



Law Council
OF AUSTRALIA

National Consultation Paper

Shaping our future: discussions on disability rights

Disability Discrimination Commissioner,
Australian Human Rights Commission

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2017 Executive as at 1 January 2017 are:

- Ms Fiona McLeod SC, President
- Mr Morry Bailes, President-Elect
- Mr Arthur Moses SC, Treasurer
- Ms Pauline Wright, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Geoff Bowyer, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council acknowledges the assistance of the Law Society of New South Wales and the Law Council's Access to Justice Committee in the preparation of this submission.

Executive Summary

1. The Law Council is grateful for the opportunity to comment on the Disability Discrimination Commissioner's *National Consultation Paper: Shaping our future: discussions on disability rights (the Consultation Paper)*.
2. The Law Council notes that the Disability Discrimination Commissioner's (**the Commissioner**) proposed priority areas of focus in advancing the rights of people with disability are: the criminal justice system, housing, employment, the implementation of the National Disability Insurance Scheme (**NDIS**), and education (not addressed in this submission). The Law Council provides specific comments on the proposed priority areas of the Commissioner. In addition to the priority areas, the Law Council suggests two other areas of disability discrimination that should be included in the Australian Human Rights Commission's (**AHRC**) ongoing areas of work, namely: disability discrimination and juror participation; and, disability discrimination in care and protection matters.
3. Key recommendations of this submission include that the Commissioner consider the:
 - (a) resourcing of Aboriginal controlled organisations which provide specialised and culturally appropriate support for Aboriginal and Torres Strait Islander peoples with disabilities;
 - (b) impact of insufficient funding for legal assistance services on the capacity of people with disability to access legal assistance services;
 - (c) impact that current unfitness to stand trial tests have on people with a disability in the criminal justice system;
 - (d) need for reform of board and lodging systems to address serious concerns about the safety, health, welfare and rights of residents with disabilities;
 - (e) impact of changes to workers compensation legislation on workers with certain types of visas who are injured and become eligible for disability payments; and
 - (f) opportunity that the NDIS could offer in providing support services to forensic patients and the broader prison population.

Priority Areas

People with disability and the criminal justice system

4. The Law Council strongly supports priority action to address the issue of the overrepresentation and discrimination of people with a disability in the criminal justice system. People with a disability are overrepresented in the criminal justice system and are often subjected to discrimination which makes it difficult to achieve access to justice.
5. The overrepresentation of people with a disability in the criminal justice system has been well-documented in a number of recent reports, including the AHRC 2014

Report, *Equal Before the Law*,¹ the Australian Law Reform Commission's (ALRC) 2014 Report, *Equality, Capacity and Disability in Commonwealth Laws*,² the Productivity Commission's 2014 Report, *Access to Justice Arrangements*,³ and most recently the Senate Community Affairs References Committee's 2016 Report on the *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia (Indefinite Detention Inquiry)*.⁴

6. In 2014 the AHRC noted that:

*Access to justice in the criminal justice system for people with disabilities who need communication supports or who have complex and multiple support needs (people with disabilities) is a significant problem in every jurisdiction in Australia. Whether a person with disability is the victim of a crime, accused of a crime or a witness, they are at increased risk of being disrespected and disbelieved and of not enjoying equality before the law.*⁵

7. People with disability, as identified in the 2012 Legal Australia-Wide (LAW) Survey Report,⁶ experience very high levels of unmet legal need. The LAW survey found that people with a disability had significantly higher prevalence of:

- (a) legal problems overall;
- (b) substantial legal problems;
- (c) multiple legal problems; and
- (d) problems across a broad range of legal areas.⁷

8. The Senate Community Affairs References Committee (**the Senate Committee**) in its 2016 Report, made a number of recommendations aimed at ensuring that persons with a disability are fully supported to appropriately intersect with all aspects of the criminal justice system, including identifying disability, provision of supported decision making and providing appropriate exit mechanisms.⁸ The Senate Committee also highlighted the overrepresentation of Aboriginal and Torres Strait Islander people with a disability in the criminal justice system.

¹ Australian Human Rights Commission, *Equal Before the Law* (Report, February 2014) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>>.

² Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>>.

³ Productivity Commission, 'Access to Justice Arrangements' (Report No 72, September 2014) <<http://www.pc.gov.au/inquiries/completed/access-justice/report>>.

⁴ Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report>.

⁵ Australian Human Rights Commission, *Equal Before the Law* (Report, February 2014) <<https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>> 5.

⁶ Law and Justice Foundation of New South Wales, 'Legal Australia-Wide Survey: Legal Need in Australia' (Report, August 2012) <<http://www.lawfoundation.net.au/ljf/app/6DDF12F188975AC9CA257A910006089D.html>>.

⁷ Ibid.

⁸ Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report> 174.

9. Recently, the Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System Project conducted by the University of New South Wales found that:

Indigenous Australians with mental and cognitive disabilities are forced into the criminal justice system early in life in the absence of alternative pathways. Although this also applies to non-Indigenous people with mental and cognitive disabilities who are highly disadvantaged, the impact on Indigenous Australians is significantly greater across all measures and experiences gathered in the studies across the project.⁹

10. Foetal Alcohol Spectrum Disorders (**FASD**) are more prevalent in Indigenous communities, difficult to diagnose and significantly impact an individual's cognitive or psychiatric functioning. In 2010, the National Indigenous Drugs and Alcohol Committee stated that:

Limited research has investigated the relationship between FASD and contact with the criminal justice system in Australia. The limited Australian literature, complemented by international research, indicates that FASD should be considered at every stage of the criminal justice system, from offending behaviour, through to court proceedings, as well as throughout incarceration and post-release.¹⁰

11. The Law Council agrees with the view expressed by the Senate Committee that:

Screening of people with cognitive and/or psychiatric impairments needs to be made a priority, particularly for those with severe impairments such as FASD, to ensure that the judiciary can make early informed choices about diversion and therapeutic treatment for this group of vulnerable Australians.¹¹

12. In its recommendations, the Senate Committee suggested that Aboriginal and Torres Strait Islander forensic patients should have access to culturally appropriate therapeutic and support services, to communicate effectively with service providers, police and the judiciary.¹²
13. The Law Council strongly supports the Senate Community Affairs References Committee's recommendations, and particularly the need for Aboriginal controlled organisations to be properly resourced to provide specialised and culturally appropriate support to Aboriginal and Torres Strait Islander peoples with cognitive and psychiatric impairments in detention and community care.¹³

⁹ Eileen Baldry, et al, 'A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system' (University of New South Wales, Report, October 2015) <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_2nov15.pdf> 12.

¹⁰ National Indigenous Drugs and Alcohol Committee, Submission No 94 to House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities*, 14 April 2014, Attachment 2, 10.

¹¹ Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report> 74.

¹² Ibid, 177.

¹³ Ibid.

Legal Assistance Funding Services

14. The Law Council agrees with the statement made by the Government in its response Senate Community Affairs References Committee's 2015 Report,¹⁴ 'that providing access to legal representation, and ensuring that courts and tribunals are accessible, are essential to providing access to justice.'¹⁵
15. The Law Council acknowledges the Government's support of legal assistance services for Australians with disabilities, through the funding of disability advocacy agencies under the National Disability Advocacy Program, and disability advocacy agencies and Legal Aid Commissions (**LACs**) under the NDIS Appeals program to assist NDIS participants.
16. However, only a limited number of people with disabilities actually qualify for legal assistance under the NDIS. Furthermore, access to justice issues persist for those with disabilities, despite prioritisation under the National Partnership Agreement on Legal Assistance Services.
17. The Law Council also notes that inadequate funding by successive governments for legal assistance services has undermined the capacity of legal assistance providers to meet the legal needs of specific and vulnerable target groups, including those with disabilities.
18. Underfunding of legal assistance services, including LACs, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services are likely to severely limit access to justice for those with disabilities.
19. The Law Council recommends that the Commissioner consider the impact of insufficient funding for legal assistance services on the capacity of people with disability to access legal assistance services.

Unfitness to stand trial test

20. Legislation dealing with a person's fitness to stand trial in criminal proceedings is lengthy and complex, and differs between the states and territories.¹⁶
21. At the Commonwealth level, the *Crimes Act 1914* (Cth) (**Crimes Act**) does not define, or provide a test for, 'fitness to be tried', other than noting that it includes 'fit to plead'.¹⁷ The issues relevant to identifying fitness are identified in *R v Pritchard*.¹⁸ The

¹⁴ Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (November 2015) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>.

¹⁵ Australian Government response to the Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (3 March 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Government_Response> 13.

¹⁶ Australian Human Rights Commission and DLA Piper, 'Background Paper on Access to Justice for People with Disability in the Criminal Justice System' (Report, 2013) 57.

¹⁷ *Crimes Act 1914* (Cth) s 16.

¹⁸ (1836) 7 Car & P 303; 173 ER 135.

common law has been modified to various extents by the relevant legislation in each jurisdiction.¹⁹

22. In reviewing Commonwealth laws concerning legal capacity, the ALRC recommended reform of the 'unfitness to stand trial' test,²⁰ accompanied by the provision of limits on detention and periodic reviews where detention is required.²¹ It did so to 'avoid unfairness and maintain the integrity of criminal trials, while ensuring that people with disability are entitled to equal recognition before the law, and to participate fully in legal processes.'²²
23. In its submission to the Indefinite Detention Inquiry the Law Council supported consideration being given to amending the unfitness to plea test in the manner recommended by the ALRC.²³ The ALRC recommended that the Crimes Act should be amended to provide that a person cannot stand trial if the person cannot be supported to:
- (a) understand the information relevant to the decision that they will have to make in the course of the proceedings;
 - (b) retain that information to the extent necessary to make decisions in the course of the proceedings;
 - (c) use or weigh that information as part of the process of making decisions; or
 - (d) communicate the decisions in some way.²⁴
24. The Law Council supports Recommendation 6 of the Senate Community Affairs References Committee in its 2016 Report on the Indefinite Detention Inquiry that
- [t]he Australian Government work with state and territory governments to implement the recommendations of the Australian Law Reform Commission report Equality, Capacity and Disability in Commonwealth Laws, in relation to legal capacity and supported decision making.*²⁵
25. However, the Law Council also proposes that the ALRC's preferred test should be amended to require that a person be capable of 'rational' decisions. The ALRC did not support this view on the basis that some level of rationality is implicit in the

¹⁹ Australian Human Rights Commission and DLA Piper, 'Background Paper on Access to Justice for People with Disability in the Criminal Justice System' (Report, 2013) 57.

²⁰ Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>> recommendation 7-1, 200.

²¹ Ibid recommendation 7-2, 206.

²² Ibid 194.

²³ Law Council of Australia, Submission No 72 to Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, 7 July 2016, 10.

²⁴ Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>> recommendation 7-1, 200.

²⁵ Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report> 174-5.

requirement of understanding, using and weighing information.²⁶ However, the Law Council prefers an express requirement rather than relying upon implications. It is quite possible for a person to understand, retain, and communicate a decision they have made, without that decision being a rational decision.²⁷

26. The Law Council acknowledges, as the ALRC did in its Report, that amendments to the Crimes Act to redefine the unfit to stand trial test would not apply if the matter is being heard in a state or territory court.²⁸ However, amending the Crimes Act is likely to drive similar reforms in the states and territories.²⁹
27. The Law Council recommends that the Commissioner consider the impact that current unfit to stand trial tests have on people with a disability in the criminal justice system.

Housing

28. The Law Council welcomes the Commissioner's focus on access to affordable and accessible housing for people with a disability. In addition to the Commissioner's focus on increasing supply of housing which meets a minimum standard of accessibility, the Law Council suggests that the Commissioner may also wish to include particular consideration of the needs of people with a disability in social housing and boarding houses.
29. The Law Council refers the Commissioner to the 2011 NSW Ombudsman's Report, *More than board and lodging: the need for boarding house reform*,³⁰ which identified serious concerns about the safety, health, welfare and rights of the residents of licensed boarding houses in NSW, and the adequacy of the system that is meant to protect them. The Ombudsman's report highlighted the vulnerability and poor circumstances of people living in licensed boarding houses, many of whom have a disability and require daily supervision and support. At the time of the report, the Ombudsman found that boarding house accommodation did not afford residents adequate protection, support or rights, and that there was a pressing need for significant reform to address these ongoing issues.

Employment

30. The Law Council acknowledges the Commissioner's priority to drive implementation of the recommendations contained in the AHRC's *Willing to Work Inquiry Report*.³¹ In

²⁶ Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>> 202.

²⁷ Law Commission of England and Wales of England and Wales, 'Unfitness to Plead', (Report, 13 January 2016) <http://www.lawcom.gov.uk/wp-content/uploads/2016/01/lc364_unfitness_vol-1.pdf> 62.

²⁸ Judiciary Act 1903 (Cth) ss 68, 79; *Kesavarajah v R* (1994) 181 CLR 230; Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>> 206.

²⁹ Australian Law Reform Commission, 'Equality, Capacity and Disability in Commonwealth Laws' (Report No 124, November 2014) <<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>> 206.

³⁰ NSW Ombudsman, 'More than board and lodging: the need for boarding house reform' (August 2011) <<https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/community-and-disability-services/previous-community-and-disability-services-reports/more-than-board-and-lodging-the-need-for-boarding-house-reform>>.

³¹ Australian Human Rights Commission, 'Willing to Work, National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability' (2016)

particular, the Law Council notes the Report's finding that some government programs, policies and federal laws including workers compensation, can impact negatively on the workforce participation of Australians with disability.³²

31. The Law Council encourages the Commissioner to undertake further consultation regarding the impact of changes to workers compensation legislation on workers with certain types of visas who are injured and become eligible for disability payments as a result of such injuries. The Law Society of New South Wales (**Law Society**) has noted to the Law Council that this is a particular issue in NSW.
32. By way of example, changes to the NSW workers compensation scheme in 2012 included a number of amendments that decreased compensation entitlements for certain workers. Specifically, where previously an injured worker was able to receive weekly compensation payments until the age of 66, the changes introduced a five year limit or sunset on weekly payments.³³ The *Workers Compensation Act 1987*(NSW) states that an injured worker should be entitled to lost wages but for the accident (which must be a work related accident). The presumption is that, after five years, the injured worker would be entitled to Centrelink disability payments or the NDIS scheme.
33. However, by shifting eligibility for compensation payments from state-based workers' compensation schemes to Commonwealth social security benefits, the changes affect injured and disabled workers who are not eligible for government disability benefits due to their visas status.
34. The Law Council and the Law Society refer the Commissioner to the case of *Singh v TAJ (Sydney) Pty Ltd*.³⁴ In this matter, the Court of Appeal found that the common law confirms that a worker's visa (in this case, a change in its status), has no bearing on that person's workers' compensation benefits.³⁵ However, due to the above changes to the NSW compensation scheme, a worker who was previously eligible for workers' compensation payments for a longer period of time, but who is not a permanent resident, is not entitled to Centrelink disability payments.
35. The Law Society has raised with the Law Council, concerns that the NSW reforms to the workers' compensation scheme have unfairly impacted on the rights of disabled workers who are employed in Australia on certain types of visas and who are not permanent residents. The Law Council therefore encourages the Commissioner to give further consideration to this issue (and any similar issues arising in other jurisdictions) as part of the AHRC's ongoing work in advocating for the implementation of the *Willing to Work Inquiry Report* recommendations.

Implementation of the NDIS

36. Evidence received by the Senate Inquiry noted the opportunity that the NDIS could offer in providing specialist disability supports to forensic patients and the broader

<https://www.humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_AHRC_ac.pdf>.

³² Ibid, 169.

³³ *Workers Compensation Act 1987*(NSW) s 39.

³⁴ [2006] NSWCA 330.

³⁵ Ibid 58.

prison population.³⁶ The Senate Committee received conflicting evidence regarding eligibility and access to supports through the NDIS for people held in prisons.

37. The Law Council considers that, given the significant overrepresentation of people with a disability in the criminal justice system, access to disability services for those in prison is vital for their long-term treatment and rehabilitation, and should therefore also be a focus of the AHRC's work.

Other Comments

38. In addition to the priority areas identified by the Commissioner, the Law Council suggests two other areas of disability discrimination that should be included in the AHRC's ongoing areas of work.

Disability discrimination and juror participation

39. The recent High Court decision in *Lyons v Queensland*³⁷ found that a deaf woman who uses Auslan (Australian Sign Language) was not discriminated against when she was denied the ability to be a member of a jury. In commenting on this case, the Commissioner acknowledged the need for better access to justice for all people with a disability.³⁸ The Law Council notes the Commissioner's views, that the justice system is not designed to allow people with disability to participate in it, and that there is often a lack of awareness that people with disability are capable of functioning, with appropriate support and accommodations, in the justice system.³⁹
40. The Law Council encourages the AHRC's ongoing advocacy on access to justice for people with a disability. On the particular issue of blind and deaf jurors, the Law Council and Law Society refers the AHRC to the NSW Law Reform Commission's (NSWLRC) 2006 report, *Blind or Deaf Jurors*.⁴⁰ The Report made a number of recommendations aimed at improving access to participation in juries for people who are profoundly deaf or have a significant hearing or sight impairment.
41. However, the NSWLRC's recommendation to support profoundly deaf jurors was not supported by the NSW Government.⁴¹ The Government's response notes that, while reasonable adjustment is operationally available, the NSW Government has not approved reasonable adjustment for profoundly deaf jurors due to the issue of introducing additional unsworn individuals into the Jury Deliberation Room. The NSW Government also noted its concerns regarding the accuracy and interpretation of

³⁶ Senate Community Affairs References Committee, Parliament of Australia, *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (November 2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report> 181.

³⁷ *Lyons v Queensland* [2016] HCA 38.

³⁸ Australian Human Rights Commission, 'Access to justice denied for people with disability' (Media Release, 5 October 2016) <<https://www.humanrights.gov.au/news/media-releases/access-justice-denied-people-disability>>.

³⁹ *Ibid.*

⁴⁰ NSW Law Reform Commission, 'Blind or Deaf Jurors' (Report No 114, December 2009) <<http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-114.pdf>>.

⁴¹ Department of Justice, 'Did you know: accessibility services available to jurors', (Media Release, 25 February 2016) <<http://www.justice.nsw.gov.au/Pages/media-news/news/2016/accessibility-services-available-to-jurors.aspx>>.

evidence provided.⁴² For example, evidence in court can be presented in many forms including by playing electronically recorded interviews with suspected persons, and telephone intercepts. A large component of this evidence is related to the tone, pace and nuances of speech, which means that these elements can be lost in transcripts alone.

42. The Law Council recognises the need to balance a defendant's right to a fair trial with the rights of a person with hearing loss.⁴³ The Law Council supports the Commissioner continuing to work with states and territories to encourage deaf people to serve on juries, where it is appropriate and in the interests of justice to do so.

Disability discrimination in care and protection matters

43. The Law Council acknowledges reports of discrimination and limited access to appropriate support services for parents with an intellectual disability who may cross over with the care and protection jurisdiction. More specifically, there are reports that while a high proportion of families with a parent with an intellectual disability will come to the attention of child protection and support agencies due to allegations that a child has been or is at risk of abuse or neglect, prejudice and lack of understanding often contribute to these heightened rates.⁴⁴
44. Studies have found that parents with intellectual disability represent a small number of parents in Australia. However, they are over-represented in child protection services and legal proceedings.⁴⁵ The Law Council is concerned by reports of discriminatory practices, as parents with a disability are marginalised by their lack of access to information (including information they can understand), well-informed legal representation, and most importantly, support that is appropriate to their needs during the court process.⁴⁶
45. The Law Council encourages the AHRC and the Commissioner to undertake further consultation and advocacy on the rights of parents with a disability in the care and protection system, to ensure access to appropriate legal and support services for this vulnerable group.

⁴² Ibid.

⁴³ See eg, the comments made by Douglas J in *Re Application by Sheriff* [2014] 241 A Crim R 169, [8], concerning the application to determine the eligibility of Ms Lyons for jury service pursuant to the *Jury Act 1995* (Qld).

⁴⁴ Alister Lamont and Leah Bromfield, 'Parental intellectual disability and child protection: Key issues', (Report, NCPC Issues No 31, National Child Protection Clearing House, December 2009) <<https://aifs.gov.au/cfca/publications/parental-intellectual-disability-and-child-protection-key-i>>.

⁴⁵ Ibid.

⁴⁶ David McConnell, Gwynnyth Llewellyn and Luisa Ferronato, 'Parents with a disability and the NSW Children's Court', (Report, The Family Support & Services Project, University of Sydney, August 2000) <<http://sydney.edu.au/health-sciences/afdsr/docs/mcconnell-parents.pdf>>.