 5 respectively.

The findings of the Project are broadly consistent with those of similar Australian and overseas research and are presented in Chapter 6. In summary these included:

- Parents with disabilities appeared to:
 - be fearful that contact with “welfare” and disability services workers would result in a notification to child protection authorities, and consequently they may not access necessary services
 - be over-represented in child protection proceedings compared to the overall population of people with disabilities
 - be more likely to receive disproportionate scrutiny of their parenting capacity
 - receive limited information or support about their rights and options
 - have little or no understanding of or control over the direction of child protection interventions into their parenting capacity
 - be at a disadvantage in Children’s Court proceedings in the absence of specialist support and adjustments
 - have inadequate access to affordable childcare, access to foster or respite care, and other supports and services
 - not meet the criteria for Legal Aid assistance in some cases, while being unable to afford their own legal representation in most cases

² Llewellyn G., ‘Parents with Intellectual Disability Learning to Parent: the role of experience and informal learning’ (1997) *International Journal of Disability, Development and Education* 44(3) 243-261, 256.

- have few options other than to comply with the directions given to them
- have no access to a complaints mechanism regarding concerns about their interaction with child protection services and processes
- Child protection services sometimes appeared to:
 - lack sufficient resources and skills to adequately determine what intervention is the most appropriate for parents with disabilities
 - lack sufficient resources to support parents with disabilities to meet the requirements of child protection intervention in some cases
 - lack sufficient coordination and collaboration with disability and mental health services to ensure a clear understanding of roles, expectations and processes
 - not be providing all parents with disabilities information about and documentation resulting from interventions in alternative formats that meet their various and specific needs
 - provide inadequate specialist training for workers regarding parental disability
 - sometimes lack adequate worker skills and knowledge relating to disability and its impact on parenting
- Parenting and family support services for parents with disabilities appeared to:
 - lack consistency across the state, particularly specialist disability parenting support services to assist parents before and during child protection intervention
 - generally not be provided in ways that adequately meet various specific and often changing skills development and support needs of parents with disabilities, particularly over the longer-term
 - sometimes lack sufficient resources to support parents with disabilities accessing their services
 - sometimes lack sufficient resources to provide services that support parents with disabilities to meet the requirements of child protection intervention over the longer-term
 - sometimes receive inadequate specialist training for workers regarding parental disability
 - sometimes lack adequate worker skills and knowledge relating to disability and its impact on parenting
- Disability support services appear to:

- lack adequate resources to meet the specific needs of parents with disabilities over the longer-term
- sometimes lack adequate knowledge of child protection law and the needs and rights of parents with a disability
- sometimes lack sufficient flexibility in meeting the needs of clients who are also parents with disabilities
- experience difficulties in meeting the needs of parents with disabilities who experience dual or multiple disabilities and/or disadvantage
- utilise diagnostic criteria to determine service eligibility that results in parents with an undiagnosed or borderline disability being unable to access necessary support services
- Legal services supporting people with disabilities appear to:
 - lack adequate resources to meet the various specific needs of parents with disabilities
 - be unable to assist parents with disabilities who do not meet the criteria for Legal Aid assistance other than with initial advice and referrals
 - sometimes receive inadequate specialist training for workers regarding parental disability
 - sometimes lack adequate worker skills and knowledge relating to disability and its impact on parenting
- The Children's Court appeared to:
 - record insufficient details on case files to ascertain a number of crucial facts resulting from proceedings including the nature of consent given by parents with disabilities subject to Consent Orders, the nature and detail of the needs of parents with disabilities subject to orders, and the nature of the parents' disabilities and their impact on decisions of the Court
 - lack some of the necessary adjustments to the physical environment, procedures, practices and documentation of the Court that some parents with disabilities require
 - lack adequate specialist training for magistrates and court workers regarding disability, its impact on parenting, and the needs of parents with disabilities
 - sometimes lack adequate knowledge amongst magistrates relating to disability and its impact on parenting
- The Children's Court and all stakeholders' data collection in relation to parents with disabilities is inconsistent and inadequate to ascertain either the numbers of

parents within the child protection system or to provide any meaningful analysis of outcomes for this group of parents and their families.

Although this research did not attempt to be exhaustive, there is considerable consistency in the views expressed by the various contributors to the Project, in the findings of similar literature and research, as well as in the audit of Children's Court files. These consistencies give rise to several Project recommendations that are presented in Chapter 6. The appendices to the report contain various instruments utilised in the research and consultations along with a list of those people and agencies that directly contributed to the Project. The recommendations are summarised and listed below:

Accessible Information and Documentation

1. That child protection information and documentation be consistently provided in alternative formats that meet parents with disabilities needs.

Parental Assistance in Understanding Proceedings

2. That parents with disabilities receive adequate assistance to understand their right to support and advocacy, and child protection information and documentation affecting them.

Over-representation of Parents with Disabilities

3. That further research is undertaken into the needs, experiences, prevalence and treatment of, and outcomes for, parents with disabilities within the child protection system.

Specialist Advice and Collaboration

4. That collaboration and specialist advice are provided between Child Protection, Disability Services and Mental Health Services for parents with disabilities subject to intervention, that this occurs formally, and is monitored and reviewed.

Inadequate Stakeholder Understanding of Disability

5. That training regarding the needs and rights of parents with disabilities is provided to all stakeholders involved in child protection proceedings.

Statistical Data Collection

6. That data from all key stakeholders is consistently collected and includes accurate recording of parental disability in order to adequately identify and assess outcomes for this group.

Legal Representation and Advocacy

7. That parents with disabilities are provided legal representation at all stages of the Children's Court process by legal representatives with specific disability training.
8. That a program that provides support in understanding the child protection process at the point at which parents with disabilities are first notified, and that supports the parents right to advocacy and representation through appropriate referrals, be established.
9. That a specific advocacy agency with expertise in legal advice and disability be established to provide advocacy support to parents with disabilities subject to child protection intervention.

Informed Consent to Court Orders

10. That the process of agreement to Consent Orders by parents with disabilities is further developed to ensure that parents with disabilities consenting to such orders are fully aware of the implications of providing consent, and that this consent is clearly documented.

Documentation of Court Orders

11. That the conditions in orders that parents with disabilities are subject to, are clearly documented so that the parents have an understanding of what is expected of them in order to maintain or restore their family unit.

Resources to Implement Effective Court Orders

12. That increased resources are provided for parents with disabilities to adequately meet the conditions in orders through providing longer-term solutions.

Accessibility of Court Environments and Proceedings

13. That the Children's Court ensures its procedures and physical environment address the specific disability-related needs of parents with disabilities.

Parenting Programs and Support Services

14. That services are developed and provided throughout the state that meet the varied and often changing needs of parents with disabilities, including parents with dual/multiple disabilities and/or disadvantage.

Disability Action Plans

15. That the DHS, develops and implements a comprehensive Disability Action Plan in order to ensure that any actual or potentially discriminatory policies, procedures and practices are identified and addressed.

Policy and Planning

16. That the DHS in consultation with key stakeholders and parents with disabilities, develop and implement a strategic plan that aims to address parents with disabilities needs including the concerns raised in this report and by other stakeholders, regarding the treatment of parents with disabilities subject to child protection intervention.

Child protection law, policy and practice and disability discrimination legal principles do not exist in isolation and are not mutually exclusive concepts: people with disabilities have the right to live their lives free from discrimination on the basis of disability and this right includes having and raising children; and at the same time the community has the right to expect that children are protected from harm by the law. Child protection legislation and intervention begins with affirmation of the rights of the child, but also affirms the rights of parents and children to be supported by the State, and holds to the view that children are best cared for by their parents and family wherever this is possible. Child protection intervention with a parent with a disability must be and be seen to be built upon "...an assumption of individual potential and competence."³

While becoming and being a parent can be difficult for some people with disabilities, the greatest barriers to succeeding as a parent remain the perceptions and attitudes of others about their capacity to parent, and the lack of adequate education and support services available to parents with disabilities. This research and the resulting report is one contribution to reducing and removing these barriers to parents with disabilities realising their right to nourish, care and protect their children.

³ Disability Discrimination Law Advocacy Service (DDLAS) & Yooralla's Parents With a Disability Community Project (YPWDPC), *Disability, Parenting and the Law- The Challenges facing Protective and Human Services Discussion Paper* (1999), 3.

Chapter 1: Introduction and Project Background

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1.1 Introduction

“The idea that people who have a disability are capable and competent people to raise children, challenges established assumptions that people with disabilities should not become parents.”¹

This Report presents the findings of a project that examined the experiences of parents with a disability whose children came to the attention of the Victorian child protection system. The Disability, Parenting and the Law Project (DPL Project), was conducted by the Disability Discrimination Legal Service (DDLS) and supported by Yooralla’s Parents With a Disability Community Project (YPWDCP) and the University of Melbourne School of Social Work. Funded primarily by a grant of \$16,248 from the Victoria Law Foundation (VLF), the DPL Project was also supplemented by a grant of \$7,500 from the Victorian Department of Human Services Western Metropolitan Region (DHS-WMR). The important contribution of both organisations - but especially of the VLF - to the DPL Project is gratefully acknowledged.

1.2 Parents With Disabilities Historical Experience of Discrimination

People with disabilities have historically been subject to discrimination in all areas of their lives and have often been forced to live in settings segregated from the community. Interaction with the community was often discouraged, and in particular, activities that were social in nature were avoided, whilst people with disabilities were often subject to abuse or neglect, and were denied basic human rights within these segregated settings.

People with disabilities, when forced to live in institutions, were given little assistance in developing appropriate social skills and were largely discouraged from forming intimate relationships. Individuals deemed at risk of engaging in sexual activity or of

¹ Yooralla’s Parents With a Disability Community Project (YPWDCP), *Making it Easier: A Resource Manual for Parenting with a Disability* (1999) Yooralla Society, 7 (hereafter cited as *Making It Easier*).

being sexually exploited were summarily sterilised or subject to further segregation². The concept that people with disabilities may wish to be sexually active, to be loved and to love intimately, and to realise all the human wonder and fascination that this intimacy provides, including having children, was abhorrent to many in the community³. Reactions to such suggestions were harsh and ranged from assertions that people with disabilities were 'childlike', vulnerable and incapable of understanding the risks involved⁴, to fears that this would increase the disabled population⁵ and threaten the very fabric of society.

Yet the joy of bringing children into the world has long been seen in the industrialised world as the ultimate expression of love between two people. Sadly, for people with disabilities, historically held views that they are incapable of adequate parenting are not isolated to the past and continue to abound⁶. People with disabilities, although now having greater participation and acceptance than ever before, are still subject to discrimination in all areas of life. Becoming a parent can be difficult for a person with a disability – sometimes as a result of perceptions of being unable to parent adequately, sometimes as a result of not being provided with the skills or support they may need.

1.3 The Background to the Project

The Disability, Parenting and the Law Project developed in response to concerns expressed by many agencies⁷, about parents with disabilities experiences when subject to child protection intervention. Parents, with the support of the Yooralla Society, established Yooralla's Parents With a Disability Community Project (YPWDPC) in the mid 1990s with the aim of advocating for greater support and fairer treatment. This forum allowed parents with disabilities to share stories of their parenting experience so as to gain greater acceptance and support, and to try to

² Tomison, A., *Child Maltreatment and Disability* (1996) Issues in Child Abuse Prevention Issues Paper #7, National Child Protection ClearingHouse, 3.

³ Ely, E. & Wilson, C., *Setting Up For Success: Service provision for parents who have an intellectual disability* (1997) South East Resource Action Centre, 22.

⁴ Such attitudes continue to abound today in relation to parenting capacity. See: McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court* (2000) University of Sydney, 83.

⁵ *Child Maltreatment and Disability*, above n 2, 2.

⁶ *Ibid*, 2.

⁷ Including the Office of the Public Advocate, Villamanta Legal Service, Mental Health Legal Centre, DDLS, YPWDPC and disability advocacy groups amongst others.

change the discrimination some had experienced in dealing with service providers, child protection workers and the Court. This group has been successful in raising awareness of issues faced by parents with a disability, as well as producing resources such as the *Making it Easier Resource Manual*⁸ with the support of the Stegley Foundation. DHS-WMR also provided resources to place the *Making It Easier Resource Manual* on the World Wide Web for electronic access.

In 1998 the YPWDCP approached the DDLS with a view to developing a policy and law reform project to examine these parents' legal issues in child protection proceedings. The Project would work with child protection workers, disability services workers and the broader family support service sector to improve the administration of justice for parents with a disability and their children. The DDLS and YPWDCP submitted a proposal to the VLF Community Grants Program. The VLF agreed to fund the DDLS to undertake the Project, with some additional financial support from the DHS-WMR.

The YPWDCP continues to work in the areas of support and advocacy for parents with disabilities while the DDLS maintains a focus on disability discrimination legal education, casework advice, support and assistance, and on policy and law reform issues related to disability discrimination.

1.4 The Aims and Objectives of the Project

This Project grew directly out of the experiences of service users at the DDLS, Villamanta Legal Service and the Mental Health Legal Service and from the personal knowledge of members of the YPWDCP, of systemic discrimination experienced by some parents with a disability where child protection investigations were undertaken. The anecdotal experience of parents with disabilities, and of their advocates and support groups, was that such discrimination was experienced both at the notification and investigation stage of intervention by Victorian child protection authorities, and when matters were brought to the attention of the Children's Court. Some parents found that the benchmarks of care were set higher than was the case for parents without a disability, that presumptions of incapacity to care for children were often made with little willingness to consider alternatives, and that Court dispositions

⁸ Above n 1.

generally presumed that disabled parents would be unlikely to resume the care of their children, even with on-going support.⁹ Their experience led them to conclude that Victorian child protection workers and other agency staff would "...[m]ore often than not... view the disability first and the person second"¹⁰ and confirmed their experience that for those with a disability, becoming a parent continued to be seen as a controversial event.¹¹

The Project was therefore designed to challenge the often stereotypical views held within the professional community about the rights and capacities of parents with a disability.¹²

The Project had several objectives including:

- to increase awareness of disability discrimination law and its impact upon the administration of child protection proceedings, and to develop recommendations to improve the administration of Victorian child protection proceedings where parents with a disability are involved;
- to increase awareness of the factors within the Victorian child protection investigation system that contribute to prejudicial and discriminatory treatment of parents with disabilities;
- to assist in the development of training materials and resources for inclusion within initial and on-going training for Victorian child protection workers;
- to increase awareness of the legal and human rights of parents with a disability;
- to increase awareness of the parenting needs of parents with a disability; and
- to contribute to reforms in parenting programs and support services to better meet the needs of parents with a disability.¹³

⁹ For reports of similar experiences, see: *Parents with a Disability and the NSW Children's Court*, above n 4, 2; and, McConnell D. & Llewellyn G., 'Parental Disability & the Threat of Child Removal' (1998) *Family Matters* #51 33-36 (hereafter cited as *The Threat of Child Removal*).

¹⁰ Richards D., *Research Proposal - Parents with a Disability Community Project* (1996) Yooralla Society, 9 (unpublished).

¹¹ Llewellyn G., 'Parents with Intellectual Disability Learning to Parent: the role of experience and informal learning' (1997) *International Journal of Disability, Development and Education* 44(3) 243-261, 243 (hereafter cited as *Learning to Parent*).

¹² Disability Discrimination Law Advocacy Service (DDLAS) & Yooralla's Parents With a Disability Community Project (YPWDCCP), *Disability, Parenting and the Law- The Challenges facing Protective and Human Services Discussion Paper* (1999), 2.

1.5 Project Methodology

The DPL Project was a time-limited, snapshot piece of research, highlighting practice experiences and deficiencies. Further research and examination of practice with parents with a disability is encouraged.

The Project thus incorporated several dimensions, including:

- a review of existing research and other literature (presented in Chapter 2) which drew principally upon the work of Llewellyn and others in Australia;¹⁴
- an audit of a sample of Children's Court file records (presented in Chapter 3);
- consultations with parents (presented in Chapter 4) in focus groups and individual interviews. Parents were not sought publicly, but were contacted via agencies that work with parents with disabilities, through agencies represented in the Project Consultative Committee, and through the membership of the YPWDCP. Parental contribution to the Project was thus a 'snowballing' process. The case examples and parental views are not presented as representative of the whole population of parents with a disability, but as indicative of practice difficulties which have been directly experienced by some parents in dealing with the Victorian child protection system;
- consultations with child protection workers and legal representatives in focus groups (presented in Chapter 5). Again, the Project presents a snapshot of views, indicative of concerns expressed by some professionals currently working within the Children's Court and child protection systems. Views expressed do not necessarily represent the views of the agencies for which those professionals work; and
- surveys of parenting and family support agencies for their views of the parenting needs of parents with a disability and services currently available (presented in Chapter 5).

Further discussions of the particular research processes are included in Chapters 3, 4, and 5 of this Report.

¹³ DDLAS & YPWDCP, *Disability Parenting and the Law – A submission for funds from the Victoria Law Foundation* (1999), 1.

The project was managed by staff from DDLS and YPWDCP. A Consultative Committee, comprised of representatives from key stakeholders who work with parents with disabilities including the DHS Child Protection Unit and Disability Services, the Children's Court, the Office of the Public Advocate, advocacy groups, legal representatives and parents themselves (see Appendix 2) was established prior to the commencement of the project. The aim of this group was to establish the direction of the project and to provide specific expertise regarding parents with disabilities throughout the project. The Committee met nine times over the first year of the project.

This Project, and the issues it covers, must be seen as an integral and vital part of the Victorian practice context in relation to parents with a disability. It no doubt reflects (as Fineman and Opie suggest is characteristic of all legislation¹⁵) the personal, professional and political views of those who contributed to it. However, the Project and this Report do not seek to describe all practice affecting parents with a disability. Rather, they describe dimensions of practice which are demanding of attention.

1.6 Project Timelines

The Project was undertaken from early 2000 through to early 2002. The audit of Children's Court files was undertaken from September 2000 until January 2001 (although the files examined were for the period January to June 2000). Contact with parents and agencies occurred throughout 2000 and 2001 as opportunity arose.

This Report was completed between July 2001 and March 2002.

¹⁴ For examples, see: *The Threat of Child Removal*, above n 9; and *Learning to Parent*, above n 11. Also refer to bibliography for citation details of further Australian research in this area.

¹⁵ Fineman M. & Opie A., 'The Uses of Social Science Data in Legal Policy Making: Custody determinations at Divorce' (1987) *Wisconsin Law Review* 107-158, 130.

Chapter 2: Literature and Research Background

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2.1 Introduction

This Chapter presents key research findings in the context of the principles on which current child protection practice, and particularly Victorian practice, is based.

In addition, it is important to reflect on those national and international legislative frameworks that support the rights of people with disabilities, and in particular, parents with disabilities.

The presumption underpinning Australian law is that all people - whether disabled or not - have rights and are assumed to be competent. There is an inherent "...assumption of individual potential and competence."¹ This is reflected in current Victorian Child Protection Practice standards which incorporate the principle that generally the best care and protection for the child is provided by the family, and intervention should occur only to the minimum extent required to ensure adequate care and protection.²

International legal instruments further support these principals and provide universal frameworks for nation member states to ensure that certain rights are afforded their citizens, including parents with disabilities. They acknowledge that persons with a disability have the right to be respected for their human dignity, to the same civil and political rights as other humans, to measures to enable them to be self reliant, and to treatment to develop their skills to the maximum³. These instruments require, amongst other things, that "[s]tates should promote the full participation of persons with disabilities in family life... promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood."⁴

¹ Disability Discrimination Law Advocacy Service (DDLAS) & Yooralla's Parents With a Disability Community Project (YPWDCP), *Disability, Parenting and the Law- The Challenges facing Protective and Human Services Discussion Paper* (1999), 3 (hereafter referred to as the *Disability Parenting and the Law Discussion Paper*).

² Department of Human Services (DHS), *Parental Mental Illness - Policy Advice and Practice Guidelines for Protective Workers* (1996), 23 (hereafter cited as *Parental Mental Illness*). See also *Children and Young Persons Act 1989* (Vic.) s 87 (hereafter cited as the CYPA).

³ Nicholson, Hon Justice R.D., 'Waving the Magic Wand: Solving key legal issues relating to intellectual disability' (1995) *Journal of Law and Medicine* 2 270-292, 272.

⁴ United Nations, *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, adopted by the United Nations General Assembly, A/RES/48/96, 85th Plenary Meeting, 20 December 1993, to which Australia is a signatory (hereafter cited as the *UN Standard Rules*).

2.2 State, National and International Legal Obligations

While there are many examples of legislation that support people with disabilities in a wide range of jurisdictions, this section deals primarily with intellectual disability services legislation, disability discrimination legislation, and United Nations resolutions to which Australia is a signatory. These all reflect developing national and international legislative norms to promote the recognition of the rights of people with a disability, which in turn reflects changing societal attitudes toward people with disabilities.

The Intellectually Disabled Person's Services Act (Vic. '86) (IDPSA) regulates service eligibility, standards and review for people with intellectual disabilities deemed eligible for such services in Victoria. While this legislation is not directly concerned with or applicable to child protection proceedings or issues, it does reflect contemporary practice in relation to services for people with disabilities. As a result, the principles on which the IDPSA is based can inform child protection practice in relation to parents with an intellectual disability. Further, services provided under the IDPSA for people with an intellectual disability who are also parents must address their parenting needs.

Some of the principles of the IDPSA worthy of mention in this context include that:

- (a) intellectually disabled persons have the same right as other members of the community to services which support a reasonable quality of life;*
- (b) every intellectually disabled person has a capacity for physical, social, emotional and intellectual development and a right to individualized educational and developmental opportunities and is entitled to exercise maximum control over every aspect of his or her life;*
- (d) the needs of intellectually disabled persons are best met when the conditions of their everyday life are the same as, or as close as possible to, norms and patterns which are valued in the general community;*
- (e) services should promote maximum physical and social integration through the participation of intellectually disabled persons in the life of the community;*

(f) services generally available to all members of the community should be adapted to ensure access by intellectually disabled persons and specialized supplementary services should be provided to the extent required to meet individual needs;

(g) services to intellectually disabled persons should be provided in such a manner that an individual need not move out of his or her local community or travel inordinately long distances to receive the services needed;

(h) services to intellectually disabled persons should be sufficiently flexible in structure and organization to meet the varying needs of intellectually disabled persons in developing towards independence and to maximize the choices open to them;

(i) it is in the best interests of intellectually disabled persons and their families that no single organization providing services to intellectually disabled persons exercise control over all or most aspects of an individual's life;

(j) it is the responsibility of the State of Victoria to plan, fund, ensure the provision of and evaluate services to intellectually disabled persons according to the principles stated herein;

(n) when some restriction on the rights or opportunities of an intellectually disabled person is necessary, the means chosen should be the least restrictive of the available alternatives having regard to all the circumstances

Disability discrimination laws provide for unlawful discrimination on the basis of disability in certain circumstances. Importantly, these laws are applicable to the provision of statutory services and other services provided by government. The potential exists for complaints of disability discrimination regarding child protection services, programs and decisions where it can be shown that the parent has experienced less favourable treatment on the basis of disability when compared to that of a person without that disability. The objects of the *Disability Discrimination Act 1992* (Cth)⁵ (DDA) are:

(a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:

⁵ The *Equal Opportunity Act 1986* (Vic.) (hereafter cited as the EOA) contains similar objects and provisions.

- (i) *work, accommodation, education, access to premises, clubs and sport; and*
 - (ii) *the provision of goods, facilities, services and land; and*
 - (iii) *existing laws; and*
 - (iv) *the administration of Commonwealth laws and programs; and*
- (b) *to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and*
- (c) *to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.*

Internationally, there are a number of United Nations resolutions that refer to the rights of people with disabilities, and some make specific reference to the parenting rights of people with disabilities.

The *Declaration on the Rights of Disabled Persons*⁶ was developed subsequent to the *Declaration on the Rights of Mentally Retarded Persons*⁷ and contains similar principles. In particular the Declaration states:

- 3. *Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.*
- 4. *Disabled persons have the same civil and political rights as other human beings;*
- 5. *Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.*
- 6. *Disabled persons have the right to medical, psychological and functional treatment... and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.*
- 8. *Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.*

⁶ Proclaimed by the United Nations General Assembly, Resolution 3447 (XXX), 9 December 1975, to which Australia is a signatory.

⁷ Proclaimed by the United Nations General Assembly, Resolution 2856 (XXVI), 20 December 1971, to which Australia is a signatory.

9. *Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities...*
10. *Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.*
11. *Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.*
12. *Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.*

Further, the *Standard Rules on the Equalisation of Opportunities for Persons with Disabilities*⁸ states a number of specific rules that nation state members are encouraged to adopt in domestic law and policy. *Rule 9: Family life and personal integrity*, amongst other things, applies to parents with disabilities in the context of child protection proceedings:

“States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

1. *Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.*
2. *Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.*

⁸ UN Standard Rules, above n 4.

3. *States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes.”*

These principles are all not only relevant to disability-specific legislation, but should in fact underpin the development of all legislation that might impact on the lives of people with a disability. They are principles that reflect the standards and values to which our society ascribes. In this way, then, both the law and the practice of child protection should be consistent with these internationally agreed principles.

2.3 What Do We Know of the Parenting Capacities of Parents With a Disability?

There has been limited research in Australia into the parenting capacities of parents with a disability.⁹ This possibly reflects the widespread view that "...parenthood and disability have long been considered mutually exclusive...".¹⁰ There is some evidence from research that once parents with an intellectual disability have been brought to the attention of the child protection system, those parents are generally less able to benefit from support services to the extent that they are able to retain principal care of their children, with those who do retain care characterised by the presence of another adult who 'functioned more normally' and who provided extended daily support.¹¹ On the other hand, Fegan et al concluded that with appropriate parenting training, information and support, parents with an intellectual

⁹ A principal Australian researcher is Gwynneth Llewellyn and her colleagues. For examples of their work see: Llewellyn G., 'Parents with Intellectual Disability Learning to Parent: the role of experience and informal learning' (1997) *International Journal of Disability, Development and Education* 44(3) 243-261 (hereafter cited as *Learning to Parent*); and, McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court* (2000) University of Sydney. Also refer to bibliography for further texts by these authors.

¹⁰ Fuller L., *Advocacy for Parents with a Disability: The 'Advantage Project' Report* (1996) Citizen Advocacy Western Region, 5 (hereafter cited as *Advocacy for Parents with a Disability*).

¹¹ Tomison A., *Issues in Child Abuse Prevention - Child Maltreatment and Disability* (1996) National Child Protection ClearingHouse Issues Paper No.7, 6.

disability could meet the same responsibilities of parenting as non-disabled parents.¹²

A study reported by Llewellyn of parents with an intellectual disability and their families, conducted over two years, examined their views of parenting and family life, and their support needs¹³. Llewellyn reported that the everyday experience of family life for parents with an intellectual disability involved -

(a) *learning from the experience of others by -*

- *using family traditions - by the use of childhood memories or family traditions; parents who perceived their childhood experiences positively were more likely to act in a similar way to their parents;*
- *following example set by others - particularly other family members.*

(b) *learning from the daily practice of parenting, involving -*

- *making mistakes - a means of accumulating parental experience;*
- *changing daily routines - the development of routines to ensure child-rearing tasks are met, either by completely altering existing routines, or altering parental priorities to put the child's need first; or to put in place alternative routines for the child. Thus, "...[l]earning to parent is an ongoing process, worked and reworked to meet the changing and stable demands of everyday family life..."¹⁴;*
- *trying out alternatives - developed from other people's suggestions or thought up by parents themselves.¹⁵*

Llewellyn concluded that parents with a disability learn by the experience of parenting, with support and especially with the support of family members and their own parents: "... [the common threads of parents' experience of parenting] reflect the everyday reality of the shared experience of intellectual disability and being a parent."¹⁶

¹² Fegan L., Rauch A., & McCarthy W., *Sexuality and People with Intellectual Disability* (1993) MacLennan and Petty, 52.

¹³ *Learning to Parent*, above n 9.

¹⁴ *Ibid*, 245.

¹⁵ *Ibid*, 252.

¹⁶ *Ibid*, 248.

2.4 Parents' Experiences With The Child Protection System

In various pieces of research Llewellyn (and other co-authors) have investigated child protection workers' knowledge and understanding of disability,¹⁷ and parents with disabilities views of their support needs and experience of the child protection system.¹⁸ As outlined in Chapter 1, an outcome envisaged for this Project, along with other outcomes, is to supplement this research with the experiences of Victorian parents and workers.

Research¹⁹ has demonstrated that parents with a disability are wary of child protection intervention, and are subject to much greater scrutiny of their capacity to care than are other non-disabled parents. Parents with a disability have been described as 'living under constant scrutiny'²⁰ of welfare authorities, despite the evidence that a significant percentage of [intellectually disabled] parents provide a level of care that is acceptable by community standards.²¹

The picture that emerges from both reported research and anecdotal experience, is of frequently discriminatory treatment by child protection authorities in the assessment of the parenting capabilities of some parents with a disability. McConnell and Llewellyn refer to several dimensions of this discrimination. These include the presumption that neglect/abuse will inevitably occur where a parent has a disability; that parenting deficiencies are irredeemable; and that appropriate parenting cannot be learned where a parent has a disability. The authors refer also to the notion of 'false attribution' - that is, that parental difficulties are attributed to the disability rather than to such structural issues as poverty, poor housing, lack of education or supports.²²

Further, the fact that a parent with a disability is also struggling with lack of financial resources, or poor housing or community supports, tends to be seen as confirming

¹⁷ *Parents With a Disability and the NSW Children's Court*, above n 9.

¹⁸ Llewellyn G., McConnell D., Cant R., & Westbrook M., 'Support Network of Mothers with an intellectual Disability: an Exploratory Study' (1999) *Journal of Intellectual & Developmental Disability* 24(1) 7-26; McConnell D., Llewellyn G., & Bye R., 'Providing Services for Parents with Intellectual Disability: Parent needs and service constraints' (1997) *Journal of Intellectual & Developmental Disability* 22(1) 5-17 (hereafter cited as *Providing Services for Parents with ID*).

¹⁹ McConnell D. & Llewellyn G., 'Parental Disability & the Threat of Child Removal' (1998) *Family Matters* #51 33-36, 33 (hereafter cited as *The Threat of Child Removal*).

²⁰ *Ibid*, 33.

²¹ *Ibid*, 35.

parental inadequacy. Finally McConnell and Llewellyn note the perceived disadvantage of inter-dependent parenting where parental disability is at issue - that is, the seeking of help from such significant others as grandparents will be interpreted as indicative of inability to parent²³ - notwithstanding research supporting the view that "...the life history of a parent with intellectual disability contributes strongly to reliance on others and family tradition to guide parenting endeavours."²⁴

Victorian agencies working with parents with disabilities have reached similar conclusions. In 1999 the YPWDCP and the DDLS investigated concerns about the child protection system for parents with an intellectual disability, concluding that such parents were over-represented in the Victorian system and estimated that approximately 1/3 of their children were removed by child protection intervention.²⁵ In addition the paper expressed the following concerns:

- there is a widespread perception that welfare workers may take children away from parents with an intellectual disability, and a parallel perception by child protection workers that such parents will not access parenting/supportive services;
- there was increased risk of parents with an intellectual disability being reported to child protection authorities; and
- that evidence relied upon to allow intervention to the point of termination of parental rights would be insufficient to justify a similar level of intervention for a parent without an intellectual disability.²⁶ This conclusion supported that of Levesque who argued that "...the rights of mentally retarded parents are, in practice, being terminated when states present evidence which, if used against non-disabled parents, would not be enough to sever the parental relationship...."²⁷

Overall, the YPWDCP and the DDLS concluded in 1999 that

²² Ibid, 34.

²³ Ibid, 35.

²⁴ *Learning to Parent*, above n 9, 253.

²⁵ *Disability, Parenting and the Law Discussion Paper*, above n 1, 2.

²⁶ Ibid, 3. See also: *Parents With a Disability and the NSW Children's Court*, above n 9, 3.

²⁷ Levesque R., 'Maintaining Children's relations with mentally disabled parents: Recognising difference and the difference that it makes' (1996) *Children's Legal Rights Journal* 16(2) 14-22, 15.

“...In Victoria.... parents with a wide range of disabilities are more generally subject to prejudicial and discriminatory treatment by child protection authorities [than are parents without a disability]”

...and that this was demonstrated in unsubstantiated presumptions by child protection workers as to parental capacity to care for their children; by inadequate parental legal representation; and by culturally biased views as to what constituted family/parenting competence.²⁸

As noted by the DDLS and the YPWDCP, some researchers have also questioned the outcome of child protection intervention and the basis on which child protection orders were made²⁹. Another study noted further that often crises need to occur for an intellectually disabled parent to receive support services, concluding that "...a common outcome [of child protection intervention] is Court-ordered parent attendance at family support or parent education services as a condition of keeping the child or 'proving' parental competence to regain child custody".³⁰ Thus, despite the legislative preference for minimum intervention, and the preference for supportive in-home assistance to be offered rather than more intrusive intervention,³¹ research has found that there is a tendency to base a finding of incompetence to care on the existence of disability alone - without due regard for the usual investigations and the provision of appropriate support services³².

2.5 The Legislative Basis for Child Protection Intervention in Victoria

The legislative basis for all child protection intervention in Victoria is the *Children and Young Person's Act 1989* (Vic.) (CYPA). That Act sets out several principles upon which Children's Court decision-making is to be based,³³ provides for mandatory reporting of suspected sexual and physical abuse concerns by certain

²⁸ *Disability, Parenting and the Law Discussion Paper*, above n 1, 3.

²⁹ *Ibid.*

³⁰ Llewellyn, G., McConnell, D. & Bye, R., *Parents with Intellectual Disability: Support and services required by parents with intellectual disability* (1995) University of Sydney, 13.

³¹ CYPA s 87.

³² Llewellyn G., 'People with Intellectual Disability as Parents: Perspectives from the professional literature' (1990) *Australian and New Zealand Journal of Developmental Disabilities* 16(4) 369-380, 374 (hereafter cited as *People with ID as Parents*).

³³ CYPA s 87.

professionals,³⁴ and sets the grounds upon which notifications to Victorian child protection services can be made.³⁵ Further principles are detailed under relevant sections of the CYPA, which sets out the basis on which post-court case planning should proceed, and refers to the importance of participation by indigenous and non-English speaking background (NESB) parents in case planning processes, but makes no specific mention of parental disability.³⁶

In Victoria, the grounds for notification of concerns (and, so, for child protection intervention) include notification where there is a belief that the child is at risk of significant harm due to physical or sexual abuse, or where the child has been subjected to emotional or psychological harm such that his or her emotional development is significantly damaged. The CYPA also establishes that intervention can occur if parents are 'incapacitated' provided no other suitable person is willing and able to care for the child³⁷. However, neither a definition of 'incapacity' is provided in the CYPA, nor is any benchmark standard of care indicated.³⁸

2.6 Victorian Child Protection and Disability Practice

A worrying concern is that parental disability receives limited reference in DHS Manuals and other policy or training materials. In Victoria and in other jurisdictions, there is considerable information and resource material available in relation to children with a disability, but much less regarding parental disability. This is perhaps a reflection of the perception that "...becoming a parent [for a person with a disability is] still seen as a controversial event."³⁹

The fundamental principle underpinning child protection practice (in Victoria and elsewhere) is that the protection of the child should be the primary aim⁴⁰, and the child always remains the primary child protection services client.⁴¹ In addition, intervention should be minimalist - that is, the least intrusion necessary to protect the child.

³⁴ CYPA s 64-64(1A).

³⁵ CYPA s 63.

³⁶ CYPA s 119.

³⁷ CYPA s 63(B)

³⁸ Office of the Public Advocate & Wesley Central Mission, *No Easy Answers: Issues and Challenges for Parents with and Intellectual Disability* (1997), 27.

³⁹ *Learning to Parent*, above n 9, 243.

⁴⁰ CYPA ss 87(1)(h)(j) & (k), 119(1)(a) & (b).

The clear principle on which Victorian child protection intervention is based is that the welfare of the child is paramount regardless of who the 'client' is; that is, the rights of a parent with a disability never overrides the rights of the child to adequate care and protection from harm or the risk of harm.⁴² The view is that critical decision-making regarding children in need of protection "...should be linked to sustained, demonstrated ability, on the part of parents, to provide minimum standards of care and protection and to utilise required standards of treatment and support services."⁴³

Where possible, the family should always be supported to care for their child without child protection intervention - or with the least possible intervention⁴⁴. The DHS *Protocol Between Intellectual Disability Services and Protective Services*⁴⁵ (hereafter referred to as *DHS Protocol*) notes that parents with a disability should receive "appropriate support services to help them in their parenting role".⁴⁶ Similarly, there is a clear emphasis throughout the *DHS Protocol* on continuing consultation between Disability Services and Protective Services in relation to any Children's Court recommendations, the establishment and review of any case plan for the family, any decision to return the child to the care of the family, and any decision regarding alternative care or placement of the child.⁴⁷

Victorian *Child Protection Intervention Practice Principles*⁴⁸ require that -

- the first priority is to protect the child;
- the undertaking of investigations, pursuit of statutory action, or case-management where a parent has an intellectual disability, should reflect the same decision-making processes as those where intellectual disability is not evident;
- in particular, "[P]rotective Services intervention where intellectual disability is a factor should emanate from an informed knowledge base of the particular

⁴¹ *Parental Mental Illness*, above n 2, 35.

⁴² DHS, *Protocol Between Intellectual Disability Services and Protective Services* (1993), 2 (hereafter cited as *DHS Protocol*).

⁴³ *Parental Mental Illness*, above n 2, 7.

⁴⁴ CYPA ss 87, 119.

⁴⁵ Above n 42.

⁴⁶ *Ibid*, Principle 3.4, 2.

⁴⁷ *Ibid*, 6.

⁴⁸ DHS, *Working with Parental Intellectual Disability Services* (1993) (hereafter cited as *Working with Parental ID Services*).

vulnerabilities and special needs affecting parents with an intellectual disability....”;⁴⁹

- “[w]hilst research indicates that parents with an intellectual disability may be able to parent adequately, there will also be parents who are unable to acquire adequate skills even with appropriate training.”;⁵⁰ and
- where a parent has an intellectual disability, consideration must be given to obtaining an expert assessment of parenting capacity.⁵¹

The *DHS Protocol* also notes that where parental mental illness, substance abuse or domestic violence is present, then “...[i]nfants are at increased vulnerability to child maltreatment both in terms of the **probability** of maltreatment and the **potential for harm**.”⁵² (emphasis added). However, notwithstanding this expectation of both the probability and potential for harm, Victorian child protection workers are required to make a full assessment of the actual situation which confronts them -

*“In terms of protective intervention, assumptions of risk to children based solely on a parent’s intellectual disability, as opposed to a full risk assessment, is discriminatory and risks inaccuracy and ineffective protective intervention. Intellectual disability must be assessed in the context of the risk of child abuse and neglect and the potential to provide adequate care and protection in the immediate and longer term.”*⁵³

The risk framework utilised in child protection assessments in Victoria⁵⁴ requires that workers pay attention to four key dimensions of harm, including -

- the **severity of believed harm** – the type/degree of harm which is/likely to be suffered by the child;
- the **child’s vulnerability to harm** – those factors which relate to the child’s development or functioning;

⁴⁹ *Ibid*, 13.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

⁵² *DHS Protocol*, above n 42, 17.

⁵³ *Ibid*, 2.

⁵⁴ DHS, *Victorian Risk Framework - A Guided Professional Judgement Approach to Risk Assessment in Child Protection*, 1999, (hereafter cited as *Victorian Risk Framework*).

- the **likelihood of the believed harm actually occurring** – including those factors which are perceived to increase the probability of harm to the child, including:
 - the caregiver's prior patterns of treatment of the child;
 - the caregiver's belief that he/she is correct in their opinions regarding care of the child; and
- the presence of any **complicating factors** including substance abuse, mental illness, violence, and social isolation. Amongst risk factors noted are 'history of mental illness' and 'carer(s) have intellectual disability' and 'carer(s) have mental health problems'.⁵⁵
- the degree of safety for the child – including those factors which decrease the probability of harm to the child, and any demonstration by parents of protection/strengths (positive attitudes in relationships/skills/ personality).⁵⁶

The essence of judgement of risk "... requires an evaluation of the degree and probability of harm... [in which the] focus is the balance between actions to secure safety over the immediate assessment period and actions to reduce any future need for protection..."⁵⁷

In determining the impact of parental intellectual disability on parenting capacity, child protection workers should incorporate an assessment of -

- how the parents have learned skills in the past and whether they have been able to generalise these skills to new situations;
- the parents' level of knowledge of normative child development;
- the parents' capacity to independently gain access to community resources and to accept services from them; and
- any other issues confronting the parents which may compete with parental responsibilities and intentions.⁵⁸

The suggestion that an adequate assessment needs to include attention to *the parents' capacity to independently gain access to community resources* raises the

⁵⁵ Ibid, 11-12.

⁵⁶ Ibid, 7-8.

⁵⁷ Ibid, 9.

⁵⁸ *Working with Parental ID Services*, above n 48, 17.

question of 'why *independently*'? This focus suggests that the conclusions drawn by other researchers that seeking of help from significant others will be interpreted as indicative of parental incompetence where disability is at issue,⁵⁹ are in fact reflected in practice protocols in Victoria. Why is the act of seeking assistance indicative of incompetence, rather than demonstrating an understanding of personal levels of competence?

2.7 Chapter Conclusions

Child protection personnel carry a double-edged sword: the obligation to intervene to protect the child, but to do so minimally and only where there is no other less intrusive way. They bear accountabilities to the wider community as well as to the particular families and agencies with whom they are engaged. In addition, in the disability field, there is the potential for conflict between those personnel responsible for child welfare and those responsible for parental interests, and indeed the greatest source of stress for child protection workers is the difficult task of balancing the child's and the parents' interests.⁶⁰

But that balancing act, difficult though it is, cannot be achieved by ignoring or minimising the rights of parents with a disability. Nor can it be achieved through applying the law in discriminatory or prejudicial ways. After all, "...parenting is not instinctual, and lack of relevant knowledge is not monopolised by people with disabilities...".⁶¹ There is evidence that parents with (an intellectual) disability appear no more likely than other socio-economically disadvantaged parents to abuse their children, and that at least where neglect has occurred it is attributable to parental lack of experience and training, and lack of appropriate supports.⁶²

Workers need to ensure that the label of *disability* does not become the individual parent's only or most salient feature.⁶³ Whilst the clear thrust of current research is that the parent with a disability must be treated as an individual, it is apparent that

⁵⁹ *The Threat of Child Removal*, above n 19, 35.

⁶⁰ *Learning to Parent*, above n 9, 255.

⁶¹ Piper B., *Parents with an Intellectual Disability - a Case Study* (1995) Paper presented to the 31st Annual National Conference of the Australian Society for the Study of Intellectual Disability, 6.

⁶² *The Threat of Child Removal*, above n 19, 35.

⁶³ *Child Maltreatment and Disability*, above n 11, 2.

with accessible, relevant supports many parents with a disability are able to parent well.⁶⁴

“...[T]o speak collectively of ‘parents who have a disability’ is as foolish as trying to speak collectively of ‘parents’ generally - as though they belong to some homogeneous group who share identical experiences of impairment, disability and parenting.”⁶⁵

Disability, of itself, is not a barrier to parental capacity.

⁶⁴ Berkeley Planning Associates, *Challenges and Strategies of Disabled Parents: Findings from a national survey of parents with disabilities - Final Report to ‘Through the Looking Glass’* (1997), Ch 11, 12.

⁶⁵ *Advocacy for Parents with a Disability*, above n 10, 5.

Chapter 3: Children's Court File Audit

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3.1 Introduction

Soon after the commencement of the Project, it became apparent that there is limited information available as to the numbers of children whose parents have a disability, who are brought to the attention of child protection services in Victoria. Similarly, the project found there is a lack of clarity as to the numbers from within that group who are brought to the attention of the Children's Court itself. The DHS do not appear to readily have this information within child protection statistics, nor does the Children's Court routinely collect such information, either regarding child protection matters presented to the Court involving any disability issues, or the outcomes of those matters. Although disability issues may be presented at Children's Court Directions hearings, they are not routinely recorded in statistics.

The information as to the numbers of Children's Court matters where parental disability is an issue, needed to be identified - if at all - by direct reference to the files of matters presented to the Court. The Children's Court record system remains, in comparison to other jurisdictions, relatively unsophisticated.¹ Although magistrates themselves increasingly use computers to record evidence and findings during the course of hearings, the Court's records are not computerised and are retrievable only by individual search through the paper records. These are stored by completion date in compactus shelves at the Melbourne Children's Court.

From discussions with court staff there did not appear to be any means other than manual research of individual files whereby detailed information as to the numbers of parents with a disability who are brought to the attention of the Court could be ascertained. Certainly this information has not in the past been included in the statistical information which is routinely collected by either DHS or the Court itself. The Project strongly urges the Court to collect this information as a matter of course.

3.2 Audit Methodology

In mid 2000 discussion took place with Judge Jennifer Coate (then Senior Children's Court Magistrate and now President of the Children's Court) regarding the Project's access to the Court's records. The intention was to undertake a 'snapshot' statistical

analysis of families using the Court over a three to six month period, as a means toward a greater understanding of prevalence and outcomes of hearings where parents with disabilities were involved with the Court. This snapshot would not, of course, provide direct information regarding the involvement of such parents with the Victorian child protection system, but was expected to give an insight into the numbers of parents with a disability who did become involved in the Court, and the impact, if any, of those disabilities upon child protection intervention and the outcome of the court process.

This dimension of the DPL Project was presented to the Research Ethics Committee of the Department of Justice in June 2000, and approval for access to the Children's Court records was subsequently given. An outline of the information to be sought from the Court's files in this Audit is contained in Appendix 3.

This small snapshot audit utilised records of finalised matters only and aimed to determine whether parents with disabilities (intellectual, psychiatric, physical or sensory) and their children were disproportionately represented in Family Division proceedings, and whether outcomes for these families were different from outcomes for parents without disabilities. In addition the audit investigated factors that influence the Court's decisions and whether the Court's processes and procedures disadvantaged parents with disabilities.

It was proposed that 6 months of records from the Melbourne Registry of the Children's Court be examined. Records for the period January to June 2000 inclusive were examined with particular attention to:

- Type and incidence of parental disability in matters appearing before the Family Division of the Court;
- Information about disability presented in specialist and protection reports to the Court;
- Numbers of relative supports and agency involvement with parents with a disability who appear before the Family Division of the Court;
- Numbers of court appearances and time involved from initiation to finalisation of process, in Family Division matters where parental disability is an issue;

¹ Swain P., 'On the Bottom of the Pile - Judicial Independence and the Children's Court' (1996) *Alternative Law Journal* 21(5) 234-237.

- Outcomes of matters in the Family Division where parental disability is an issue; and
- Representation and involvement of advocacy workers in matters where parental disability is an issue.

Some descriptive data was collected to illustrate the quantitative data obtained. The data obtained was aggregated and is presented below.

A Project Research Assistant was appointed in mid 2000 to undertake the primary Children's Court research data collection. Given the limited resources of research assistant time (approximately 1 day per week for the period September 2000 to January 2001), a statistical sampling approach was used to select files for analysis. The sampling involved inclusion in the audit of all files listed for hearing on any date in each month (from January to June 2000) which ended in a numeral '1' -ie the first, eleventh, twenty-first and thirty-first of each month, moving to the next available sitting day where that sampling date was a non-sitting day or public holiday.

By this means 87 files were randomly identified for the period January to June 2000. Data was collected manually using data sheets as per the format in Appendix 3, and then analysed using the SPSS program for cross tabulation between variables.

3.3 Audit Results

The Victorian Children's Court file records are wholly paper based, and vary in detail from matter to matter. Whilst there are generally copies of the relevant application, supporting reports and orders made, the detail in these varies greatly. The only means whereby the presence or absence of disability can be ascertained is to routinely read each file, as the Court itself does not maintain such data. Even in detailed files, the presence of disability is sometimes only gleaned from behavioural and similar descriptions contained in, for example, specialist or child protection reports.

An examination of particular documents kept in Children's Court files, it was assumed, would provide some information about magistrates' attitudes towards parents with disabilities, and about the sorts of information presented in this regard to magistrates. The files contain reports made by child protection workers and,

occasionally, workers from other (non-government) family agencies, family support workers, and mental health professionals. These reports generally indicate whether parents have a disability or disabilities, but it cannot be assumed that disabilities are always referred to in such reports. Disabilities, particularly of a psychiatric nature, can, in some instances be concealed from relevant professionals and, in particular instances, workers may not have seen or understood the relevance of referring in reports to parental disabilities. Court files can also provide information about the types of orders made by magistrates, the dates on which hearings were held and orders made and, in many cases, the conditions accompanying orders. Court files also often give indications as to whether parents were represented. But, as this audit has confirmed, a number of files do not include particular types of information, some of which was directly relevant to the focus of this Project.

Some conclusions arising from the file audit are detailed below.

3.3.1 Prevalence

Of the 87 files reviewed, there was no indication of any parental disability in 61 matters. Parental disability of one form or another was noted in 26 matters (30%), including the following –

<i>mother</i> - intellectual disability	5
- psychiatric disability	20
- physical disability	2
<i>father</i> - intellectual disability	1
- psychiatric disability	3
- physical disability	0

(Note that some families, where there are multiple incidence of disabilities, may be represented more than once in these figures.)

3.3.2 Removal of children

Of the 26 parents with a disability, there were three families where two children had been removed, one where three children had been removed, and one where five children had been removed by DHS Child Protection services.

3.3.3 Referral to disability support services

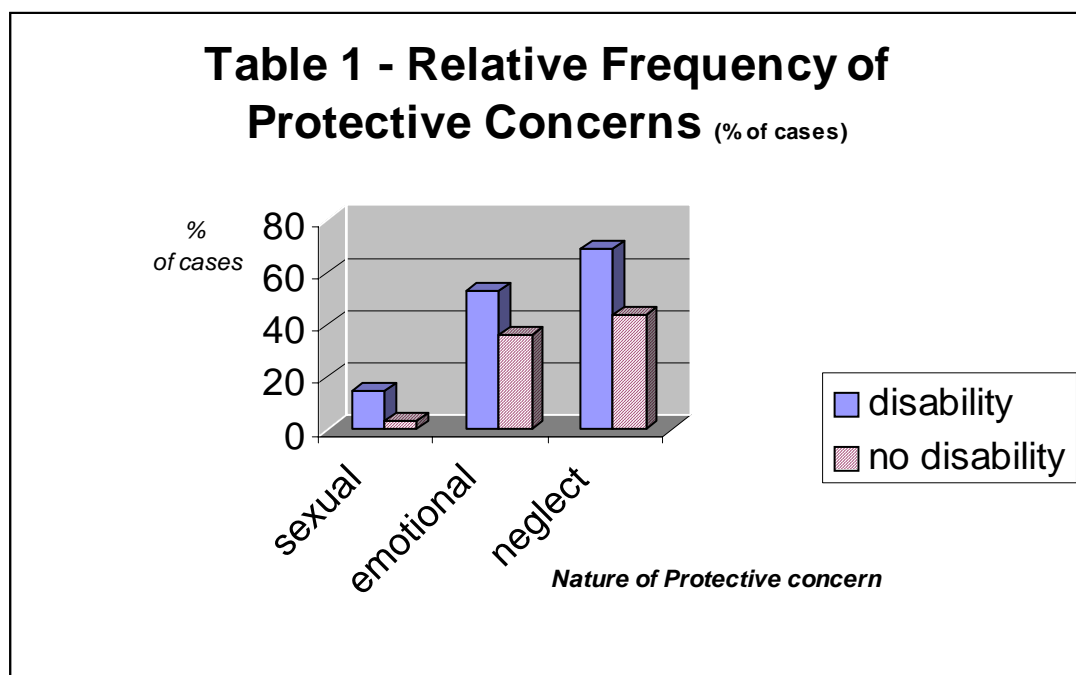
In this audit of the 26 matters where parental disability was recognised, there was no indication on any file documents before the Court in 8 cases (31% or almost a third of

these matters) that any referral of the carer (ie. the parent with a disability, or their partner or spouse) to disability support services had occurred, or was recommended.

3.3.4 Relative frequency of child protection concerns

The file audit suggested that concerns are more likely to be raised as to possible sexual abuse or emotional abuse, or neglect concerns, where parental disability is noted. In the sample there were 6 files of the 87 examined where concerns as to possible sexual abuse were at issue (4 or 15.4% of the 26 matters involving parents with an acknowledged disability; 2 or 3.3% of those 61 matters not involving disability). There were 36 matters where emotional abuse was at issue (14 or 53.8% of the 26 matters involving parents with an acknowledged disability; 22 or 36.1% of the 61 cases not involving a disability). 45 cases concerned neglect (18 or 69.2% of the 26 matters that involved parents with a disability; 27 or 44.3% of the 61 cases not involving a disability). The same trend was not borne out in this audit in relation to physical abuse.

These figures are represented below in Table 1.



Whilst the numbers in this audit are small the figures represented in Table 1 support anecdotal evidence and findings from other research that parents with disabilities are more likely to be perceived as potentially emotionally abusive or neglectful of their children, or are more likely to sexually abuse, or to place their children in situations

which expose them to sexual abuse, than are non-disabled parents². This is commensurate with what Llewellyn describes as the "...commonly held view that parenthood for persons with [intellectual] disability is automatically beset with problems...."³, and that "[f]or parents with Intellectual disability this means that their parenting will most likely be scrutinised by child... protection authorities".⁴

3.3.5 Risk factors

The file examination disclosed a series of 'risk' factors often mentioned in DHS reports as the basis of child protection assessment and concern. Such factors included the age of the mother at the time of pregnancy; the access of the parent to antenatal care; substance use during pregnancy; current or previous domestic violence; poor impulse control and anger management by parents; previous experience of abuse or parental admission to care as a child; understanding of parenting; and, the frequency of family moves or homelessness.⁵

The data obtained in this audit suggests that parents with a disability are more likely (up to twice as likely or more) than those without a disability, to be seen: as having poor impulse control or anger management (a factor noted in 23% of matters where parents had a disability, but only 11.5% of those where no disability was noted); to have poor parenting skills or poor understanding of parenting needs (11.5% of matters where parents had a disability, but only 3.3% of those where no disability was noted); and, to have a history of frequent moves or homelessness (23% of matters where parents had a disability, but only 4.8% of those where no disability was noted). This is not to say, necessarily, that factors such as these were perceived by Victorian child protection workers where they did not exist. However, the disproportionate disparity between the two sets of figures is of concern. This disparity would suggest that the anecdotal experience of parents with a disability, and the findings of similar research, being that benchmarks of competence are higher where

² See for example, McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court* (2000) University of Sydney, 2; and, McConnell D. & Llewellyn G., 'Parental Disability & the Threat of Child Removal' (1998) *Family Matters* #51 33-36, 34 (hereafter cited as *The Threat of Child Removal*).

³ Llewellyn G., 'Parents with Intellectual Disability Learning to Parent: the role of experience and informal learning' (1997) *International Journal of Disability, Development and Education*, 44(3) 243-261, 256 (hereafter cited as *Learning to Parent*).

⁴ Ibid.

⁵ Department of Human Services (DHS), *Victorian Risk Framework - A Guided Professional Judgement Approach to Risk Assessment in Child Protection* (1999) Appendix 1, 7 (hereafter cited as *Victorian Risk Framework*).

disability is noted⁶, is supported and should be further investigated. However, the figures also suggest that particular supports are required for parents with a disability, given the imperative of the CYPA to ensure that the child is maintained within the family where this can be achieved with support.⁷ But as found in other research and supported by this project, for parents with disabilities these supports are not readily available or accessible⁸, or they are not adequately meeting parents' needs⁹. Under that CYPA, intervention into the family, regardless of disability, should be the least intrusive necessary to ensure the care and safety of the child.¹⁰

3.3.6 Legal representation

Representation of parents (or lack of it) appearing before the Court is of great concern, but especially for parents with a disability. In this audit, there was no evidence on files in six matters to indicate that primary carers (one a parent with a disability) were legally represented at the time the first order on file was made. In a further 14 matters (5 of which involved parents with a disability) files notes indicated that the parents concerned had consented to the intervention, and so representation at the relevant hearings was not required or provided. It is at least arguable that these parents may not have been fully aware of their rights and options,¹¹ nor was there certainty from the file documentation that their consent were fully 'informed'.¹² In some 14 matters included in this audit, parents (3 of whom had an acknowledged disability) appeared from the available file records to have had no representation at the time the final order on file was made, whilst in a further 24 matters (5 involving parents with a disability) parental consent to the order sought was given and the outcome was unopposed.

Nevertheless, whether parental consent was unequivocal and informed in these matters, especially where parental disability was at issue, remains open to question.

While the absence of reference to representation is not in itself a certain indicator

⁶ For similar recent findings, see: *Parents With a Disability and the NSW Children's Court*, above n 2, 3.

⁷ CYPA ss 87, 119.

⁸ *Parents With a Disability and the NSW Children's Court*, above n 2, 76.

⁹ Llewellyn, G., Bye, R. & McConnell, D., 'Parents With Intellectual Disability and Mainstream Family Agencies' (1997) *International Journal Of Practical Approaches to Disability* 21(3) 9-13, 10.

¹⁰ CYPA s 119.

¹¹ *The Threat of Child Removal*, above n 2, 34.

that parents were in fact unrepresented, the fact that representation is noted elsewhere at least suggests that this is likely.

3.3.7 Court orders

In this Audit, orders made by the Court rarely referred explicitly to disability or to disability services in their terms and conditions. Often the conditions attached to orders were no more detailed than to require "such treatment/counselling etc. as directed by DHS". This was generally the case, even where the tenor of the reports on file explicitly referred to disability in one parent or the other. For example, of the 26 files where disability was noted, none made any specific reference in final orders to any referral of the family or a parent to Disability Services (although the records on the files clearly noted in some instances that appropriate disability services were involved with the families). Although note was made of parental psychiatric disability for 20 mothers and 3 fathers in the audit, the orders made by the Children's Court required that relevant psychiatric services be used for only 8 mothers and 1 father. Five mothers and 1 father were known to have an intellectual disability, but the requirement that appropriate disability services be made available to the family was not made a condition of any Children's Court orders noted in this audit.

3.4 Observation of the Children's Court

During the course of this Project, the working of the Family Division of the Children's Court was observed on many occasions, both in the Melbourne Registry and at the Geelong sittings of the Court. This was not done in a selective way, but rather as opportunity arose. Although coincidentally a few of the matters observed involved parental disability, the objective of observing the Court was not necessarily to target disability but rather to consider the everyday working of the Court in contested welfare matters. This, it was anticipated, would in turn raise issues for the appropriate management of cases where disability was at issue, and would suggest strategies to respond to issues raised through the file audit.

From these informal observations, a number of comments can be made -

- the Court is frequently required to consider and to give appropriate weight to professional and lay evidence as to 'normality of behaviour/normal behaviours' –

¹² For a discussion of 'informed consent', see: Charlesworth S., Turner J.N. & Foreman L.,

highlighting the importance of identification and agreement as to the appropriate benchmarks for 'normality'. The usual benchmarks which appeared to be utilised by the Court are those set by reference to the non-disabled population in the community;

- the need for clarity in worker/professional explanations of, and rationales for, parent behaviour was frequently apparent, as magistrates sought to make sense of often complex evidence and inter-familial behaviour;
- the need for witness preparation, about both the case (the matters in contention and the evidence to be led) and the process of giving evidence (the rules of examination etc.) was frequently apparent, and was reflected in the relative confidence and certainty with which both professional and lay persons gave evidence. Even a well prepared person without a disability can become confused or anxious in the face of aggressive examination in the Court. This suggests that the persons with an intellectual or psychiatric disability or an acquired brain injury are likely to be at an even greater disadvantage - in the absence of specialist support or other ways in which evidence can be led - when their evidence or parenting is subject to legal examination;
- the difficulties of the children's legal representative in obtaining instructions, especially where the child is young and unwilling to cooperate in the process of obtaining instructions, etc., was frequently apparent. Similar difficulties also potentially apply, of course, to many parties where a disability is at issue. The need for skilled advocacy where disability is an issue was highlighted throughout this Project. As has been already noted: "A parent with [an intellectual] disability is most likely not to understand what is happening or why, except that the child or children is being taken away...".¹³
- the potential for counsel's use of language or grammar to confuse even an articulate witness was repeatedly demonstrated. Clearly these problems would be even further exacerbated for a person with disability that affects their capacity.
- the observations of the Court also highlighted the complex and exhausting role of the Magistrate in clarifying court and evidentiary procedures, in ruling regarding evidence and objections, and in clarifying the process of the hearing, etc., despite the context of a jurisdiction designed to be less formal, less bound by rules of evidence and procedure, and more attuned to the needs of the family and the

Disrupted Families - the Law (2000) 30-31.

¹³ Office of the Public Advocate & Wesley Central Mission, *No Easy Answers – Considering Issues and Challenges for Parents with an Intellectual Disability* (1997), 26.

child. The observations demonstrated the complex magisterial role in mastering both legal complexities and difficult disciplinary understandings of family and individual behaviour.

3.5 Chapter Conclusions

Given the proportion of parents with a disability in the population at large¹⁴, this audit suggests that parents with a disability appear to be disproportionately represented before the Children's Court in Melbourne. Given the randomised nature of the audit, a finding that some 30% of matters within this audit involved a parent with a disability, suggests that such parents are over-represented within the Victorian child protection population. This supports anecdotal reports and the findings of existing Australian research that parents with a disability are unfairly targeted by the child protection system,¹⁵ although further research in this regard is required.

Decisions made by the Children's Court in relation to child protection cases take into account the abuse that children have experienced, as well as the likelihood that they may be subject to further abuse. Discrimination against parents with disabilities in the Children's Court can be said to have occurred if –

- (a) magistrates make decisions that reflect a lack of genuine understanding about the levels of risk that particular types of parental disability presents for children;
- (b) magistrates make decisions that reflect a belief that parents with disabilities who have been found to have caused harm or whose behaviour presents risks to their children, are not entitled to receive services that make allowance, at least partially, for their disabilities or to which other parents are entitled;
- (c) magistrates make decisions that reflect outmoded inaccurate beliefs and pejorative attitudes held regarding parents with disabilities¹⁶; and

¹⁴ Approximately 19.3% (3.6million) of the Australian population has a disability defined as one or more impairments that has lasted or is likely to last for 6 months or more. A further 16.9% (3.1million) have an impairment or long-term condition that does not restrict their everyday activities. Reported in the Australian Bureau of Statistics, *Disability, Ageing and Carers, Summary Tables - Northern Territory 4430.7.40.001* (1998).

¹⁵ Tymchuk A., Llewellyn G., & Feldman M., 'Parenting by persons with Intellectual disabilities: A timely international perspective' (1999) *Journal of Intellectual & Developmental Disability* 24(1) 3-6, 5. See also: *Parents with a Disability and the NSW Children's Court*, above n 2, 10; and, *The Threat of Child Removal*, above n 2, 33.

¹⁶ *Parents With a Disability and the NSW Children's Court*, above n 2, 87.

(d) the Court's procedures and practices marginalise parents with disabilities¹⁷.

It was thought that comparing the speed at which interim orders gave way to long term orders in the cases of children of parents with disabilities and children of parents without disabilities would be informative of magistrate opinion on these points. Did, for example, interim orders *routinely* give way to long term orders more quickly where children of parents with disabilities are concerned? If so, this *could* have indicated either: that magistrates were reluctant to give parents the opportunity to learn new parenting skills; or, that magistrates were unsure about the amount of time those with certain disabilities might need to acquire particular skills or to adjust to receiving particular types of formal assistance.

There are many factors that influence the pace at which the court process moves ahead. These include non-appearance by parents which can delay the making of new orders for considerable periods of time, and family 'crises' of any nature which can both hasten and delay the handing down of long term orders. In this Project it was found, however, that there was no particular pattern that the provision of orders follow in relation to children of parents with disabilities and children of parents without disabilities. For both categories of children, orders are likely to progress from interim orders to long term orders and back again several times. As identified in other research and supported in this project, that for those parents who do have a cognitive disability, the confusing progress of matters through the Court is likely to be even less understood¹⁸.

A comparison of the conditions of the orders made in relation to children of parents with disabilities and children of parents without disabilities was intended to focus on whether, without justification, parents with disabilities were regularly being made subject to greater levels of scrutiny, being ordered to comply with conditions that would be harder for a person of any level of ability to observe, or being required to attempt the care of their children without the direction that appropriate supports be provided. This Project has concluded that, rather than stipulating the services that parents should receive, the Court is more likely to order that parents simply 'accept services as directed by DHS', confirming, as have others, the DHS' dominant position

¹⁷ Ibid, 86.

¹⁸ Ibid, 55.

in child protection proceedings¹⁹. This could be attributable to a range of factors, including: magistrates' sense that DHS are a more reliable authority on the kinds of assistance parents require; the desire to create greater consistency across cases, perhaps to eliminate the appearance of bias against parents with a disability; or, to lessen the administrative burden of recording all details of orders following prior agreement to the orders by the parties. In any case, the weight or significance that magistrates give to particular disabilities in their determinations is almost impossible to establish through scrutiny of the conditions of Court orders, even where the fact of disability was very apparent from the material on court records.

¹⁹ Ibid, 60.

Chapter 4: The views of Parents

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“Being a parent is a right not a privilege.”¹

4.1 How Parents Were Consulted

Drawing on the information gained from the audit of Children’s Court files, together with that gathered through literature and from key stakeholders during Consultative Committee meetings and informal discussions, a series of questions were developed to ask parents with disabilities about their experiences with child protection services in Victoria (see Appendix 4). The questions were divided into six categories -

- Background Information
- Child Protection Processes
- Support / Advocacy
- Legal Representation
- Child protection Orders & Undertakings
- Parenting Support Services

The questions in the last three categories all related to parents' involvement with these services as a result of child protection issues. The questions were formulated to gain as much information as possible about parents' experiences within the Victorian child protection system. They were presented as open questions to allow participants the freedom to provide detailed descriptions of their experiences.

The opportunity for participation in the Project was only open to parents: who have a disability; who have or have had child protection intervention regarding their children; and, who could reiterate the reasons why they were being consulted. It was essential that participation by parents with disabilities be voluntary, and that the parents' anonymity be protected. Hence it was felt the best approach was to invite parents to share their experiences in a focus group or in an interview with the Project Worker.

Whilst this approach does have some methodological problems (in particular, that it was likely that only parents who had problematic experiences with child protection would volunteer information), this was the only feasible approach given the resources available to the Project. A more systematic and controlled analysis of parents with disabilities' experiences of child protection intervention is required.

¹ Comment by a parent with a disability consulted for the project, 2001.

An information flyer was developed and distributed by post and electronic mail to disability advocacy services and a small number of parenting services known to work with parents with disabilities subject to child protection intervention. Invitations were also provided to parents with disabilities known to those involved with the Project. This, it was hoped, would build on the support group model developed by the YPWDCP, by providing those parents involved in the support groups an opportunity to contribute to changing discriminatory policies and practices that many had experienced. Some advocacy groups then forwarded information about the Project through their networks and to parents known to them.

As parents made contact it became clear that a focus group discussion was difficult for many parents to attend either because of distance, the difficulty in accessing suitable transport, work or other commitments. In addition, differences in disability type presented problematic methodological issues. As a result two focus groups were held (one for five parents with psychiatric disabilities and another for four parents with sensory and/or physical disabilities – two of whom also had intellectual disabilities) as well as individual interviews, either face-to-face (one interview) or by telephone (five interviews). All focus groups and interviews used the same questions in order to maintain consistency and integrity in the process.

In a similar vein to other research and as reported by legal practitioners consulted for the Project, many parents approached expressed reluctance to participate due to fears that their participation could draw attention to their parenting.² This was despite numerous efforts to reassure individual parents that their contributions were confidential and anonymous.

4.2 The Experiences of Parents

A total of six parents were individually interviewed with nine parents consulted in focus group discussions. The parents who took part had a range of disabilities including intellectual, psychiatric, physical and sensory, with some having multiple disabilities. They had children ranging from the ages of eighteen months to adult and had been involved with child protection services at various stages in their children's

² McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court* (2000) University of Sydney, ii.

development. The highest number of children any parent had was five. All parents had varying contact with child protection from the investigation stage through to Permanent Care Orders. Two parents were still currently involved with child protection, while thirteen had no ongoing contact at the time of the consultations.

4.2.1 Reasons for notification according to the parents

Parents described the reasons for which child protection services became involved. These included the following concerns -

- Spouse's excessive drinking and family violence
- Difficult behaviour of child attributed to an assumption of the parent's inability to cope
- Lack of parenting and home management skills
- Allegations of child abandonment
- Breaking into in-laws property after the child was not returned from contact visit
- Health Professional's concerns about the person's current ability to parent
- Allegations of drug use and/or dealing
- Parent late in getting child to school creating the fear that the child might be missing
- Child arriving late to school and missing days
- Allegations of sexual abuse
- Refusal to take psychiatric medication
- Family's uncertainty as to whether to keep the baby or put it up for adoption
- Concerns about the baby's lack of development and parents' inability to care for the baby

4.2.2 Child protection investigations

In total, amongst the 15 families consulted, there had been approximately 40 notifications and subsequent investigations by child protection services (one parent could not recall the precise number of notifications and investigations). Of the fifteen families -

- Seven families had been through the notification and investigation process only once, with no further action.
- One family had been through notification and investigation on six separate occasions. While never going to the Court or being issued with any formal orders, this family was required by child protection services to undertake several

activities through informal arrangements and were informed that if they did not comply formal Court orders would be obtained.

- Five families had their children removed into substitute care on one or more occasions and for varying lengths of time. Four of these families had no current involvement with child protection services. In the fifth family, by mutual agreement, a teenage child was residing with a family friend under Court order, after the child notified child protection services of problems with an older sibling.
- One family had their child removed after which time the extended family became involved and eventually the child was returned to the families' care.
- One family had their child removed at the age of one month. The child had subsequently been in foster care for a number of years and at the time of the interview the parent was about to agree to a permanent care arrangement as they had decided it was in the best interests of the child given that the child had been in care for a number of years and had had limited contact with the biological parents.

4.2.3 Parents' understandings of the processes

*"None at all. I knew absolutely nothing [about the child protection investigation]."*³

*"...I received written material [about being investigated by child protection] in small print on coloured paper which I couldn't read – it was about a 9 font. There were no offers made to provide the information in an alternative format."*⁴

*"They [the child protection workers] gave me no information."*⁵

Of the parents consulted, all indicated that they had little or no understanding of what their rights were as parents, and most stated that they felt they had no rights as parents under the *Children and Young Persons' Act (1989)* (CYPA). Parents consulted were unaware of the particular legislative requirements of the Act:

³ Comment by a parent with a disability consulted for the project, 2001.

⁴ Comment by a parent with a vision impairment consulted for the project, 2001.

⁵ Comment by a parent with a disability consulted for the project, 2001.

- s 87 (1)(a) ...*[child protection authorities] must ensure that intervention into family life should be to the minimum extent that is necessary to secure the protection of the child; and*
- s 87 (1)(b) ...*[child protection authorities] must have regard to the need to strengthen and preserve the relationship between the child and the child's family.*

The majority of parents reported that after they were informed that a notification had been made, they were given little or no assistance to understand the investigation process. The parents indicated uncertainty as to who would assist them in carrying out any undertakings they had to perform (for example, to find a suitable parenting program).

Only one parent said that they had seen the written information child protection services have available about the various processes and orders,⁶ and this parent, who has a vision impairment, had difficulty reading and understanding the information provided due to the small font used in the information sheets. One parent who had a physical and sensory disability said that they were not informed of the investigation and court processes. The parent said that when the Children's Court Magistrate later questioned why this was the case the child protection worker had indicated that it was because "I didn't have a full brain".

4.2.4 Advocacy / Support

Parents were asked whether they were given the option of having an advocate or support person attend meetings they had with child protection workers, and whether they were involved in any disability services at the time of the investigation by child protection services. The responses of parents varied -

- Five parents indicated that they were given this option but were given no further information as to who might be an appropriate support person or advocate.
- Two parents indicated that they were given this option but chose not to have an advocate or support person present. One chose not to because of a

⁶ Department of Human Services (DHS), Information Sheets for Parents, *When Protective Workers Visit, The Children's Court, Interim Protection Order, Guardianship to Secretary Order, Supervised Custody Order, Supervision Order, Undertakings; and Review of Case Plan Decision*; available through the DHS website: www.dhs.vic.gov.au

wariness of 'government people', and the other because of geographic isolation.

- One parent refused to meet with child protection workers unless the meetings took place at the child's school with a staff member, who was supportive of the parent, in attendance.
- One parent eventually had a representative of a local advocacy service attend case planning meetings, and another a worker from the Office of the Public Advocate.
- Five parents indicated receiving support from their disability support worker. For one parent this was not beneficial, as the parent's perception was that the worker agreed with Protective Services and was not prepared to support the rights of parents with a disability above the rights of the child.

4.2.5 Legal representation and the Children's Court

"...I have had several solicitors. One represented me twice and another one for a different occasion [all before the Children's Court]. The first solicitor was happy to provide background information on my situation and the previous cases to the new solicitor."⁷

"I kept sacking them because they wouldn't do anything. The last [Children's Court] solicitor I had I complained to the Legal Profession Tribunal and got half my money back."⁸

"I've had different solicitors for each [Children's Court] hearing..."⁹

Those parents who went to the Court were legally represented for the majority of court appearances, generally by solicitors from Victoria Legal Aid or by private solicitors funded through Victoria Legal Aid. Five parents indicated that they had utilised the services of more than one solicitor for different hearings regarding the same matter.

⁷ Comment by a parent with a disability consulted for the project, 2001.

⁸ Comment by a parent with a disability consulted for the project, 2001.

⁹ Comment by a parent with a disability consulted for the project, 2001.

All parents who had been legally represented believed that their representatives had little knowledge of how parental disability impacted on parenting abilities or how parenting skills may need to be adapted because of parental disability. Further, parents reported universally that legal representatives did not spend the time necessary to ensure the parent understood the nature of the legal process and the particular issues relevant to their case. One parent indicated that they had only spoken to a lawyer on the telephone the day before appearing in Court.

Contact with legal representatives before and between court appearances varied. Representation for one parent was difficult because of living in a small rural area with no local legal service available. One parent with a physical disability who uses an electric scooter, found the physical set up of the Children's Court difficult to navigate and could not provide evidence in the witness box due to its physical inaccessibility and did so from the public gallery. The person found this disconcerting. The process highlighted this parent's status as a parent with a disability more than would have been the case had evidence been presented whilst sitting adjacent to the witness box or the bar table.

4.2.6 Undertakings and conditions required of parents

Four of the parents interviewed said that they were required to attend parenting programs, three as a condition of formal orders, and the fourth under informal orders. Other conditions that they reported having imposed upon them, either formally through Court orders or informally through the directions given by child protection workers, included requirements to -

- attend parenting skills development courses
- attend stress and anger management courses
- take psychiatric medication
- attend counselling to address their own childhood abuse
- separate from their spouse who had a history of sexual offending
- ensure their child attended school
- ensure the house was properly cleaned, the children properly fed, and that the child "didn't throw any tantrums"

All parents placed under formal Court orders had received a written copy of the relevant orders, including any conditions and tasks they had to undertake, but this was not provided in alternative formats (such as large print, Braille, modified or

simplified language). Only one parent said that they had the orders explained to them by child protection workers. Another parent said that they only found out what the Court orders meant when the family's disability support worker explained the order to them.

All parents who had been under formal Court orders were asked what assistance they were provided by child protection workers in order to meet the conditions they had to comply with. All indicated that they had received very little support. Two parents stated that they were simply given the telephone numbers for a few parenting services. Another parent noted that their disability support worker agreed to assist in accessing the required programs. Yet another, felt that they were intentionally left without support as child protection workers viewed their situation as "hopeless".

4.2.7 The supports needed by parents

Parents were asked what supports they felt they needed in order to maintain their children at home, or to have their children returned to them. Their responses included -

"When they were younger I needed child care assistance for the two older ones."¹⁰

"Usually just someone to talk to about stuff... to call up or drop in and say, 'Hi. How are you? How are the kids?', so I can say, 'Look I've got this problem feeding [the baby]. What should I do?' then they can tell me about it all or give me a [phone] number of who can. You know, just someone to talk to 'cause its lonely sometimes too."¹¹

"I need someone to come in and help me learn parenting, not be sent off to [a distant suburb] to learn with normal [non-disabled] parents."¹²

"[I] don't really know. None of the things I've accessed have been any help. I had to undergo an assessment in home which was awful – got a clean bill but had to access these other services anyway."¹³

¹⁰ Comment by a parent with a disability consulted for the project, 2001.

¹¹ Comment by a single parent with a disability consulted for the project, 2001.

¹² Comment by a parent with an intellectual disability consulted for the project, 2001.

¹³ Comment by a parent with a disability consulted for the project, 2001.

“Services, services, services. Someone to help [with] the garden, someone the housework, someone to give me a break or take them [the children] to the footy or the movies. My illness gets bad and I need extra help too.”¹⁴

“The support that we really needed was a health nurse to come in – a health nurse... to come in – explaining to us how to put the bottles – the formula bottle up with [our child] as he’s growing.”¹⁵

Nine of the families consulted said that they had accessed some form of parenting service, either voluntarily or as the result of being ordered to do so, though not always with positive outcomes -

“[I was not] too impressed with the program. They go along with it from a non-disabled perspective. Felt like I had to educate them on the needs of a parent with a disability. The parenting guide was basically useless [to me].”¹⁶

Five of the parents who accessed parenting services believe the services were of limited benefit and provided little they did not already know. Another parent, although finding the program useful, reported that keeping up with other participants was difficult, as literature was not provided in the appropriate alternative format. Three families accessed a residential early parenting service post birth – two families found the supports from this model of service beneficial, one family maintaining contact with the service through the 24 hour telephone support service it offered after they took their baby home.

Other difficulties expressed included:

- lack of access and choice of services where parents lived in remote rural areas;
- lack of acknowledgment by parenting programs of individual parenting approaches;
- difficulties associated with developing parenting skills; and

¹⁴ Comment by a parent with a mental illness consulted for the project, 2001.

¹⁵ Comment by a parent with an intellectual disability consulted for the project, 2001.

¹⁶ Comment by a parent with a disability consulted for the project, 2001.

- accessing parenting support services when the child was already in substitute care.

None of the parents interviewed said that they had accessed a specialist parenting service for parents with disabilities.

Generally the parents indicated that they found that the available parenting programs they had accessed did not cater to parents with disabilities and, therefore, that there was little understanding of the issues and needs of parents with disabilities within these programs.

4.2.8 Parents Suggestions for Change

Parents felt that they should be provided with more information about what is happening and what various child protection processes involve, including access to 24-hour telephone advice regarding their parenting rights and needs, and the impacts of the investigation and Court processes. There was a general belief that child protection workers, solicitors working in the Children's Court, and Children's Court Magistrates, should have disability awareness training including information about the impact disabilities can have on parenting. Opinion differed on what form the training should take, but parents all felt that it was important for child protection workers, in particular, to have such training before they started working with families, as these workers were perceived to have had little practical experience.

There was strong support from parents for more transparency in the notification process, and for a clear and transparent process for complaints against child protection service workers. Parents felt they needed more access to respite or foster care to enable breaks from parental responsibilities as required, without repercussions or assumptions that they are unable to cope with their children. It was also felt that appointments with legal representatives need to meet the specific needs of parents with disabilities: to take the time to ensure that parents with disabilities comprehend what is being presented to them; so that they can adequately discuss the key issues and concerns with their legal advisor and others; and to provide adequate legal instructions and therefore maximise their chances of getting a fair hearing.

Parents argued that transport, attendant care and medication needs should all be taken into account in determining the times and duration of Children's Court hearings, and that magistrates and legal representatives need to demonstrate an understanding of the principles of disability discrimination law.

Parents indicated that they believed parenting programs need to be more flexible and willing to adapt their programs to meet the needs of a more diverse community that includes parents with disabilities and that the information provided by the programs or courses needs to be provided in alternative formats.

4.3 Chapter Conclusions

"Instead of just looking at the situation and seeing a parent with a disability and deciding they're not coping, they should be providing better support and providing information on alternative ways to parent effectively. Don't be so quick to judge. It doesn't mean that some kids don't need to be removed but it's important to find out why parents with disabilities are coping the way they are."¹⁷

Whilst the small numbers of parents with disabilities consulted results in limited conclusions being able to be drawn from the available data, a number of issues can be highlighted that are indicative of practice and procedural issues and concerns, and are more broadly informed by:

- the consistency of themes amongst the parents with disabilities consulted;
in addition to
- research and other reports indicating similar experiences here in Victoria, interstate and overseas;
as well as
- the consistency of these experiences with the contributions of other stakeholders consulted by this Project;
and
- the audit of Children's Court matters.

¹⁷ Comment by a parent with a disability consulted for the project, 2001.

Despite the fact that the parents consulted would be more likely to have had problematic contact with child protection workers, all of the parents reported negative experiences of and attitudes toward child protection authorities. As a result, and as reported in other research, many parents expressed feeling that their parenting is always being scrutinised, and fears that contact with child protection services, and in many cases also parenting, family and disability support services, will inevitably lead to their children being removed¹⁸. Many parents consulted expressed a lack of trust that these services would help and support them rather than report any parenting needs or issues as protective concerns.

There was a strong belief amongst these parents that child protection workers, solicitors, magistrates and parenting service providers have little understanding of disability and the impact parental disability may have on parenting skills and approaches. Many reported that worker and magistrate assumptions about them and their parenting were made, often based on common disability stereotypes, and that these were evident in prejudicial judgements being made about: disability types, characteristics and needs primarily over social disadvantage and other needs or issues; comprehension levels; learning abilities and needs; parenting competence; and, levels of parental risk to their children¹⁹.

Parents reported having little knowledge of their rights once child protection services are involved with them. Their experience was that generally neither child protection workers nor legal representatives adequately explained the intervention or court processes to them, and that for some parents there was a real concern that they were left totally ignorant of what is occurring.²⁰ Their experience of involvement with child protection services is that little account is taken of disability in the process or in the orders that result, nor in the conditions that they are required to meet in order to satisfy child protection concerns.

¹⁸ McConnell, D., Llewellyn, G., 'Parental Disability & the Threat of Child Removal' (1998) *Family Matters* #51 33-36, 33 (hereafter cited as *The Threat of Child Removal*); Ely, E. & Wilson, C., *Setting Up For Success: Service provision for parents who have an intellectual disability* (1997) South East Resource Action Centre, 38-39 (hereafter cited as *Setting Up For Success*).

¹⁹ *Parents With a Disability and the NSW Children's Court*, above n 2, 83.

²⁰ *Ibid*, 86. See also: Office of the Public Advocate & Wesley Central Mission, *No Easy Answers: Considering Issues and Challenges for Parents With an Intellectual Disability* (1997), 26 & 29; *Setting Up For Success*, above n 18, 39.

Parents indicated that the support services they need are either not available or are only provided by generic agencies which do not adequately meet their needs.²¹

²¹ *Parents With a Disability and the NSW Children's Court*, above n 2, 85.

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5.1 Consultation With Child Protection Workers

5.1.1 Methodology

On the basis of the information gained through parent interviews, the Children's Court audit and literature review, a series of questions were developed for child protection workers (see Appendix 5). The aim was to develop an understanding of how child protection personnel work with parents with disabilities, of their understanding of the impacts parental disability can have on parenting, of their perceptions of the impact of child protection and legal proceedings on parents with disabilities, and finally of their perceptions of the supports parents require to maintain their children at home.

With these aims in mind, an information flyer was distributed in mid 2001 to regional Department of Human Services managers throughout Victoria via the Child Protection Training and Development Unit, with the request that it be distributed to child protection workers with experience working with parents with disabilities who might be interested in participating in a focus group discussion. This was followed by a phone invitation to several team leaders to discuss the possibility of staff from their region attending. In all, nine child protection workers from two metropolitan and one rural region attended the focus group discussion. All who attended had extensive experience working with parents with disabilities within the child protection system, and several had also worked in the disability sector.

The workers who participated in the focus group work in a range of areas within the DHS Child Protection Unit, and had both long term and short term experience working directly with parents with disabilities. The comments and information presented in this section of the report represents the views of the workers who participated in the focus group discussions and not those of the Child Protection Unit of the Department of Human Services.

5.1.2 Levels of worker involvement with parents with disabilities

Workers reported that the number of parents with a disability (in particular intellectual disability and mental illness) coming into contact with the child protection system in Victoria is high and continuing to increase. They noted that in some child protection units parents with intellectual disabilities and mental illness make up between 50% and 90% of the child protection caseload. Workers reported that a precise

determination of the numbers of parents with disabilities is difficult to estimate, even where statistics are available. In part this is due to the proportion of parents with literacy and numeracy difficulties, and/or whom may have borderline, undiagnosed psychiatric and/or intellectual disabilities, which may affect their understanding of information provided by child protection workers and the Court. In addition, workers reported that some parents with acquired brain injuries become involved with the child protection system, and may require specific assistance and support services.

Workers reported that very few parents with physical and/or sensory disabilities come into contact with the child protection system. When parents with disabilities other than cognitive (intellectual disability and possibly acquired brain injury) or psychiatric disabilities come to the attention of the child protection system, it is usually because of some other perceived risk factor, such as substance abuse or domestic violence, to which parental disability is considered secondary or irrelevant.

5.1.3 Sources of notifications

Workers reported that the majority of parents with disabilities came to their attention through notification by family members, medical professionals and disability support workers.¹ However, workers also advised that “quite a number” of parents with disabilities “self reported” to child protection services, although no further information as to why this occurred was provided. It may be possible that parents with disabilities contacted child protection seeking support with their parenting and that this has been perceived or recorded as self-reporting.

5.1.4 Disability and its impact upon parenting capacity

In assessing how parental disability affects parenting skills and in making decisions about how cases would be managed, all workers indicated that both risk factors and the parent’s disability are taken into account. They noted that risk assessment includes a determination of what, if any, care the parent had access to before and immediately after the child’s birth, whether the pregnancy was planned, and the supports available during pregnancy and post-birth. Workers also indicated that they explore what supports a parent receives from a disability support service, if eligible to receive such services, and parental willingness to undergo assessment for eligibility for such support services. Workers noted that parental age is also considered a relevant factor in assessing the appropriate intervention.

Child protection workers stated that they found it impossible to generalise about how different disabilities impact upon parenting skills and the required supports – each parent and situation has to be assessed individually. The key issues to incorporate into the making of an assessment include the ages of the parents, and their life experiences in childhood, adolescence and adulthood.

Workers reported that assessments of disability and related issues are often problematic. They reported that parental illiteracy or limited literacy skills are often difficult to identify as parents often choose not to disclose these limitations. Workers noted that it can be difficult for a child protection worker to identify multiple, complex or apparently similar disabilities.

For some workers the differentiation between intellectual disability and mental illnesses presents challenges. Where intellectual disability is involved, assessment as to the level of cognitive capacity is usually essential to determine eligibility for services. Frequently, however, child protection workers encounter parents who are assessed as having a 'borderline' intellectual disability (that is, having an IQ close to but above the eligibility level of 70) meaning that access to appropriate disability services remains difficult.

Where a parent has multiple disabilities, workers identified that a critical issue can be the identification of the 'primary' disability and, in turn, what agencies are available and able to support that parent. They noted that service eligibility criteria related to disability type exclude some parents with disabilities, and consequently, restricts their access to available supports.

Overall, workers identified that assessment tools they use to identify disability and literacy levels require improvement. They noted that until workers are able to adequately identify a parent's capacity for understanding and reasoning, they are often operating "in the dark". Workers noted that when a parent is quickly assessed as having a disability child protection may have disability workers involved quickly. They stated that, ideally, a process of negotiation needs to begin straight away so that parent supports and case allocation can be prioritised.

¹ Of these, only medical practitioners are mandated to report under section 64 of the CYPA.

Workers expressed particular concerns meeting complex needs where a parent with dual or multiple disability and/or disadvantage presented.

Workers also noted the importance of parental capacity for insight into how they may be able to help themselves, and into the impact of their actions on their children. Without parental capacity for insight, some workers felt that improvement in the family's situation and parenting skills impossible without child protection intervention. This is consistent with comments by NSW Department of Community Services child protection workers as reported in the findings of similar recent research.²

Protective workers stated that they work with each parent and family individually and use a checklist to ensure that parents are aware of what is occurring. This checklist may include such matters as:

- Assessing that the parent comprehends what the worker is talking about;
- Clarifying the parent's understanding of the current situation; and
- Clarifying the parent's history.

Workers report that when assessing a parent with a disability, the "bottom line" is the potential level of risk to the child and that they react to the level of risk assessed, rather than to parental disability itself.

5.1.5 Factors that may impact on parenting skills/abilities

Child protection workers believe that parental disability is rarely the sole factor in interventions. Most parents with disabilities coming to the attention of child protection also display other risk factors such as poverty, homelessness, alcohol and/or drug use and deprived backgrounds. As noted above, workers indicated that the age of the parent at the time of the child's birth or of the child protection intervention, can also be a factor that can mean that parenting skills are limited and support needs are indicated. Similarly, a parent's background of childhood, it was noted, may require undertaking a more careful assessment of parenting capacity, and may indicate that the need for support services is more likely.

² McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court*, 2000, University of Sydney, 23.

5.1.6 Parental support and resource needs

Child protection workers identified a variety of supports as particularly relevant to parents with a disability. These included both specialist disability support services and generic parenting support services, resource needs for child protection workers when developing case plans for parents with a disability, and the resource needs for parents themselves.

The child protection workers participating in the focus group identified that much of their work is based on forming a relationship with the parents and families they are working with. Workers perceived that the relationship between child protection workers and parents with disabilities is more important than for non-disabled parents as often parents with disabilities are without other social supports. Workers stated that this type of relationship requires time that they do not necessarily have. Further, workers indicated that they sometimes find it difficult to allocate the time required to support some families requiring more intensive support. In the context of the often large case load most workers carry, they reported being faced with constantly competing priorities, and that consequently, some families may not get the intensive support that might enable them to maintain the family unit.

5.1.7 Specialist disability support services

Workers reported that specialist disability support services can be reluctant to work with a parent with dual or multiple disabilities. Hence, workers noted that if a parent is perceived to have a primary disability best met by another specialist service, it can be difficult to find a disability service willing to work with the parent. Workers noted that assessments to identify appropriate services can take weeks or months, during which time the child's future care arrangements are "in limbo", and the child may be outside of the family home and parental care, awaiting a cohesive plan. Protective workers stated that children can spend longer than they should in out-of-home placements while parental supports are being organised, and that this may result in the children expressing the preference to remain in care because of the often greater resources and support they receive, and the perception of a safer environment than was provided to them by their parents.

In these consultations, child protection workers indicated that their experience is that specialist support services for parents with personality disorders simply are not available, and hence negotiating supports for these parents is virtually impossible.

The decision to provide additional support is often dependent on the time available for the assessment and development of a support plan for the family. Workers identified that it is important to draw upon specialist expertise so as to identify the best way to work effectively with the particular parent, and to be clear as to who will work with the parent to address the particular risk concerns and parenting issues.

Workers noted they are familiar with and often utilised the *DHS Protocol Between Intellectual Disability Services and Protective Services* (hereafter referred to as the *DHS Protocol*) but hadn't referred to it for some time as they had become familiar with it and implemented the steps automatically. They identified that once workers had an understanding of the protocol's emphasis on working more collaboratively with Disability Services, the implementation of the various procedures occurred automatically. They noted that the implementation of the protocol includes such steps as making intake phone calls, consultation meetings and conferences.

5.1.8 Generic support services

Child protection workers advised that they assist parents with disabilities to access a wide range of services in order to enhance parenting skills. Many services utilised by child protection workers for parents with disabilities are generic services. Workers generally prefer to use community sector agencies and programs, although sometimes a private provider (on a 'user pays' basis) may be used despite funding/payment dilemmas.

The services used by child protection workers include varied parenting programs, maternal and child health support services, and residential early parenting services followed by intensive in-home supports. Workers identified that a strength of residential early parenting programs followed by intensive in-home support, is that they allow assessments to be conducted to identify strengths and weaknesses in parental capacity, and consequently the development of appropriate strategies to reduce the risk of removing the child. A problem with this type of service is the limitation in the eligible age ranges of the children – some agencies will assist families with children up to 3 years of age but not those with older children. Another problem is the level of knowledge and awareness of parental disability among the agency staff who conduct parental assessments.

Workers indicated that there is an ever-present tension between Protective Services, with their mandatory legislated involvement with families whose children are at risk³, and other support agencies who may have strict guidelines or criteria that parental involvement with their services must be voluntary. Workers noted that where parents with disabilities do not want to become involved with specialist disability support services, for whatever reason or because these services are unavailable, then they link parents into generic services which, they noted, generally do not have specialist knowledge of disability. In addition workers noted that generic parenting support services provide short-term programs, yet parents with a disability may require longer-term, intensive supports. The availability of such longer-term, intensive supports was reported by workers as a critical factor in whether parents with disabilities are able to maintain their children at home.

5.1.9 Access to services and programs across regions

Child protection workers reported an inconsistency across the State in the programs and services, both child protection focussed and generic, available in each region and, in turn, the accessibility of services to support a parent with a disability to maintain their children at home. Workers concluded that this inconsistency and the geographical boundaries of services can, in some cases, mean the difference between keeping the family together or removing the children from the home. Although child protection workers indicated that they develop excellent knowledge of the available local parenting support services because of their commitment to link parents to the best available option, they also suggested that access to a regularly updated resource data base maintained between child protection and disability support services would be of great assistance.

5.1.10 Department of Human Services Child Protection Programs

Workers also reported that there are particular programs offered by the Department of Human Services aimed to reduce the likelihood of harm for certain groups of children and families. Workers mentioned the Department's *High Risk Infants Program* which starts working with the expectant parents and other agencies before the birth of the child, taking a more preventative approach (rather than a crisis-driven one) where it is assessed that the child and family will be at risk of notification after the birth.

³ CYPA, ss 64, 64(1A).

Child protection workers noted that an example of an important initiative is the new DHS Northern Metropolitan Region program that targets parents with intellectual disabilities and parents with mental health issues. The program involves a collaborative approach between child protection, disability services and mental health services to support families where there is parental disability in order to reduce the impact of and need for child protection intervention.

5.1.11 Child protection processes and parents with disabilities

Child protection workers participating in the consultations stated that the child protection mission statement is based around a client centred, family focused approach to working with families and that it is very much pro-parent. Workers described their mandated role as including advising parents of issues relevant to the welfare of their child, including risk assessments undertaken, the ongoing needs identified, goals that are set for the family, and reasons for decisions made by Protective Services. Workers noted that the child protection intervention and case management process is highly structured and workers have specific tasks and actions they must carry out when working with a family. Workers indicated that if a parental disability is identified at any stage during child protection involvement, attempts are made to put the appropriate disability supports in place for the parent. Further, workers indicated that they viewed these supports as important in ensuring that the parent understands the nature of the child protection involvement.

Child protection workers noted that the exact steps undertaken when first making contact with parents depends on the parental disability and the individual worker's capacity to assess whether the parent has a disability. As an example workers noted that a sign interpreter would be organised if the parent had a hearing impairment. Workers felt that support networks familiar to the parent/family might be able to explain what is taking place in a way that ensures that the parent is better able to understand what is occurring.

Child protection workers identified that the ability to provide appropriate disability related support at the time of first contact with the family is based on whether workers responding to the notification are aware that the parent has a disability. They noted that often when the family has had no previous contact with child protection, workers are likely to be unaware of parental disability unless the party making the notification

has provided such information. Workers reported that when this information is not available, parents are unlikely to be provided with any additional support.

The child protection workers interviewed identified that prior knowledge of parental disability can lead to assumptions being made about the parent's current disability related support needs when responding to a new notification. They noted, for example, that if workers were aware that the parent had a mental health issue they may organise mental health support services to attend the family home when they responded to the notification, regardless of whether or not there is any indication that the parent may require the intervention of these services at that time. Workers noted that in some cases there is a risk that planned responses may be based on inaccurate assumptions that the parent is experiencing a specific disability related crisis and therefore requires a particular disability support service.

5.1.12 Particular resource needs for parents

Child protection workers note that when giving information to parents, the steps undertaken to ensure that brochures (such as the Child Protection *'Information for Parents'* handouts) are able to be read and understood, varies greatly. This range includes instances where a worker may decide not to provide the Department's *'Information for Parents'* sheets because the parent is unable to read them, to instances where a worker may engage the services of an advocate from the Office of the Public Advocate or a disability support worker to advise the best way to present the information to ensure parents are able to understand it. Further, workers noted that where parents cannot read, they may employ alternative methods to inform parents about the proceedings, including oral explanations, although this can be repetitive – workers sometimes finding they need to go over the same information with every visit or phone call. Workers noted that information for parents is available in multiple languages in print format, but that there are no alternative formats routinely produced for use by parents with disabilities. Workers noted the prohibitive cost of transcribing information results in some parents with a disability not receiving information in a format that they can access.

Child protection workers reported a “vacuum” in relation to the development and production of appropriate resources for parents with cognitive disabilities to better understand the processes and legal issues involved in child protection matters. In response to this lack of alternative format resources, one worker involved in the

consultations had personally produced a laminated outline detailing the history of a particular parent's involvement with child protection to assist the parent to gain some understanding of what had occurred. However, workers noted that producing these resources is time-consuming and involves specialist skills. Workers noted that this raises the question of who is responsible for producing such resources and whether their development and distribution should be undertaken by child protection or disability support services.

Workers participating in the consultations identified a lack of availability of, and access to, the resources parents require in order to meet the conditions in orders issued by the Children's Court. Workers identified that it can be difficult to meet the needs of parents and to get agencies to work longer-term with families. Further, workers noted that it is also difficult to find services with staff who have expertise and knowledge on the needs of parents with disabilities. The limited funding available for parents with disabilities to access longer-term programs and supports to enable them to continue to care for their children is a major concern of the workers consulted. They noted that where ongoing parental support is necessary, the cost of contracting longer-term support services can be prohibitive. Workers reported that in some cases, parents with financial resources can get access to necessary family support services quickly, but without financial resources parents may be on waiting lists for lengthy periods of time, and consequently, child protection intervention becomes more likely. It is important to note that a significant proportion of parents with disabilities are receiving low incomes and have little scope to increase their incomes in the short term, and so have little or no capacity to purchase the services they require.

Child protection workers noted that an important issue arises where parents have multiple disabilities and areas of support need. As noted earlier, many of these parents receive little or no support at all. Workers reported that for some others, however, these differing areas of need may each result in the allocation of a support worker. Whilst workers noted that the involvement of all support workers in the case planning process is vital, they also recognised that this can be overwhelming for parents who may also feel they have little say in or control of the process. Workers felt that decisions as to who participates in case planning processes, and how, need to take account of parental disability and levels of comprehension.

In addition, workers expressed that a lack of clarity exists as to which area of DHS holds responsibility for the provision of financial resources to fund specific programs for parents with disabilities. Whether this provision should rest with child protection services or disability services was unclear and a contentious point amongst those workers consulted.

5.1.13 Advocacy needs generally

Child protection workers reported that locating advocates for parents involved in child protection proceedings is often very difficult: often the only advocacy support available to a parent is through the child protection worker. This raises the issue of conflict of interest on the part of these workers given the statutory obligations upon child protection workers.

Workers report that the preference is always to locate a more objective advocate to support the parent with a disability. They noted that some advocacy services are reluctant to be involved with parents with disabilities who are involved in child protection matters, and even the advocates from the Office of the Public Advocate are not always available and/or willing to become involved in such matters. To adequately advise parents, workers noted however, that advocacy agencies need to have detailed and accurate knowledge of child protection processes, outcomes, and roles within the pre and post Court system. Workers noted that where permanent care orders have been made following child protection proceedings, advocates need to be aware of the potentially disruptive effects that continually appealing matters in an attempt to reverse a care order can have on continuing family relationships.

The child protection workers consulted stated that an effective advocacy service is necessary for parents with disabilities who are involved with the child protection system. This would include access to advocates who are able to work consistently with the parent with a disability so that trust between parent and advocate can be established.

5.1.14 Legal representation and the Children's Court

Workers reported that the Children's Court environment and processes can be overwhelming and stressful to everyone, and are usually unfamiliar to parents with a disability. They further noted that within the Court complex such parents may perceive other families as aggressive or intimidating, and may find the physical layout

of the Court confusing. Workers reported this experience leaving the parent with a disability stressed and subsequently this affecting their presentation in Court⁴.

Under the CYP A every parent has the right to be legally represented unless, after being informed of this, the parent refuses representation. When a parent with an intellectual disability is scheduled for a hearing before the Children's Court, child protection workers reported making contact with Victoria Legal Aid to organise a solicitor, where the parent had no other supports to assist with this. Workers noted they generally request a solicitor with experience in working with parents with intellectual disabilities, although there are few practitioners with this experience. Where representation has not been able to be arranged beforehand, workers noted that the Children's Court staff and Legal Aid Coordinator would try to provide parents with a solicitor at the Court.

Workers reported that a tension arises between the child protection worker's representative role and the legal representative's role at the Court. Workers noted that the lawyer may not want child protection workers to speak to their client (the parent) nor to explain the processes that will take place. Child protection workers in this consultation indicated that they found this attitude strange as often the worker will have personally collected the parents from their home and driven them to the Court as parents may have no other way of attending. The workers reported that the unfamiliar Court environment may mean that the parent maintains close contact with them due to familiarity with them and fear of what is going on. The workers felt that if the parent is then informed that they should not speak to the child protection worker, the parent can become very confused. They noted that parents may have never even spoken to a solicitor before and so may not know how to provide instructions, or might not even understand the role of the legal representative. In addition, child protection workers felt that legal representatives do not adequately explain to the parents what is or has taken place in Court proceedings, and that negotiations about the future of the children take place between the various legal representatives in the absence of either of the parties – workers noted with irony that often they were left with the task of explaining and clarifying the process and issues with the parent⁵. The family may not receive the report to be submitted to the Court until the day of the

⁴ Recent research in NSW has reported similar findings. See: *Parents With a Disability and the NSW Children's Court*, above n 2, 54.

⁵ *Ibid*, 55.

hearing and therefore have no time to have the content and meaning of the report explained to them, whilst the meanings of some of the terms used in reports and in the hearing itself (such as the concept of “likelihood of harm”) may be difficult for some parents with disabilities to comprehend.

Child protection workers noted that magistrates also urge parents to have legal representation in matters before the Court. They perceived this to be critical in order for parents to understand what is occurring. While parents have the right to represent themselves, child protection workers perceive this as problematic because parents are usually not familiar with court procedures and language, and may be unable to give informed consent to any orders that may be suggested to them. Child protection workers participating in the consultations felt that some magistrates and legal representatives have limited understanding of how disability may impact on parenting skills, and so look to apply the same standards and processes that would be appropriate to parents without a disability.

Child protection workers in this consultation advised that they do attempt to ensure parents with disabilities clearly understand the implications of agreement to any consent orders. Workers reported that this usually involves asking parents to explain what the order means to the worker, before the signed consent is taken. They noted that if the parent is unable to adequately explain the implications of the order to the worker, a signature is not sought. Child protection workers expressed concern about how informed consent is sometimes handled by legal representatives. They indicated that often several hours of work by the child protection worker to ensure that parents understand what they may be consenting to, is reduced to a few comments by the legal representative after which parents are asked whether or not they agree. Because of this and as a result of the intimidation parents with disabilities feel when in the Court environment, child protection workers indicated that they believed many Court orders are accepted by parents without evidence that these parents indeed understand the orders. Workers commented that some parents may believe that if they agree to orders and conditions they will be able to leave the Court environment sooner.

The conditions in Court orders for child protection matters are now standard. Workers stated that the process for filing applications for orders is to tick boxes for standard conditions. Child protection workers indicated that the process changed as a result of

concerns expressed by magistrates about the number and breadth of conditions being included in applications for orders. As a result of this decision, workers stated that some files may have up to twenty notations linked to conditions in Court orders. Other workers stated that, in some courts around the state, they were only able to use standard conditions and were unable to include notations.

In summary, workers report that the whole process of the Children's Court is very formal and legalistic. They noted that Hearings can be as brief as a few minutes and workers indicated parents with disabilities may find it difficult to comprehend what has taken place⁶ - they may have understood nothing more from the hearing than that their family name was mentioned. Workers noted the vast difference between the formality of the Children's Court and the less formal processes of the Victorian Guardianship List⁷. These less formal proceedings were suggested as a possible alternative for parents with disabilities.

5.1.15 Child protection training needs

Child protection workers also reported that they receive only a small component of training on working with children with disabilities, and no training on working with parents with disabilities, during their induction. Workers stated that training on working with parents with a disability needs to be specialised and offered separately to induction, and on an on-going basis. Workers stressed that magistrates and legal representatives also need to be provided with training on disabilities and how particular disabilities may impact upon parenting skills.

5.1.16 Conclusions

Child protection workers identified that the numbers of parents with disabilities, particularly parents with intellectual disabilities and/or mental illnesses, coming into contact with the child protection system is high and increasing. Workers identified that their skills and the time and resources available to them to support parents with disabilities specific child protection needs are inadequate. They also noted that specific disability-related training and the assessment tools they use to assess risk of harm to the child, need further development and improvement in order that workers can adequately assess and support parents' with disabilities specific needs. They

⁶ This was one of the most common concerns reported by child protection workers in a recent NSW study, see: *Parents With a Disability and the NSW Children's Court*, above n 2, 55.

⁷ The Guardianship and Administration List of the Victorian Civil and Administrative Tribunal.

noted that such training would also benefit legal representatives and magistrates as well as generic family support service agencies.

Child protection workers also indicated that many support services needed by parents to care for their children are not available, or are restricted by limited eligibility criteria, or are generalist in nature and cannot always meet parents with disabilities specific parenting needs. They also identified a lack of resources to provide services that meet longer-term support needs of some parents with disabilities. Workers also identified a lack of access to advocacy services (particularly advocacy services with an understanding of the child protection system) as problematic throughout all child protection processes, from investigation to hearings.

Geographic location, dual or multiple disabilities and or disadvantage, alcohol and/or drug use, homelessness or frequent moves, poverty and access to financial resources, the parents family background, age, and treatment and care history were all noted by workers as impacting upon the outcomes of child protection intervention for some families where one or both parents have a disability. The relationship developed between child protection workers and parents with disabilities and other workers, the level of support required by the parent, and the parent's insight into their own and children's needs and situation, were all stated by workers as crucial factors in improving the parent's likelihood of retaining care of their children.

Child protection workers also identified that the Children's Court environment and processes were very intimidating and confusing for all parents, and particularly so for many parents with disabilities. They also identified that there are few legal representatives with the specific skills and experience to adequately assist parents and that parents often accepted orders while having difficulties comprehending them or the legal process generally.

5.2 Consultation with Legal Practitioners

5.2.1 Methodology

A consultation was conducted with legal practitioners from Victoria Legal Aid Children's Court section regarding their experiences of working with parents with disabilities in child protection matters. The aim was to develop an understanding of how legal representatives work with parents with disabilities, of their perceptions of the impact of child protection and legal proceedings on parents with disabilities, and finally of their perceptions of the supports parents require to maintain their children at home. The views presented in this section of the Report represent the views of those practitioners who participated in the consultation process and not necessarily those of Victoria Legal Aid.

5.2.2 Parents with disabilities subject to child protection proceedings

The participating legal practitioners noted that parents with intellectual disabilities and mental health concerns appear before the Children's Court at a significantly higher rate than parents with physical or sensory disabilities. As with the views of Child protection workers (see above), legal practitioners noted that some parents before the Children's Court also have dual or multiple disabilities, but few had appeared for parents with physical disabilities alone.

The Legal Aid personnel consulted stated that assessments of parents with disabilities' parenting capacity presented to the Children's Court indicated that for some parents it is difficult to effectively parent without supports in place. They identified that children with a disability, who also had a parent with an intellectual disability, are harder to place in long term or permanent care. Conversely, they reported that non-disabled children of parents with an intellectual disability are more likely to be placed in permanent out-of-home care.

5.2.3 Perceptions of child protection services

Legal practitioners reported that the focus of the DHS tends to be exclusively on the child, even when the parent is also a client of the Department (for example, where the parent is also a client of Disability Services Branch). They noted that child protection processes tend to focus on parental failures rather than their successes, and legal options can be utilised as the apparently easiest solution for situations where child protection consider removal of the child is the only option. They added

that great emphasis appears to be given by DHS to the cost implications of proposed orders rather than, as the first consideration, the appropriateness of those orders. Practitioners expressed concern that this can lead to a failure to focus on the supports that are necessary to enable parents with disabilities to maintain the family unit.

Legal practitioners noted that the child protection system can be influenced by sensationalised media attention, and this can contribute to child protection workers feeling pressured to respond with legal interventions rather than other support options outside the legal system.

Legal practitioners raised concerns regarding the adequacy of training for child protection workers regarding the legal aid system.

5.2.4 The resource needs of parents with a disability

Legal practitioners suggested that greater access to childcare can provide relief to parents and also assist in the development of the child, but that this option is seen as too costly for DHS to finance.

They suggested that the introduction and development of parenting plans similar to General Service Plans (as required in Victoria under the *Intellectually Disabled Person's Services Act (Vic) 1986* for any person receiving services under the Act) may be beneficial to assist parents with intellectual disabilities to manage their parenting with their children at different developmental stages. Such plans, they said, should bear the same weight as General Service Plans and address some of the problems that arise from what practitioners described as the more ad hoc arrangements child protection workers currently organise with parents.

Victoria Legal Aid workers involved in the consultations noted that parents with intellectual disabilities require an independent source of support, particularly where court action is envisaged. Legal Aid staff indicated that at times some Disability Services workers may have difficulty separating their roles as support workers for parents, and their status as employees of the Department of Human Services. Practitioners suggested that the existing Independent Third Person (ITP) model, administered by the Office of the Public Advocate, as used in the criminal justice system to assist people with disabilities, may be an appropriate approach to

providing supports for parents with a disability subject to child protection intervention. However, some legal practitioners expressed concerns regarding how this program is currently being utilised, including the possibility that the ITP volunteer contacted by police may not always be independent. In addition, practitioners felt that some families may not wish to have a volunteer advocate from their local area involved in discreet family matters such as child protection hearings. Some individual legal practitioners indicated that a 'best interest' volunteer might be a more appropriate model for parents with disabilities and that such a program would not only assist the parent to understand the situation but also provide referral and advice of options available to the person and their implications.

5.2.5 The Children's Court

Victoria Legal Aid practitioners appearing in the Children's Court indicated that they assist parents with disabilities who are not eligible for Legal Aid funded solicitors but who require representation at meetings prior to Court hearings in order to be better informed of the processes they are about to go through, and to receive advice on any matters or conditions they are agreeing to or contesting. Solicitors also indicated that they viewed signed parental consent to child protection applications for Court orders as often "fait accompli" by the time parents sought legal advice or came to the Court. Practitioners reported that parents with an intellectual disability usually do not know what they are signing and the implications of what they are agreeing to.

The legal practitioners consulted generally felt that some magistrates do not always have a good understanding of intellectual disability and the impact this may have on parenting skills. They also felt that some magistrates may assume that workers within the Department of Human Services (both Child Protection and Disability Services Branches) have a greater knowledge than do others about the issues for parents with intellectual disabilities, although the experience of legal practitioners is that this belief is not always accurate.

Within the hearing process, legal practitioners noted an apparent growth in the use of psychological assessments that predict "potential risk" presented by parents with disabilities, and that magistrates increasingly appear to accept these reports as 'scientifically' sound. Many of these assessments are produced by a small number of professionals contracted by Child Protection Services, raising concerns for legal practitioners about the independence of their assessments.

Practitioners also noted that a person's history of institutionalisation, involvement with Child Protection Services when they were young, and use of disability support services, are used in a negative manner in reports produced for the Court. That is, as evidence of inability to cope rather than as an explanation of the parents' difficulties, barriers to successful parenting, or as indicators of their attempts to manage better.

Legal practitioners noted that parents with mental health difficulties or intellectual disabilities are generally more likely to have their children placed in long-term care, than are other parents involved with the child protection system. They felt that the three month Interim Order frequently granted to child protection services is often utilised as a period of trial placement for children, rather than as an opportunity to identify and put into place the services and supports to allow the children to remain in or return to the home.

5.2.6 Perceptions of parents with disabilities

Legal Practitioners stated that the majority of parents with intellectual disabilities they have encountered in the Children's Court have the capacity to learn parenting skills and to raise their children. They said parents with mental illness may go through periods of time when they are less stable or focused, and so may require access to more flexible services and support systems to counter the impact of these periods of illness.

Practitioners felt that parents with disabilities bear the impact of inadequate community resources to aid them in parenting, and suffer from staffing changes in agencies resulting in a loss of knowledge and experience relating to disability.

⁸Practitioners noted that parents often feel a sense of betrayal where it is their disability support worker or mental health case worker who actually makes the child protection notification.

Practitioners indicated that even when parents with disabilities have not become involved with the child protection system, they may have a fear of child protection workers. From their knowledge of the role of Child Protection Services and the fear that their children will be removed, legal practitioners stated that some parents with

⁸ This concern is reflected in other research. See: *Parents With a Disability and the NSW Children's Court*, above n 2, 25.

disabilities may not seek out the support services that could assist them in their parenting role.

Legal practitioners also reported that parents with intellectual disabilities are often unaware of their rights, especially their rights as parents within the child protection system, and are likely to have little or no understanding of the legal processes involved. Practitioners identified a strong link between Child Protection Services and Disability Services but with the former seen as the more powerful partner in the relationship. Practitioners stated that some parents, however, may be unaware that both Disability Services and Child Protection Services are both areas within the one Department of Human Services.

5.2.8 Conclusions

As with child protection workers, Victoria Legal Aid practitioners from the Children's Court section identified that parents with intellectual disabilities and mental illness are over-represented in child protection proceedings and that parents with physical and sensory disabilities appeared before the Court at significantly lower rates.

Legal practitioners indicated that child protection tend to focus on parental failures rather than successes and that despite this, with appropriate supports in place, many parents with disabilities subject to child protection proceedings can raise their children adequately themselves.

They also identified an apparent increase in reliance by magistrates on expert assessments of potential risk and question their 'independence' given that Child Protection Services pay for these reports⁹. They added that magistrates appeared to assume child protection and disability support workers had knowledge of different disabilities and how they may impact on parenting capacity. Legal practitioners viewed this as a sometimes erroneous assumption.

Legal practitioners involved in the consultations indicated that their involvement begins sometimes 'after the fact', that is, when parents with disabilities had already agreed to consent orders prior to receiving legal advice. They stated that some parents with disabilities who had agreed to consent orders had done so without a full

⁹ Ibid, 55.

understanding of what they were agreeing to and consequently parental consent was not fully informed¹⁰.

Legal practitioners consulted expressed similar concerns to child protection workers about the lack of appropriate advocacy services available to parents with disabilities involved in child protection proceedings and suggested a program similar to that of the ITP¹¹. They also highlighted the lack of access for parents with disabilities to both specialist disability support services and generic support services to enable them to maintain the care of their children, and the consideration of cost before appropriateness of providing particular parenting support services over the longer-term.

¹⁰ Ibid.

¹¹ This has been suggested before in Victoria by the Office of the Public Advocate and others, and is currently under investigation by the DHS. See: Office of the Public Advocate & Wesley Central Mission, *No Easy Answers: Considering Issues and Challenges for Parents With an Intellectual Disability* (1997), 29.

5.3 Parenting Support Services

5.3.1 Methodology

As part of the Disability Parenting and the Law Project it was decided to find out what, if any, generic parenting support services provided assistance to parents with disabilities in Victoria. A questionnaire was developed covering such areas as:

- types of services provided;
- costs involved;
- restrictions on service users;
- whether the agency worked with parents involved with the child protection system;
- what experience the agency had of working with parents with disabilities;
- whether the agency had or was willing to adapt its programs for parents with disabilities;
- perceptions of the support needs for parents with disabilities; and
- the supports and resources the agency believed were required in order to provide effective support services to parents with disabilities.

A further aim of distributing the questionnaire was to raise awareness among existing agencies of the need for services to be adapted to meet the needs of parents with disabilities. The covering letter to participating agencies provided an explanation of the Disability, Parenting and the Law Project and a definition of disability as defined in Section 4 of the DDA.

The agencies were located through a search of a community services database and through agencies across Victoria in each Department of Human Services region. All agencies identified through this search that indicated they provided parenting programs, counselling for parents, and self-help and support groups were contacted by letter with a request to complete the questionnaire. Maternal and Child Health Services that provided Enhanced In-Home Support Services were also contacted in the same way. Generalist Maternal and Child Health agencies and programs/services that targeted children with disabilities, rather than their parents, were excluded from the survey as this Project was explicitly directed towards parents with a disability. It was not possible with the resources available to survey all family services providers who may potentially provide a service to parents with disabilities.

5.3.2 The responses from agencies

A total of 354 questionnaires were distributed to agencies around Victoria, 122 by fax and 232 via electronic mail where this was available. Of these, 37 agencies completed and returned the questionnaires. Further questionnaires were received after a decision was made to individually approach agencies known to provide supports to parents with disabilities.

5.3.3 Services for parents with child protection involvement

Of the 37 agencies responding, 33 indicated that they provide services to parents involved with or likely to become involved with child protection services. Two of the responding agencies do not provide services to parents who have child protection intervention in their family.

One service indicated that it works solely with parents referred through Child Protection Services; and a disability specific agency indicated that it receives a number of referrals from child protection, generally following the investigation stage.

Some services indicated that when their agency provides services to parents with disabilities involved with and/or referred by Child Protection, they expect that Child Protection provide the case management support needed to assist the family.

5.3.4 Supports provided

The agencies responding to the questionnaire provide a diverse range of parenting programs and services to parents. They include counselling services, self help groups, support groups, parenting courses, day stay and residential early parenting programs, in-home support services, '1st Time' parents groups, parenting playgroups, and respite services.

The frequency of programs and services varies considerably from agency to agency, with some agencies conducting multiple programs while others offer one program each year or school term. Costs to access services also varied from agency to agency. Many agencies indicated that their costs were nil or minimal, while others charged a fee per program or session.

Some of the agencies that responded to the questionnaire target specific age groups in relation to children eg. 0 – 3, 2 – 12, or primary school aged children. Other services specifically targeted particular groups of parents, eg. young pregnant or parenting mothers under the age of 25. Several agencies indicated that they receive funding to provide parenting support programs to parents of children with disabilities but not to provide programs for parents with disabilities.

The types and programs reported as provided by agencies varies greatly. Seven agencies reported providing in home support services to parents including: family counselling, financial counselling/budgeting, family communication, household management and daily routines, coping skills and assistance with parenting difficulties.

Other specific supports the responding agencies provide include programs that: reduce social isolation; allow the opportunity to share experiences of childbirth and child rearing; offer foster and respite care; increase confidence in parenting; provide skills and knowledge in creating safe environments for children; develop strategies in handling children's behaviour; improve relationships between parents and children; provide assessment of parenting skills and needs; and assist parents to develop an awareness of child developmental stages.

5.3.5 Disability specific support services

Two agencies specifically target parents with disabilities, one focussing on parents with intellectual disabilities and one for parents with mental health issues. Both provide services and supports to parents involved with the child protection system.

Some responding agencies that target people with disabilities who may also be parents, do not specifically target their support to the parenting needs of parents with a disability. Rather, the support is based upon the other needs of the parent, such as access to childcare or playgroups, general support groups and social groups. These agencies stated that if the family requires support for parenting issues an appropriate referral elsewhere is made to meet this need.

5.3.6 Provision of services to parents with disabilities

The majority of agencies responding to the questionnaire indicated that they are willing to adapt their services to meet the needs of parents with a range of

disabilities. Many, in fact, reported already doing so on an ad hoc basis as parents with disabilities come into contact with their programs.

Two agencies expressed concern that adapting their services to meet the specific needs of parents with disabilities excludes “mainstream” parents and that they lack the resources to adapt their services.

Many agencies indicated that they provide services to parents with a wide range of disabilities. Most agencies indicated that they worked with parents with intellectual, physical and sensory disabilities, and mental illnesses. As already indicated, some agencies work with specific disability groups while others are generic agencies whose programs are accessed by parents with a range of disabilities. A number of agencies also reported providing services to parents with other disabilities as defined by the DDA, Section 4. This includes illnesses such as asthma, diabetes, HIV/AIDS, and Hepatitis.

As with child protection workers, parenting support services indicated that parents with learning disorders such as dyslexia, literacy and numeracy issues, also access their services.

5.3.7 Restrictions to services available to parents

Some agencies indicated that a range of factors may limit or restrict a potential client’s access to the services, programs and supports they provide, some relating to parenting generally and others relating specifically to disability. The general issues indicated that may exclude parents from accessing programs (in some cases necessary to address child protection concerns) include: current use of drugs and/or alcohol; specified target age ranges; ‘maintaining safety within the service environment’; people who are known sexual offenders; specified geographical boundaries; voluntary service users only; and, [displaying] ‘parental willingness to participate and to learn new skills’.

Some agencies stated that they are unable to work with families where the child/ren is not in the parents’ care or where the parents do not have regular access visits. In addition, one agency indicated that if the parent had a mental illness they cannot be in an “acute stage or crisis point of illness” in order to access the services available.

5.3.8 Perceived needs of parents with a diverse range of disabilities

Agencies reported that parents with different disabilities generally require different supports to non-disabled parents accessing their services. Fifteen responses from staff providing services in parenting support agencies reported that parents with disabilities 'may require additional monitoring and more visits or contact with agencies', 'that more intensive support with these parents may be required', and 'that clear plans, networks and back up supports may need to be in place'.

Agencies identified that a range of learning strategies are required, particularly relating to parental literacy. The strategies and tools identified included graphics or other visual prompts, use of Compics (a visual language based on computer pictographs), bold letters, clear concise language, and 'rechecking that information provided is understood'.

Many agencies report that parenting needs are best assessed individually and programs should be tailored to meet individual needs. Staff in parenting support programs reported that services are better delivered in-home to reduce the risk of parents with disabilities having difficulty transferring the skills from one setting to the other. Further, some agencies noted that, in order to maintain the family unit at home, a higher level of support is required by some parents with disabilities and that this support may need to be ongoing with a gradual reduction in intensity over a long period.

Some services noted that parents with physical may require specialised assistance and equipment to support their parenting.

5.3.9 Barriers to delivering support to parents with disabilities

Parenting support services identified some barriers encountered in delivering effective support services to parents with disabilities. These include:

- Lack of appropriate assessment tools to understand the degree of literacy a parent may have, and what resources need to be developed as a result.
- Insufficient staffing levels and funding to meet the needs of parents with disabilities who may require more intensive longer-term support.
- A lack of available specialist training to enable staff to better understand and meet the needs of parents with intellectual disabilities and mental health issues,

in particular. Some agency staff identified that they found it easier to meet the needs of parents with physical and sensory disabilities.

- Finding resources in alternative formats that parents with disabilities are able to access.
- The size of the catchment area for some agencies is very large and this can make access to the program difficult.
- Waiting lists for families wanting to access programs or being referred to programs by child protection services may result in parents having to wait long periods of time before receiving support.

5.3.10 Providing effective services to parents with disabilities

Parenting support agencies identified a range of resources they require in order to provide effective services to parents with disabilities to assist in reducing the risk of child protection intervention or removal of children from the family unit. These include:

- One of the primary needs agencies identified was the need for sufficient funding to provide appropriate staffing levels, resourcing, services and programs provided over the long-term, in order to meet the specific needs of parents with disabilities.
- Brokerage funds from the Department of Human Services to purchase occasional crisis support services for parents with disabilities.
- Training and professional development to raise awareness amongst agency staff in order that they better understand the specific needs of parents with different disabilities.
- Better access to disability support workers and advocates in order to provide more comprehensive services, including professional support from specialist services.
- Access to resources in various formats, ie. Compics, graphics, audio visual, modified language materials, sign interpreters and TTY machines, so as to enable parents with disabilities to receive the same information, and therefore have access to the same services, as non-disabled parents.
- Participation in case planning for parents with disabilities already involved with child protection.
- Adequate geographic distribution of services provided in each region.

5.3.11 Conclusions

Generic parenting support agencies, in whatever format they provide their services, are catering to or receiving regular requests to cater to the needs of parents with disabilities, many of whom are involved with the child protection system.

The agencies surveyed generally reported lacking the financial and human resources to provide effective, long-term support to parents with disabilities which may assist parents to maintain their children at home and to reduce the impact of child protection intervention.¹² Generic agencies are attempting to cater for the needs of parents with disabilities within their existing program and service formats, and without access to the alternative format resources required to do this work more effectively.

Agencies reported the need for more collaboration between child protection services, disability support services and agencies providing parenting programs/support, so as to best meet the needs of the parent. Agencies also reported that alternative methods of delivering services to parents with disabilities needs to be considered – for example, provision of services in-home so the parent does not lose skills between classroom and home, and is able to transfer newly acquired skills.

¹² Llewellyn, G., McConnell, D. & Bye, R., *Parents with Intellectual Disability: Support and services required by parents with intellectual disability* (1995) University of Sydney, 47.

5.4 Chapter Conclusions

Child protection workers considered that parents with disabilities, particularly intellectual disabilities and mental illnesses, are over-represented in the child protection system in comparison with non-disabled parents. Legal representatives shared similar views. However, child protection workers stated that for most parents and particularly parents with physical and/or sensory disabilities, the parental disability is usually considered a secondary factor in the cause for notification and child protection services involvement. Other factors noted included drug and/or alcohol use, dual or multiple disability and/or disadvantage, poverty, frequent moving or homelessness, geographic isolation, the parents' family background, age, and treatment and care history.

It is clear that child protection workers and legal representatives both share concerns about the over-representation of parents with disabilities in child protection proceedings, the impact of child protection intervention upon parents with a disability, and about the capacity of the child protection and family support systems to adequately support such parents.

Child protection workers and legal representatives highlighted the limited resources, skills and time they have to provide adequate support to parents with disabilities. They highlighted development of appropriate disability-related training and the improvement of assessment tools as areas of need.

Child protection workers and services report a lack of consistency across Victoria in the services and specialist support programs that are available to assist parents with disabilities or whose criteria exclude certain groups of people with disabilities. These services were seen as necessary for parents with disabilities to prevent child protection intervention – or further intervention – or to regain the care of their children.

Child protection workers and legal practitioners identify that parents with disabilities require access to independent support and advocacy when involved with the child protection system and that these services are generally not currently available.

All groups consulted reported that information and resources are not available in alternative formats applicable to parents with disabilities, many already largely dependent on others to explain what is available to them. Both child protection workers and legal representatives report that parents are often unaware of their rights and have little or no understanding of the child protection system. Both groups also expressed concern that parents with disabilities can agree to consent orders before receiving legal advice and without a real understanding of what they are agreeing to. However, legal practitioners involved in this research believe a 'best interest' model of advocacy would be preferable to the existing ITP model currently in place with the Victoria Police for criminal and other matters.

Generally parents with disabilities have had little or no contact with the legal system, the process and language of which can be very difficult for parents to understand and negotiate. There is a perception from varying perspectives that child protection workers, staff in support agencies, legal representatives and magistrates have limited awareness of the impact of parental disability on a parent's skills and learning capacity, and therefore limited understanding of what is required to ensure the appropriate child protection intervention and support.

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6.1 Introduction

Although the Project's research and consultations did not attempt to be representative, there is considerable consistency between the views expressed by the various contributors to the Project, the findings of similar literature and research¹, and the issues that emerged through the audit of Children's Court files. These consistencies give rise to a range of Project findings and a number of recommendations that are detailed below.

The recommendations are framed with the responsible agency or agencies noted, unless this is already obvious from the recommendation itself. They are referenced, where appropriate, with relevant domestic and/or international, laws and obligations, as well as relevant supporting research.

6.2 Accessible Information and Documentation

1. Information about, and documentation resulting from, child protection proceedings is not generally made available in a range of alternative formats that meet the various and specific needs of parents with disabilities.

Parents with disabilities and child protection workers reported that information made available to all parents is only provided in the generally available format. In some cases parents are not provided with any information at all. Further, documents resulting from proceedings are also only provided in written, small text format. Reports produced for hearings are often not made available until the day before or the morning of the hearing. Some parents with disabilities are therefore denied the opportunity to have the information properly explained to them and/or transcribed into an appropriate format.

This Project found that parents with disabilities who require information and/or documentation in alternative formats are placed at an additional disadvantage when these formats are not provided. This diminishes their knowledge of the process, their

¹ Particularly those of: McConnell, D., Llewellyn, G. & Ferronato, L., *Parents with a Disability and the NSW Children's Court*, 2000, University of Sydney.

rights within that process, and their capacity to adequately respond, compared with parents who have ready access to these materials.

Child protection workers reported frustration at the lack of availability of resources in alternative formats and processes to produce these as required. Staff in some parenting support services also indicated that they require resources in a range of alternative formats to meet the specific needs of parents with a range of disabilities and that the cost of producing these is prohibitive. Consequently, parents with disabilities requiring resources in alternative formats in order to participate in programs generally do not receive accessible information.

2. There is an apparent lack of consistency in the provision of the DHS' written information explaining child protection processes and orders to parents with disabilities.

Child protection workers indicated that the steps they take to ensure the parent understands the content of or is even able to read the Child Protection 'Information for Parents' handouts varies. In some instances a worker may make the decision not to provide the Department's 'Information for Parents' sheets about child protection processes because the person couldn't read them. In other cases the worker might utilise the services of an advocate from the Office of the Public Advocate or a disability support worker to advise the best way to present the information so that the parent understands it. If the parent can't read, workers have indicated that they would find alternative ways to deliver the information to the parent.

The experiences of the parents with disabilities participating in the Project were different. Only one of the six parents interviewed indicated that they received any written information about the child protection intervention and this was not made available to the parent in a suitable format. All of the parents felt that there is little or no effort made by workers to explain what is happening.

This would suggest that there is no process in place for systematically ensuring that all parents with disabilities are consistently provided information resources in a wide range of alternative formats that meet their needs, explaining the various stages of child protection intervention and documents resulting from that intervention. .

Recommendation 1: Consistent Provision of Accessible Information and Documentation

That the DHS ensures that information about, and documentation resulting from, child protection proceedings is available and consistently provided in a range of alternative formats that meet the various and specific needs of parents with disabilities.

Whilst responsibility for this rests with the DHS, it is also noted that some parenting and family service providers also need to ensure their information, programs and services are accessible to this group of parents.

Responsibility for providing resources in alternative formats is inferred through domestic disability discrimination laws² and is explicitly stated in the *UN Standard Rules for the Equalization of Opportunities for Disabled Persons*, Rule 5:

Accessibility:

“States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should... undertake measures to provide access to information and communication.”

Part b) of Rule 5 continues...

“5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.

6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to spoken information for persons with auditory impairments or comprehension difficulties.

² Federally through the DDA, and in Victoria through the EOA.

6.3 Parental Assistance in Understanding Proceedings

3. Assistance to parents with intellectual disabilities, mental illness and cognitive impairment in understanding child protection proceedings appears insufficient to ensure that parents clearly understand the child protection process, and their right to appropriate parenting support services and advocacy.

All of the families interviewed reported they had little or no understanding of what their rights were as parents. Some parents with disabilities also reported little or no understanding of the processes occurring after they were informed that a notification had been made. Parents with disabilities reported that they often required assistance to understand the materials provided to them and what was happening to them. Parents said that they may experience delays in receiving this support and may experience significant distress and frustration as a result. Parents with disabilities who require assistance to understand these materials and proceedings are placed at an additional disadvantage when this support is delayed or not provided, leaving their capacity to adequately respond, diminished when compared with parents who do not require such support.

Child protection workers reported inadequate training about the needs of parents with disabilities and how to best provide basic support to these parents in order to assist them to understand what is occurring, as has been identified by NSW child protection workers consulted in similar research³.

Recommendation 2: Parental Assistance in Understanding Proceedings
That the DHS ensures that parents with disabilities receive adequate assistance to understand child protection proceedings and documentation affecting them, including their right to appropriate parenting support and advocacy services.

Primary responsibility for this recommendation is inferred through domestic Disability Discrimination legislation⁴ and internationally through the *UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities Rule 4. Support Services*, which states:

³ *Parents With a Disability and the NSW Children's Court*, above n 1, 28.

⁴ Federally through the DDA, and in Victoria through the EOA.

“States should ensure the development and supply of support services... to assist them to increase their level of independence in their daily living and to exercise their rights... [including] ...ensur[ing] the provision of... personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.”

6.4 Over-representation of Parents with Disabilities

4. Parents with disabilities are more likely to be perceived as potentially emotionally abusive or neglectful of their children, or are seen as more likely to sexually abuse, or to place their children in situations which expose them to sexual abuse, than are non-disabled parents.

The file audit suggests that concerns are more likely to be raised regarding possible sexual abuse and/or emotional abuse or neglect, where parental disability is noted. In six of the 87 files examined where concerns of possible sexual abuse was at issue, 15.4% of the matters involved parental disability as compared to 3.3% of the matters involving parents without a disability. Similarly, of the 36 matters where emotional abuse was at issue, 53.8% of the matters involving parental disability were cited as compared to 36.1% of the matters not involving parental disability. In cases where neglect was a concern, 69.2% of matters involving parental disability were cited as compared to 44.3% of matters not involving parental disability⁵.

5. Parents with a disability are more likely than those without a disability to be seen as having poor impulse control or anger management, to have poor parenting skills or poor understanding of parenting needs, and to have a history of more frequent home relocation or homelessness.

Poor impulse control or anger management was a factor noted in the file audit for 23% of matters involving parental disability as compared to 11.5% of matters not involving disability. Of matters concerning parents with disabilities, 11.5% were noted to have poor parenting skills or poor understanding of parenting needs compared to

⁵ Other research has reached similar findings in relation to alleged emotional abuse and neglect. See: *Parents With a Disability and the NSW Children’s Court*, above n 1, 38-39, Tables 10 & 12.

only 3.3% of matters not involving parental disability⁶. A history of frequent housing relocation or homelessness were noted in 23% of matters involving parental disability compared to only 4.8% where there was no disability. The reasons for this disparity are unclear. They may reflect some genuine differences between the circumstances of parents with and without disabilities, or may suggest that benchmarks of competence are higher for parents with disabilities as compared to matters where there was no disability. In either event, the disparity is a concern and the issue requires further investigation.

6. Parents with disabilities are over-represented in child protection proceedings with almost one third (30%) of Children's Court files audited indicating parental disability of some kind.

Of the 87 files reviewed there was no indication of parental disability in 61 matters (70%) while parental disability of one form or another was noted in 26 matters (30%), which is consistent with reports from other Australian jurisdictions⁷. Further, child protection workers indicated that a significant proportion (over 50 percent in some cases) of families involved in ongoing case management in some regions had at least one parent with a disability.

These figures are significant given that it is estimated that people with intellectual disabilities make up 0.99% of the general population in Australia. This figure increases to 1.7% of the population when people who identify as 'slow at learning or understanding' are included. The significance of over-representation of parents with intellectual disabilities involved in child protection processes is further highlighted when estimates that 0.25% of families are headed by parents with disabilities are taken into account. According to US studies 5.4% of all adults are estimated to experience a severe mental illness (identified as a mental illness that interferes with some form of social functioning). Further, only 2.6% of all adults are estimated to have a severe mental illness characterised by severe and persistent mental illness (including schizophrenia, bipolar disorder and severe forms of depression). Again, these figures reinforce the significant over-representation of parents with mental illness in child protection processes.⁸

⁶ Ibid, above n 1, 39, Table 12.

⁷ Ibid, above n 1, 10.

⁸ Figures cited from: *Parents With a Disability and the NSW Children's Court*, above n 1, Appendix 1, 94.

The over-representation of parents with disabilities in the child protection system is a factor in all of the findings of this Project. In this sense, then, all of the recommendations made are focused on further identifying and addressing this issue.

Towards this end, further research is required to thoroughly identify the reasons for the over-representation of parents with disabilities in child protection proceedings, and to generate more specific strategies for addressing these causes.

Recommendation 3: Over-representation of Parents with Disabilities

That the DHS ensures further research is undertaken into the prevalence and treatment of, and outcomes for, parents with disabilities within the child protection system including the Children’s Court, and into the needs and experiences of parents with disabilities, and that such research be developed and undertaken in consultation with relevant stakeholders.

The responsibility for conducting such research is inferred internationally through the *UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities Rule 13. Information and Research* which, amongst other things, states:

“States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities...”

“3. States should initiate and support programmes of research on social, economic and participation issues that affect the lives of persons with disabilities and their families. Such research should include studies on the causes, types and frequencies of disabilities, the availability and efficacy of existing programmes and the need for development and evaluation of services and support measures.”

6.5 Specialist Advice and Collaboration

7. Collaboration and specialist advice provided between Child Protection, Disability Services and Mental Health Services occurs informally and therefore there is often no clear understanding of roles and expectations.

Parents with disabilities who have case workers from Disability Services and Mental Health Services reported that these workers have little or no say in the processes and that it is difficult to distinguish between the roles of disability support workers and child protection workers. Further, some parents noted that they were uncertain who had responsibility for assisting them in accessing the services they required or were ordered to access.

Child protection workers indicated that they were familiar with and often utilised the protocol between Child Protection Services and Disability Services when they were aware that the parent had an intellectual disability. They identified that they considered this to be important as the appropriate disability workers could assist in explaining to parents what is occurring. However, the use of the protocol does not appear to be uniform across child protection services and the implementation of the protocol by child protection workers when working with families where one or both parents have an intellectual disability does not appear to be monitored.

Recommendation 4: Specialist Collaboration and Advice

That the DHS ensures that collaboration and specialist advice are provided between Child Protection, Disability Services and Mental Health Services where necessary for parents with disabilities subject to intervention, that this occurs formally, and that regular review and monitoring take place to ensure such collaboration and advice is effective.

6.6 Inadequate Stakeholder Understanding of Disability

8. Apparent lack of adequate understanding of disability and its impact on parenting amongst some child protection workers, legal representatives, magistrates and court personnel, and staff in parenting support services who work with parents with disabilities.

All stakeholder groups consulted identified the need for the provision of adequate training regarding parental disability and its impacts.

Child protection workers reported a need for training in relation to the specific needs of parents with disabilities. Training of this kind is not generally and systematically available to workers in any comprehensive way. What training is available during

induction tends to target children with disabilities rather than parents with disabilities. Further, workers reported often having little awareness of specialist programs for disability and/or parenting support services.

Parents with disabilities also identified the need for training for child protection workers on parental disabilities and the impacts on parenting practices. They identified that, in their experiences, child protection workers had little knowledge or experience of parental disability. The parents interviewed expressed the need for child protection workers to receive training on parental disability before they became involved in casework and direct service delivery.

Child protection workers and parents identified training for some legal practitioners regarding disability and working effectively with clients who are parents with disabilities.

Legal practitioners identified that magistrates tend to rely upon the knowledge and experience of child protection and disability support workers in identifying the needs of parents with disabilities. Further, they identified that magistrates appear to put great validity in the assessments of psychologists presenting reports to the Court about a parent's capacity to raise their children successfully, and the risks the individual parent's disability presents to their children. Child protection workers and legal practitioners indicated that they believed magistrates required training in different disabilities and how those disabilities may impact on parenting skills, techniques and supports required.

According to parents with disabilities some parenting and family support programs seem to expect that parents with disabilities can perform the same tasks in the same way as non-disabled parents. Consequently, they may fail to adapt their programs and services to meet the needs of individual parents and therefore risk leaving the parent without the support they need and with a sense of having failed the program/activity, and therefore having failed as a parent. There also appears to be little knowledge among service providers of alternative resources and strategies and how to access these to make the involvement of the parent with a disability in programs inclusive and constructive.

<p><i>Recommendation 5: Inadequate Stakeholder Understanding of Disability</i></p>
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That the DHS and the Department of Justice ensures that training regarding the needs and rights of parents with disabilities is developed and delivered to a range of stakeholders involved in child protection proceedings including: child protection workers, legal service providers, magistrates and court staff, disability services workers, parenting and family support workers.

This responsibility is inferred through domestic disability discrimination legislation⁹ and internationally through the United Nations *Standard Rules on the Equalization of Opportunities for Persons with Disabilities Rule 19. Personnel Training* which states:

“States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programmes and services concerning persons with disabilities.

- 1. States should ensure that all authorities providing services in the disability field give adequate training to their personnel.*
- 2. In the training of professionals in the disability field, as well as in the provision of information on disability in general training programmes, the principle of full participation and equality should be appropriately reflected.*
- 3. States should develop training programmes in consultation with organizations of persons with disabilities, and persons with disabilities should be involved as teachers, instructors or advisers in staff training programmes.*
- 4. The training of community workers is of great strategic importance... It should involve persons with disabilities and include the development of appropriate values, competence and technologies as well as skills which can be practised by persons with disabilities, their parents, families and members of the community.”*

6.7 Statistical Data Collection

9. Data collection by all stakeholders, including the Children’s Court, in relation to parents with disabilities subject to child protection proceedings, is currently inadequate to provide any meaningful analysis of the treatment of and outcomes for this group of parents and their families.

⁹ Federally through the DDA, and in Victoria through the EOA.

In general, there are no readily available and accurate data on the incidence of parents with disabilities involved in child protection processes. Data available from the Department of Human Services Child Protection Unit' statistics does not provide information on the number of notifications or investigations where one or both parents has a disability nor does it provide any indication of the number of matters involving parental disability referred to the Children's Court.

Similarly, the data collected by the Children's Court for child protection matters before it, does not allow for the routine recording of incidence of parental disability. This information had to be drawn from the written records on file in the Children's Court and was not always clear. Inadequate data collection identifying the number of parents with disabilities involved in child protection matters and Children's Court processes necessarily results in an under recording of these matters. This dearth of accurate data results in a lack of recognition by the DHS and other relevant government departments of the needs of this particular group of parents and as a consequence there are insufficient and inadequate resources available to meet the needs of parents with disabilities.

Recommendation 6: Statistical Data Collection

That the DHS and the Department of Justice ensures data collection by all key stakeholders is developed and improved, is consistently collected, and includes accurate recording of parental disability in order to adequately identify and assess the treatment of and outcomes for this group.

Responsibility for this recommendation is inferred through international obligations notably the *UN Standard Rules' Rule 13. Information and Research* which states:

"States assume the ultimate responsibility for the collection and dissemination of information on the living conditions of persons with disabilities and promote comprehensive research on all aspects, including obstacles that affect the lives of persons with disabilities.

- 1. States should, at regular intervals, collect... statistics and other information concerning the living conditions of persons with disabilities. Such data collection... could be undertaken in close collaboration, inter alia, with universities, research institutes and organizations of persons with disabilities.*

2. *States should consider establishing a data bank on disability, which would include statistics on available services and programmes as well as on the different groups of persons with disabilities. They should bear in mind the need to protect individual privacy and personal integrity.*
3. *States should initiate and support programmes of research on social, economic and participation issues that affect the lives of persons with disabilities and their families. Such research should include studies on... the availability and efficacy of existing programmes and the need for development and evaluation of services and support measures.”*

6.8 Legal Representation and Advocacy

10. Unrepresented litigants in matters where one or both parents have a disability continue to appear before the Children’s Court.

Of the 26 families where one or more parent has a disability, one parent had no representation at the time the first order was made and almost one fifth (19.2%) of families were shown to have consented to the intervention and so representation at the relevant hearing was not required or provided. In a further three matters (11.5%) involving parents with disabilities there was no record of legal representation at the time the final order was made. In another five cases (19.2% of families where one or both parents have a disability) the final order was consented to and therefore legal representation at the hearing was not required. It was unclear from records to what extent parents consenting to orders understood their rights and options at the time of agreeing to the orders. It was also unclear from records what efforts were made to ensure the parents were providing informed consent to the conditions in orders.

11. Some parents with disabilities do not meet the criteria for Legal Aid assistance in their proceedings and present as unrepresented litigants. Despite the legal right to representation contained in Section 20(1)(c) of the Children’s and Young Person’s Act 1989, unrepresented litigants continue to present.

Solicitors working for Victoria Legal Aid indicated that some parents with disabilities appearing before the Children’s Court may be unrepresented as a result of either not attending the first appearance, refusing legal representation, or the parent having

already agreed to a consent order. Some parents with disabilities may also be ineligible for legal aid because they fail to meet the means test or the case is assessed as not having merit, that is, it is believed there is a strong likelihood that the case will not be resolved in favour of the parent.

Whilst the DHS go to great efforts to ensure legal representation as required by the CYPA¹⁰ and VLA aims to ensure advice and at least a referral to a suitable legal practitioner is provided, this is currently not enough to ensure that all parents receive legal representation at all stages of proceedings.

Recommendation 7: Legal Representation and Advocacy

That the DHS and the Department of Justice ensures that parents with disabilities are provided legal representation at all stages of the Children’s Court process, including in hearings for the processing of consent orders, by legal representatives with specific disability training.

Responsibilities are inferred internationally through the United Nations’ *Declaration of Rights of Disabled Persons*, which states:

“11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property...”

12. Lack of adequate legal and non-legal advocacy services for parents subject to proceedings and an absence of an automatic system for referral and support that supports the right to advocacy and representation throughout the child protection involvement.

Parents, child protection workers and legal practitioners all identified a lack of advocacy services for parents with disabilities involved in the child protection system as an issue of concern. Parents were not, in most cases, supported by an advocate from notification, through the investigation to the Court process (nor for most at any stage therein) with the relevant legal and disability-related experience. The Project identified that parents would benefit from the support and advocacy provided through an independent source that had the best interests of the parent and family as their aim. Further, existing programs, even if willing to support parents with disabilities

involved in the child protection system, are unable to provide an advocate who can work consistently with the parent.

Parents with disabilities and professionals participating in consultations both made reference to the Office of the Public Advocate Independent Third Person program currently in place for people with mental impairments who are being interviewed by Victoria Police. Some individual parents and legal practitioners felt that a model of this type (a model that facilitates effective communication and understanding between the relevant parties rather than providing advocacy) is not sufficient to assist parents with disabilities subject to child protection proceedings where the issues and process are not criminal in nature (in most cases). Practitioners suggested that a 'best interest' advocate would be more appropriate for parents with disabilities involved with child protection services and the Children's Court.

Recommendation 8: Legal Representation and Advocacy

That an independent program that provides support in understanding the child protection process at the point at which parents with disabilities are first notified, and that supports the parents right to advocacy and representation through appropriate referrals and support options, be established by the DHS and the Department of Justice, in consultation with key stakeholders and parents with disabilities.

Recommendation 9: Legal Representation and Advocacy

That a specific advocacy agency with expertise in legal advice and disability be established to provide advocacy support to parents with disabilities subject to child protection intervention.

This recommendation relates to many of the findings presented in this report. Parents often have little or no information about their rights and there is no agency or program with a specific brief to provide this information and support. Further, the need for parents with disabilities to have a policy and program voice in matters affecting their parenting role is clear and such an agency or program could undertake this broader advocacy.

¹⁰ CYPA s 20(1)(c).

The Project notes that parents with Disabilities have been identified as a group requiring further support in the DHS *Draft State Disability Plan*¹¹ and welcomes this focus. The need for such advocacy for parents is supported through the United Nations *Standard Rules on the Equalization of Opportunities for Persons with Disabilities Rule 1. Awareness Raising*, which, amongst other things, states:

“7. States should initiate and promote programmes aimed at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased self-reliance and empowerment will assist persons with disabilities to take advantage of the opportunities available to them.”

Further, *Rule 18. Organizations of Persons with Disabilities* states:

“States should recognize the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters.

- 1. States should encourage and support economically and in other ways the formation and strengthening of organizations of persons with disabilities, family members and/or advocates. States should recognize that those organizations have a role to play in the development of disability policy.*
- 3. The role of organizations of persons with disabilities could be to identify needs and priorities, to participate in the planning, implementation and evaluation of services and measures concerning the lives of persons with disabilities, and to contribute to public awareness and to advocate change.*
- 7. The role of local organizations of persons with disabilities should be developed and strengthened to ensure that they influence matters at the community level.”*

The DDLS asserts that this responsibility applies equally to meeting the specific information, support, and advocacy needs of parents with disabilities and notes the *Standard Rules’ Rule 9. Family Life and Personal Integrity*, which states:

“States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws

¹¹Department of Human Services, *Draft State DisAbility Plan* (2001), 45 (hereafter cited as the *Draft State Plan*).

do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

- 2. Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood...*
- 3. States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society..."*

6.9 Informed Consent to Court Orders

13. Where parents with disabilities were subject to Consent Orders of the Children's Court, evidence documenting fully informed consent was not available in all cases.

The audit of Children's Court files revealed no certainty in documentation that unequivocal, informed consent had been provided by some parents with disabilities subject to Consent Orders of the Court.

Some people with intellectual disabilities can be easily led into agreements and may agree simply because the person believes that compliance is expected of them. Further there is a risk that the person will agree because they are not aware of the consequences of the agreement. Child protection workers indicated that sometimes parents would appear to agree to Consent Orders because the whole process is so overwhelming and the court environment so hostile that the parent just wanted to have everything completed so that they could leave.

Child protection workers and legal representatives from Victoria Legal Aid both indicated that they closely question parents with disabilities about their understandings of any proposed consent orders. Both groups indicated that if the parent cannot fully explain what the order is about and the implications of agreeing to the order that they would not take the proposed Consent Order before the Court.

Recommendation 10: Informed Consent to Court Orders

That the DHS and the Children's Court ensure the process of agreement to Consent Orders by parents with disabilities, both prior to and during hearings, be further developed to ensure that parents with disabilities consenting to such orders are fully

aware of the implications of providing consent, and that this consent is clearly documented.

6.10 Documentation of Court Orders

14. Where parental disability was recognised in the audit of Children's Court files, there was no indication that any referral of the carer or his or her partner to disability support services had occurred or was recommended in almost one third (31%) of matters.

It is possible that this may be a result of the standard condition boxes being utilised on the Court order application form and no notation about referral to disability support services being included on the application. It may also be possible that the parent had refused a referral to disability specific support services for a range of reasons, that they were not registered for eligibility to support services, or had not yet undergone assessment for eligibility to receive services from the relevant disability support agency.

15. Orders relating to matters involving parental disabilities made by the Children's Court rarely explicitly refer to disability and often lack sufficient detail to ascertain specifically what is required of the parents.

Orders examined in the audit revealed that where parents with disabilities were concerned these orders often were no more detailed than to require "such treatment/counselling, etc, as directed by DHS". This was generally the case even where the tenor of the reports on file explicitly referred to disability in one parent or the other. In 23 matters where psychiatric disability was noted, 39.1% of orders referred to the use of relevant psychiatric support services. Of the six matters involving parental intellectual disability, no orders made a specific requirement that appropriate intellectual disability support services be made available to the family.

This again can be as a result of the requirement that tick boxes on application forms for orders be utilised rather than specific conditions being documented on the application. While some child protection workers indicated that they would include notations of requirements on an application for orders, others indicated that they

found some magistrates, particularly in rural and regional areas, preferred that this practice not be used and that only the tick boxes be utilised.

The Project identified a failure to clearly document what undertakings parents with disabilities must comply with, and who is responsible for assisting parents to access the appropriate support services in order to carry out undertakings. This can result in parents being uncertain about what they have to do in order to maintain or reunite their family and who is responsible for assisting them to carry out the undertakings.

Recommendation 11: Documentation of Court Orders

That the conditions in orders that parents with disabilities are required to undertake as a result of Children's Court proceedings be clearly documented so that the parents have an understanding of what is expected of them to maintain or have their family unit restored, and that appropriate support is provided to the parents to ensure they understand and can comply with the conditions.

6.11 Resources to Implement Effective Court Orders

16. Inadequate resources are available for practical and achievable Court orders that include the provision of adequate parenting and disability support services where appropriate, in order to maintain the family unit.

The professionals participating in the research all identified a lack of available resources, including parenting services, specialist disability support services, respite support, access to affordable childcare, alternative format materials and longer-term support services to best meet the needs of parents with disabilities. As reported in other jurisdictions, Court outcomes are limited by the willingness of government to fund adequate services that would support the maintenance of the family unit¹². As a consequence, some parents with disabilities are placed in a position where they have to access services and programs that do not meet their needs and that generally provide a 'short term fix' rather than effective tailored supports and care plans, based on an assessment of the parents needs. This can leave some parents particularly vulnerable to the risk of further child protection intervention.

¹² *Parents With a Disability and the NSW Children's Court*, above n 1, 76.

Recommendation 12: Resources to Implement Effective Court Orders

That the DHS provide increased resources to adequately meet the conditions in Court orders in order to provide longer-term solutions to meet parents' disability-related parenting needs, and not just short term fixes.

6.12 Accessibility of Court Environments and Proceedings

17. Parents with disabilities, particularly where the parent has an intellectual or psychiatric disability or acquired brain injury, may experience a distinct disadvantage in Children's Court proceedings and environments in the absence of specialist support and adjustments that recognise the needs of these parents.

The Project found, in a similar vein to other research¹³, that some parents with disabilities may have no understanding of what has, or is about to be, agreed to within the context of a complex and confusing legal process.

Issues raised by parents, child protection workers, legal representatives and through observation of Children's Court proceedings included:

- the complexity of the Court's rules and procedures;¹⁴
- the difficulty in providing adequate instructions to legal representatives;¹⁵
- difficulties in giving evidence;
- the imbalance of the person with a disability's evidence compared to that of expert witness opinions;¹⁶
- the use of complex and confusing language;¹⁷ and
- the lack of adequate physical access to the Court room and witness box

18. Parents with disabilities can be severely disadvantaged when scheduled times for hearings in the Children's Court are not maintained.

For parents with disabilities access to transport arrangements, attendant carers and medication are all factors that can be impacted upon if scheduled arrangements are

¹³ Ibid, 86.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

disrupted. For many parents who may require the use of specialised transport, such as taxis, bookings are required in advance. Not being able to keep the booking because of delays in the Court may result in a parent being stranded for several hours until an appropriate taxi becomes available. If parents utilise the services of an attendant carer and they are late returning from the Court to do so, they may have to forfeit the attendant's services on that occasion. Extended delays while at the Court can create a greater need for attendant care, for example, in order to access toilet facilities or to assist with administering medication and/or eating meals. As attendant care hours are funded and provided on a weekly allocation of hours, parents may lose services that are used as a result of Children's Court delays. Further, some parents with disabilities health may be at risk if medication or meals are not taken at certain specified times.

It is also possible that delays in the court process can impact on a parent's cognitive abilities or ability to express themselves if they have had to delay taking their medication or have taken it prior to going before the Court. This may have a significant impact on how the parent is perceived by professionals and magistrates during the hearing.

Recommendation 13: That the Children's Court ensures its language, practices and procedures and physical environment address the specific disability-related needs of parents by providing specialist support, and that appropriate adjustments to procedures and environments are made where necessary.

These responsibilities are inferred through domestic disability discrimination legislation¹⁸ and internationally through the United Nations *Standard Rules' Rule 5. Accessibility* which states:

"States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment

1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards

and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments...

“(b) Access to information and communication

5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.”

In a similar tone the DRDP states:

“8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.”

Further the DRDP states:

“11. ... If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.”

6.13 Parenting Programs and Support Services

19. Parent skills development and support services that meet the specific and often changing needs of parents with disabilities are not generally available within the family support services sector, particularly over the longer-term.

Parents, child protection workers and legal representatives noted the lack of services as has been identified in other research¹⁹. Whilst some very good specialist services exist, and whilst some generalist family support providers do modify their services for parents with disabilities, there is a lack of a coordinated approach to ensuring these services are available to all parents with disabilities who need them, particularly where they are needed to maintain the care of their children. The absence of such services leaves some parents particularly vulnerable to the risk of further child protection intervention.

¹⁸ Federally through the DDA, and in Victoria through the EOA.

¹⁹ *Parents With a Disability and the NSW Children’s Court*, above n 1, 76.

20. There is reliance upon generic family support services to provide programs and supports to parents with disabilities.

Child protection workers and family support agencies both reported that referral to generic support services occurs on a regular basis. While this may assist some parents with disabilities there are still insufficient specialist support services available to meet some parents specific disability-related parenting support needs. Generic services are not always an appropriate or desirable alternative as many of these programs are short term, are not equipped to meet some parents with disabilities specific learning needs, and may marginalise some parents with disabilities²⁰. The Project identified that some parents may require longer-term, more intensive support and that generic agencies do not generally have the capacity to provide this. Once again, the absence of appropriate services leaves some parents particularly vulnerable to the risk of further child protection intervention.

21. Restrictions in family and parenting support services can result in some parents with disabilities having difficulties gaining access to services that would enable them to maintain their children at home or to have them returned to them.

Family and parenting support agencies indicated a range of factors that may exclude a parent from accessing the services or programs they provide. The Project identified, as has been identified in other research²¹, a range of eligibility criteria that exclude some parents, including: drug and alcohol abuse, dual or multiple diagnosis, age restrictions, safety within the environment, a party known to be a sex offender, child protection intervention status, and geographical boundaries.

Some agencies also indicated that parents whose children are not in their care, and/or where parents do not have regular contact with children in out-of-home care arrangements, could not access their service. Parental willingness to learn new skills is also a factor in gaining access to some family and parenting support services. Both of these restrictions can result in parents being denied access to programs necessary to gain the skills to have their children returned to their care and/or to prevent the removal of their children.

²⁰ Ibid, 26.

²¹ Ibid.

22. Disability support services such as the In Home Accommodation Support program are not sufficiently flexible to meet the needs of people with disabilities who are also parents.

Parents reported that they may have a particular need related to support for their child which attendant care services are generally unwilling to perform. The strict boundaries around how attendant care can be used and what supports can be provided can result in the parent not having their most important needs met. For example, simple daily tasks performed by an attendant carer for a person with a disability, such as washing the child's clothes or tidying their room, are often not able to be done for the child because it is not seen as part of the attendant carer's role in assisting the person with a disability who is also a parent.

23. Affordable childcare and access to foster or respite care is not readily available to all parents with disabilities.

Some parents and legal practitioners indicated that access to these services would have been beneficial and that it would have reduced the likelihood of child protection services intervention. Parents subject to Court Orders reported that services that became available as a result of the Order would have been beneficial if they had been available prior to child protection intervention, and may have prevented such intervention. Some parents had attempted to obtain access to respite care for their children to enable the family some time out but that the available services had long waiting lists or required referral from child protection. Some parents expressed fears that they were judged as being dependent on others when they access services such as respite care. In contrast, parents with children who have a disability are more readily able to access respite and childcare services.

24. Apparently inadequate recognition and service response to issues of dual / multiple disadvantage and/or disability impacting on the capacity of parents with a disability to meet the needs of their children and families such as poverty, homelessness, alcohol and drug use, challenging behaviours and a history of abuse, institutionalisation and deprivation.

Child protection workers identified that the majority of the parents with disabilities they worked with experienced dual or multiple disability and/or disadvantage and that this had a major impact on supports available to parents. Agencies generally provide specific services or have restrictions that disqualify some people with dual disabilities and/or multiple needs from utilising their services²². As a consequence some parents with disabilities are often unable to access required services because it is felt that another agency is more appropriate to meet the parent's "primary" needs, or the complexity of needs/issues the parent has are seen as too difficult to address, or a particular issue, such as drug use, disqualifies the parent from the supports provided by the agency. These parents too, may be at increased risk of further intervention by child protection services where appropriate services are not available.

25. Some parents may choose not to register for services with the Department of Human Services or may have an undiagnosed or borderline intellectual and/or psychiatric disability, resulting in little or no support being provided for these parents specific disability related needs.

Parents who are outside of the disability support service system, were reported to be difficult to reach by child protection workers. These parents may not be eligible for services and where referrals to appropriate services are made, they result in lengthy periods of waiting while assessments and diagnoses are completed often leaving the child's care in 'limbo'. The Project found that parents with borderline and undiagnosed disabilities are likely to receive little support for their specific disability related needs.

26. Parents expressed a fear of child protection and "welfare" workers who may notify them to child protection. In some cases this prevents parents from seeking appropriate skills development, support and advocacy.

The Project identified, as has other research²³, that some parents with disabilities are reluctant to become involved with "welfare" services for fear that a notification might be made to child protection. Parents' reluctance to access disability support services can be further complicated where a previously accessed service notifies child

²² Ibid.

²³ McConnell D. & Llewellyn G., 'Parental Disability & the Threat of Child Removal' (1998) *Family Matters* #51 33-36, 33.

protection of concerns about the parent. Some parents expressed a sense of betrayal and loss of trust in disability support services where this had occurred.

Child protection workers also indicated that parents with disabilities who have already had involvement with child protection, and possibly had children permanently removed from their care, may choose to avoid disability support services if they fall pregnant again, fearing their new child will be removed.

Legal practitioners identified that even when parents with disabilities have not had contact with child protection themselves they may choose not to access support services because they fear they will be reported and their child removed. Further, when child protection does become involved with the family, reports written for the Court can carry a negative intonation about parents' utilisation of different support services.

Some parents with disabilities who participated in the consultations agreed and indicated that their use of parenting support services had been presented as an indicator of their inability to adequately parent before the Children's Court.

27. There is a lack of consistency across the state in what services / specialist support programs are available to assist parents with disabilities both within the child protection system and in other services available.

Child protection workers identified that what services and supports are available in each region varies greatly. They noted for example that one region in particular has a range of innovative support services for parents made available through funding from the Department of Human Services that aim to provide the appropriate supports to maintain the family unit. Other regions identified that they were unable to access these programs for parents with disabilities because they do not have these programs available, nor can referrals be made across regions, even when this is identified as the best option for the family. Workers from rural and regional areas identified that services, when available within the region, can be inaccessible for the parents because of prohibitively long travel times and costs. Consequently, parents may have to access local generic services, if available, that may not meet their needs. This can result in parents with disabilities in one region having greater opportunities to maintain their children at home than parents in other regions.

Recommendation 14: Parenting Programs and Support Services

That the DHS, in consultation with key stakeholders and parents, develop and implement, measures to ensure that services are developed and provided throughout the state that meet the varied and often changing needs of parents with disabilities, including:

- *ensuring generic parenting and family support services meet the specific needs of parents with disabilities;*
- *ensuring that where specific eligibility criteria exclude a parent or group of parents from accessing a specialist service, that alternative services are made available and provided without detriment to affected parents;*
- *ensuring that disability support services are sufficiently flexible to assist parents with disabilities with parenting tasks;*
- *ensuring that services are responsive to parents with dual or multiple disabilities and/or disadvantage;*
- *ensuring strategies and services are developed to meet the needs of parents with borderline or undiagnosed disabilities; and*
- *ensuring parents with disabilities are not disadvantaged in their access to services due to their geographic location.*

International obligations in this regard are created through the United Nations *Standard Rules' Rule 4. Support Services* which states:

"States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.

1. *States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.*
6. *States should support the development and provision of personal assistance programmes and interpretation... Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.*

7. *Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.*

In addition, *Rule 14. Policy Making and Planning* states:

“States will ensure that disability aspects are included in all relevant policy-making and national planning.

1. *States should initiate and plan adequate policies for persons with disabilities at the national level, and stimulate and support action at regional and local levels.*
2. *States should involve organizations of persons with disabilities in all decision-making relating to plans and programmes concerning persons with disabilities or affecting their economic and social status.*
3. *The needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately.*
4. *The ultimate responsibility of States for the situation of persons with disabilities does not relieve others of their responsibility. Anyone in charge of services, activities or the provision of information in society should be encouraged to accept responsibility for making such programmes available to persons with disabilities.*
5. *States should facilitate the development by local communities of programmes and measures for persons with disabilities. One way of doing this could be to develop manuals or check-lists and provide training programmes for local staff.”*

6.14 Disability Action Plans

28. Disability Action Plans that outline an agency or organisation’s commitment to, and specific strategies to address, disability discrimination in all its activities have not yet been produced by DHS.

Whilst the DHS has produced the *Disability State Plan* in order to outline its commitment to and directions for disability-related services and initiatives over the next decade, the Project notes that DHS has not yet produced a *Disability Action Plan*, as outlined in the *Disability Discrimination Act (Cth 1992)*. However, it is noted that the DHS is intending to produce such a plan. In the context of parents with

disabilities subject to child protection intervention, a *Disability Action Plan* could address what measures are required to identify and address actual or potentially discriminatory practices, as well as other measures to ensure that parents with disabilities experience equitable opportunities to assist them in their parenting role.

Recommendation 15: Disability Action Plans

That the Child Protection Division of the DHS, as well as other relevant areas of the DHS, develops and implements a Disability Action Plan, as referred to in the Disability Discrimination Act (Cth 1992), in order to ensure that any actual or potentially discriminatory policies, procedures and practices are identified and addressed, and that services are developed and provided in a manner that ensures they are accessible to all people with disabilities.

6.15 Policy and Planning

29. There is a lack of central planning, coordination, monitoring and review of services and other measures to support parents with disabilities to develop the skills and access the resources necessary to enable them to parent effectively.

The complexity of the issues affecting parents with disabilities, the current gaps and barriers in services and supports, the high number of stakeholders concerned, and the lack of a central coordinating plan for policy development, service planning, provision and collaboration, raises the need for a strategic plan to guide and inform this work.

30. There is currently no clear and transparent complaints process for parents who have concerns about their interaction with child protection workers and how their situation was dealt with, to make a formal complaint.

Parents stated they have very little recourse to have issues addressed if they are not happy with what has taken place or with the attitudes of child protection workers, including discriminatory practices on the basis of disability.

Recommendation 16: A Strategic Plan for Parents With a Disability

That the DHS in consultation with key stakeholders and parents with disabilities, develop and implement a strategic plan that aims to identify and address parents with disabilities needs and that includes measures to:

- *identify the needs of parents with disabilities and their prevalence and treatment in child protection proceedings including before the Children’s Court*
- *address the inconsistencies in service availability and accessibility for parents with disabilities*
- *ensure key stakeholders collaborate effectively, are appropriately trained and can access resources to effectively assist parents with disabilities*
- *provide for a transparent and easily accessible complaints process be developed for hearing and resolving complaints about the handling of child protection matters, including discriminatory practices on the basis of disability, and*
- *address concerns raised in this report and by other stakeholders regarding the treatment of parents with disabilities subject to child protection intervention.*

This recommendation flows from many of the findings contained in this report and goes to the heart of how to overcome some of the key barriers to change. The DDLS notes that parents with disabilities have been identified as a group requiring further support in the DHS *State Plan*²⁴ and welcomes this focus. The DDLS believes the breadth of the issues involved warrants a strategic plan.

Responsibility for this recommendation is inferred through international obligations under the *Standard Rules’ Rule 14. Policy-making and Planning*:

“States will ensure that disability aspects are included in all relevant policy-making and national planning.

1. *States should initiate and plan adequate policies for persons with disabilities at the national level, and stimulate and support action at regional and local levels.”*

Further, *Rule 9. Family life and personal integrity* states:

“States should promote the full participation of persons with disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

1. *Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families which include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.*
2. *Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counselling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.*
3. *States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes.”*

²⁴ *Draft State Plan*, above n 7, 45.

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List of Abbreviations

ABI	Acquired Brain Injury
Cth	Commonwealth of Australia
Compic	Computer pictograph language
CYPA	<i>Children and Young Person's Act 1989 (Vic.)</i>
DDA	<i>Disability Discrimination Act 1992 (Cth)</i>
DDLAS	Disability Discrimination Law Advocacy Service
DDLS	Disability Discrimination Legal Service (Incorporated Victoria)
DHS	Department of Human Services
DHS WMR	Department of Human Services Western Metropolitan Region
DHS IDS	Department of Human Services Intellectual Disability Services
DOB	Date of birth
DPL Project	Disability, Parenting and the Law Project
DRDP	Declaration of the Rights of Disabled Persons
EOA	<i>Equal Opportunity Act 1986 (Vic.)</i>
ID	Intellectual disability
IDPSA	<i>Intellectually Disabled Persons' Services Act 1986 (Vic.)</i>
IQ	Intelligence quotient
ITP	Independent Third Person
NESB	Non-English speaking background
NSW	New South Wales
SERAC	South Eastern Resource Action Centre
TTY	Telephone typewriter for people who are Deaf/hearing impaired
UN	United Nations
VCAT	Victorian Civil and Administrative Tribunal
Vic.	Victoria
VLA	Victoria Legal Aid
VLF	Victoria Law Foundation
YPWDCP	Yooralla Parents With a Disability Community Project

Footnote Abbreviations

above n 1	Indicates the full citation details for the reference can be found (“above”) at the indicated footnote number (“n 1”).
Ibid.	Indicates the same citation details for the reference as the previous footnote.
Ibid, 1.	Indicates the same text details for the reference with a different page number.
Ch	Indicates the relevant chapter of the particular reference.
s 1	Indicates the relevant section of the referenced legislation.
ss 1, 2.	Indicates the relevant sections of the referenced legislation.

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Appendix 3: Children's Court File Audit Data Collection Format

Family information

Marital status (of family)

Married/defacto/partnered
 Single (never married)
 Separated/divorced
 Widowed

Employment (tick as applicable)

	Mother	Father
home duties only	<input type="checkbox"/>	<input type="checkbox"/>
employed p/t or casual	<input type="checkbox"/>	<input type="checkbox"/>
employed full time	<input type="checkbox"/>	<input type="checkbox"/>

Primary income source (tick as applicable)

	Mother	Father
benefits	<input type="checkbox"/>	<input type="checkbox"/>
wages	<input type="checkbox"/>	<input type="checkbox"/>

Housing (of primary carer of the children)

(Tick as applicable)

(i) **shared accommodation -**

with child's grandparents
 with other relative(s)
 with non-relatives

(ii) **living independently -**

public/Ministry housing
 boarding
 private accommodation- rental
 private accommodation- owns/buying

Disability (tick)

	Mother	Father
Intellectual	<input type="checkbox"/>	<input type="checkbox"/>
Psychiatric	<input type="checkbox"/>	<input type="checkbox"/>
Physical	<input type="checkbox"/>	<input type="checkbox"/>

Number of children (tick)

1 2 3 4 5+

DOB of Child:

No of children previously removed 0 1 2 3 4 5+

Services from whom parents have received assistance in regard to protective matters:

Details of protective concerns

Date of initial order

Type of order made

Interim accommodation order

Interim protective order

Was an application to extend or vary this order ever made? **Yes** **No**

Did the parents appeal against this order? **Yes** **No**

Date of subsequent order/s

Type/s of order/s made

Undertaking

Supervision order

Custody to third party

Supervised custody order

Custody to Secretary order

Guardianship to Secretary order

Permanent care order

Were applications to extend or vary these orders ever made? **Yes** **No**

Did the parents appeal against any of these orders? **Yes** **No**

At the time of the first application protective concerns related to:

physical abuse

sexual abuse

emotional abuse

neglect

conflict b/w child and carer/s

At the time of subsequent applications protective concerns had changed to include:

physical abuse

sexual abuse

emotional abuse

neglect

other

N/A

At the time of the initial application, which of the following were referred to in DHS reports as factors that placed the child at risk of abuse?

Indicators	Mother		Father		Family
Currently under 20		History childhood abuse, neglect, abandonment or state/institu care		Isolated/ Fragmented	
Was under 20 at time of first child		History abuse and neglect of children		Complex and disrupted structure	
Pregnancy/ birth complications		Poor or absent understanding re parenting		History of protective services involvement	
Poor antenatal care		History of criminal/assaultive behaviour		Intolerance of children	
Substance abuse during pregnancy		Poor impulse control/anger management		Chaotic and unstable	
Current/past substance abuse		Current/past mental illness		Frequent moves and homelessness	
Current/past domestic violence		Current/past substance abuse		Poverty and material crises	
History of childhood abuse, neglect, abandonment, state/institut. Care		Current/past domestic violence			
Other children died in her care		Current/past intervention orders			
History of mental illness, post-partum depression, suicidality					
Single parent or parent not the birth father					

The child to whom the protection order applied is now residing with:

- | | |
|--------------------------|--------------------------|
| Mother | <input type="checkbox"/> |
| Father | <input type="checkbox"/> |
| Both parents | <input type="checkbox"/> |
| Relatives | <input type="checkbox"/> |
| Friends | <input type="checkbox"/> |
| Home-based foster care | <input type="checkbox"/> |
| Staffed unit | <input type="checkbox"/> |
| Permanent care placement | <input type="checkbox"/> |
| Other (specify) | <input type="checkbox"/> |

Consideration by DHS and the Children's Court of issues relating to parental disability**Do DHS reports make mention of the specificities of the parent's/s' disability/ies?**

- | | Mother's | Father's |
|-----|--------------------------|--------------------------|
| Yes | <input type="checkbox"/> | <input type="checkbox"/> |
| No | <input type="checkbox"/> | <input type="checkbox"/> |
| N/A | <input type="checkbox"/> | <input type="checkbox"/> |

Did the primary carer receive representation in court at the time of the first application?

- | Yes | No |
|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |

Who represented?

- | | |
|------------------------|--------------------------|
| Private solicitor | <input type="checkbox"/> |
| Legal Aid worker | <input type="checkbox"/> |
| Other advocacy service | <input type="checkbox"/> |
| Family or friend | <input type="checkbox"/> |

Did the primary carer receive representation in court at the time of the last application?

- | Yes | No |
|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |

Who represented?

- | | |
|------------------------|--------------------------|
| Private solicitor | <input type="checkbox"/> |
| Legal Aid worker | <input type="checkbox"/> |
| Other advocacy service | <input type="checkbox"/> |
| Family or friend | <input type="checkbox"/> |

Did the first order require that the parent/s undertake activities/receive services relevant to their disability/ies?

- | | Mother | Father |
|-----|--------------------------|--------------------------|
| Yes | <input type="checkbox"/> | <input type="checkbox"/> |

No	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	<input type="checkbox"/>

Which of the following did the court require the parent/parents to undertake?

	Mother	Father
Psychiatric assessment	<input type="checkbox"/>	<input type="checkbox"/>
Counselling	<input type="checkbox"/>	<input type="checkbox"/>
Receipt of support services (relating to disability)	<input type="checkbox"/>	<input type="checkbox"/>
Other (state)		

Did subsequent orders require that the parent/s undertake activities/receive services that are related to their disability/ies?

	Mother	Father
Yes	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	<input type="checkbox"/>

Which of the following did the court require the parent/parents to undertake?

	Mother	Father
Psychiatric assessment	<input type="checkbox"/>	<input type="checkbox"/>
Counselling	<input type="checkbox"/>	<input type="checkbox"/>
Receipt of support services (relating to disability)	<input type="checkbox"/>	<input type="checkbox"/>
Other (state)		

Appendix 4 Parent Interview Questions

Focus Group Questions for Parents with a Disability

1. Background Information

- 1.1 What was the reason Child Protection first become involved with your family?
- 1.2 How old were your children when Child Protection first became involved with your family?
- 1.3 Is Child Protection still involved with you and your family? In what capacity? (eg, current investigation, ongoing monitoring, current orders)

2. Child Protection Processes

- 2.1 What information did Child Protection Services/Worker provide you about what was happening? (eg, written material, verbal description of processes)
- 2.2 Did anyone from Child Protection Services sit down with you and explain what was happening and how things worked? (eg, investigation, court orders, etc.)
- 2.3 What assistance did the Child Protection Worker/s offer you to prevent the removal of your child/ren? (Clearly explaining what steps you needed to take in order to prevent removal, offer of access to respite services, assistance to access other support services)

3. Support / Advocacy

- 3.1 When you had your initial interview with a Child Protection Worker were you given the choice of having a friend, family member or support worker attend the meeting to support you?
- 3.2 At any time during your involvement with Child Protection Services did / have you had a support worker / person or advocate attend meetings between yourself and Child Protection Workers?
- 3.3 Are you registered with any disability service (eg. DHS Disability Services, Mental Health services) as being eligible to receive services?
- 3.4 Did a disability support worker of your choice have any role in supporting / assisting you during your involvement with Child Protection? If yes, what sort of assistance did the disability support worker provide you with?

4. Legal Representation

- 4.1 Were you provided with information about your legal rights and options as a parent and that you should seek legal advice before any appearances in the Children's Court?
- 4.2 Did you have any legal representation when you went to the Children's Court / met with Child Protection workers? If yes, was this through a duty solicitor at the Children's Court or through someone else?
- 4.3 How much time / contact did you have with the solicitor before your case was heard in the Children's Court?
- 4.4 What did the solicitor discuss with you about your rights, the impact of orders you may be agreeing to / contesting, etc?
- 4.5 If you had multiple appearances in the Children's Court were you able to receive assistance from the same solicitor or did you have to discuss your case with a different solicitor on each appearance?
- 4.6 Did you have access to suitable legal advice between court appearances if required?

5. Child Protection Orders and Undertakings

- 5.1 If your children were removed from your care, who were they placed with?
- 5.2 What contact, if any, were you allowed to have with your children in order to maintain a relationship with them while carrying out conditions in orders that would enable your children to be returned to your care?
- 5.3 If your child/ren has been permanently removed from your care how much contact are you permitted to have?
- 5.4 What are the conditions of the contact? (eg supervised) Is this a condition of the Children's Court or the Family Court?
- 5.5 Did the Child Protection workers explain the terms of any orders they were seeking / granted so that you were aware of what you needed to do in order to maintain your children at home or get them back from care?
- 5.6 What types of orders and final orders did you agree to / were granted by the Children's Court?
- 5.7 If you agreed to a consent order, what made you agree to the order?
- 5.8 What support / advocacy did you have from someone other than a Child Protection worker in reaching the decision to consent to the order?

- 5.9 At the time of agreeing to the consent order did you have a full understanding of the meaning of the order and its implications? What did you think you were agreeing to?
- 5.10 Where there any tasks you had to undertake in order to prevent your children being removed or to get your children back in your care?
- 5.11 When orders were issued in the Children's Court did you receive a copy of the orders with a full description of tasks you had to undertake?
- 5.12 How were you informed of the tasks you had to undertake in order to maintain your family?
- 5.13 What assistance were you given by Child Protection workers to carry out the tasks you had to in order to meet the conditions of any orders? (eg. Referral to parenting programs, other services?)
- 5.14 What support do you think you needed in order to have your child/ren continue to live with you?
- 5.15 What other services did you access in order to enhance your parenting skills or prevent the removal of your child/ren?

6. Parenting Services

- 6.1 What problems, if any, did you have accessing parenting services to meet your needs? (eg, location, availability, physical access, support available, costs)
- 6.2 Did you receive a service from a specialist parenting service? (eg, a disability specific service). If yes, how did you find out about the service?
- 6.3 Did you receive a service from a generalist parenting service?
- 6.4 How did you locate the parenting service you accessed?
- 6.5 Was the parenting service able to meet your needs?
- 6.6 What resources do you think the parenting service required in order to provide a more effective service to parents with disabilities?

7. Recommendations

- 7.1 What changes do you think Child Protection can make in order to better assist parents with disabilities in the future?
- 7.2 What changes do you think the Children's Court can make in order to better assist parents with disabilities in the future?

7.3 Are there any ways you think Legal Aid / Duty Solicitors can improve their knowledge / support of parents with disabilities?

8. Other

8.1 Is there anything else you would like to include about your experiences with Child Protection?

Appendix 5: Child Protection Focus Group Questions

1. What section of Child Protection do you work in?
2. How many families have you worked with where one or both parents had a disability?
3. How did the parent with a disability come to your notice?
4. What types of disabilities did the parent/s have?
5. In what ways did your knowledge of the parent's disability influence how you assessed and made decisions about the case?
6. What factors other than disability have been involved that may further disadvantage the family / parent eg. Poverty, homelessness, alcohol and drug use, challenging behaviours, a history of abuse, institutionalisation and deprivation?
7. What impact does dual/multiple disability/disadvantage have upon the parenting skills and capacity of people with disabilities and upon the perception of their capacity to parent?
8. What supports did you attempt to or actually put in place for the parent/s that would assist them to maintain their child/ren at home?
9. If you, as caseworker, did not perform this role what steps did you take to ensure the parent/s had the appropriate supports and/or resources to maintain their family?
10. What types of support services do you link parents up with or refer them to?
11. What is your knowledge of services available to parents with disabilities?
12. Where the parent/s were quickly assessed as having a disability, what steps did you take to ensure that the parent/s had appropriate support?
13. What understanding of disability and the needs of parents with a disability do you have? – training? – background?
14. How do you think different disabilities may impact on how someone parents?
Cognitive Impairments - Intellectual disability / ABI
Psychiatric disability
Physical disability

Hearing impairments
Visual impairments
Neurological disorders (MS, Epilepsy)

15. What steps do you take to ensure that a parent with a disability knows exactly what is occurring?
At first contact
Ongoing case management
Before going to court
With conditions in orders
16. What are your views of the role of advocacy for parents with disabilities in the child protection process prior to any Court process? Are these services necessary in your view? Are these available and used by parents?
17. If initiating a consent order, what is done to ensure that the parent with a disability understands the ramifications of consenting to the order?
18. What do you do to ensure the parents have a full understanding of what they are agreeing to in the consent order?
19. Where matters involving parents with disabilities go before the Children's Court, in your experience are these parents legally represented?
20. What is your view of parent's experiences of the Children's Court?
21. Are you familiar with the protocol developed between Child Protection and (Intellectual) Disability Services established for providing support to parents and children with intellectual Disabilities who become involved in the Child Protection system?
22. To what degree are your efforts in working with parents with disabilities your own initiative or policy instructions/directives?
23. How many times have you utilised the protocol and implemented any of steps outlined?
24. What other, if any, specialist advice and collaboration occurs with other professionals when working with parents with disabilities? ie, disability services, mental health workers/psych specialists, community disability support workers, drug and alcohol, etc.
25. If you provide the DHS produced written information on different orders and Children's Court proceedings, what actions do you take to ensure that the parent with a disability understands the information or is literate?
26. What formats is this information in?
27. How is this made available to people who require it in alternative formats?

28. What is your view of the adequacy of resources provided to parents with disabilities who are required to meet Orders of the Children's Court?
29. What is your view of the use of normative 'benchmarks' by the Children's Court Magistrates when assessing cases involving parents with disabilities?
30. What is your view of the complexity of language and process used in the Children's Court and its impact on the ability of parents to understand and respond appropriately to the proceedings?
31. If you do not consider it your role to explain the written material once it is provided to parents, what steps do you take to ensure the parent is able to access the information?
32. What supports do you think are necessary for parents with disabilities in order to maintain the family unit?
33. In your view, what are the issues for parents whose disability may not be diagnosed or whose disability is 'borderline'? eg, not being tapped in to disability support services, not wishing to be known as a person with a mental illness, etc. Are these parents facing different issues than those who have a diagnosis?
34. How well do you feel family support services meet the needs of parents with disabilities? In your view, to what degree does a lack of appropriate services for these parents impact on their parenting skills/capacity?
35. Where intervention in families where a parent has a disability is required, how do you balance the requirement to use "least restrictive means" and "maintaining the family unit" in order to realise the "best interests of the child" as described in the Children's and Young Persons Act?
36. If a woman with an intellectual disability is pregnant, what is done to assess her parenting capacity and the level of risk to her unborn child?
37. What, if any, further training and support needs do you feel would assist child protection and other workers including legal representatives, magistrates and others in their work with parents with disabilities? Ask same question in relation to magistrates.
38. What, if any, further training and support needs do you feel would assist magistrates in their work with parents with disabilities?

Appendix 6: Parent Support Services Questionnaire

Name of Service:

Address of Service / Location of Services Provided (if more than one please list all relevant sites):

Phone Number/s:

Fax:

e-mail:

Web page address:

Contact Person/s:

Name of Program:

Availability of Services (eg. Number of courses / groups a year, waiting list):

Costs involved:

Please provide a brief description of the parenting program, course and/or services provided, including the aims.

Does the program or service you provide to parents cater to parents involved, or likely to become involved, with the Child Protection system?

Yes

No

Are there any particular criteria around Child Protection issues that would include or exclude a parent from accessing your service?

Yes

No

If yes, please elaborate on the criteria / conditions?

Are there any parents who would be ineligible to support through your service? Please indicate any groups ineligible for services.

Have you ever worked with or had parents with disabilities access the parenting support services you provide (utilising the broader definitions of disability provided as listed in the DDA)?

Yes

No

If yes, what types of disabilities have the parents had?

What are your perceptions of the needs of parents with a diverse range of disabilities requiring parenting support as compared to other parents you may provide services to?

Have you ever adapted your parenting program or services to meet the needs of parents with disabilities?

Yes No
If yes please comment...

Would you be willing to adapt your service to meet the needs of parents with disabilities? Eg. Parents with intellectual or psychiatric disabilities, visual or hearing impairment, physical disabilities / impairments including those attributed to illness.

Yes No

What information, resources, support do you believe would be required in order to make your services more accessible to parents with a range of disabilities who may be required to comply with Child Protection orders?

What difficulties, if any, have you faced in providing services to parents with disabilities, eg, resources, support, training?

Would you be willing to have your service / program included in the Disability, Parenting and the Law Project Report in the section on Parenting Services / Supports? (If not a disability specific service this would be indicated in the information)

Yes

No

Thank you for taking the time to fill out and return this questionnaire



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