



The Right to Escape without Restriction for Women with Disabilities

Reply to call for Submissions on Protection Orders & Shelters as Two Ways of Prevention & Protection of Violence Against Women

Advocacy for Inclusion

January 2017

About Advocacy for Inclusion
Home of the Disability Rights Law Centre

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion is a non-for-profit Disabled People's Organisation (DPO) community organisation in the Australian Capital Territory (ACT), Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and is signed onto the *ACT Human Rights Act*.

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We agree to this submission being posted on the website of the Office of the High Commissioner for Human Rights.

January 2017

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1. Legislative and policy framework for representative organisations

Disability organisations are recognised in the *National Disability Strategy* as “essential in promoting the rights of people with disability”.¹ Despite the UN Committee recommending that Australia “take initiatives to increase the resources available for independent organisations of persons with disabilities”² the scarce amount of funding allocated for representative organisations has been substantially reduced by the Federal Australian government.³ It should also be noted that the levels of government support received by service provider and carer groups far outweigh the levels of support provided to disabled people’s and advocacy organisations.

In the Australian Capital Territory (ACT), representative organisations, including cross-disability organisations People with Disabilities ACT (PWDACT) and Women with Disabilities ACT (WWDACT), perform valuable work with very limited funding. Advocacy for Inclusion, as a Disabled People’s Organisation (DPO), undertakes a significant role in advocating for and representing the voices of people with cognitive disabilities and significant communication barriers. These three organisations often work collaboratively to ensure the broadest possible voice of disability is heard in the ACT.

Advocacy for Inclusion is keenly aware of the role of individual, self and systemic advocacy activities in amplifying the voices of marginalised women with disabilities facing violence and abuse. Our consumers are generally not members of representative organisations or likely to get actively involved in their activities or seek opportunities to contribute their views.

2. Legislation and policies aimed at ensuring women with disabilities are consulted and involved in domestic violence legislation in Australia

Australian governments, including the ACT Government, are yet to meaningfully embrace the concept of people with disabilities being experts in their own matters. Women with disabilities are often not invited or are sparse in participating in processes of legislative reform and policy development and their voices are missing from crucial conversations regarding domestic violence.

Until recent years, there has been silence around the experiences of domestic violence among women with disabilities. Women with disabilities in a domestic violence context have been largely excluded from the generic policies, including Australia’s commitment to the *National Plan to Reduce Violence against Women and their Children 2010-2022*.⁴ The National Plan provides a coordinated framework to improve the scope, focus and effectiveness of the government’s actions, to ensure women and their children receive the support and services that they need. Women with disabilities had been provided a small section as a ‘minority’, but not given priority in accessing services they need to ensure they escape violence safety without barriers.

In 2015, the Council of Australian Government (COAG) agreed that further action was needed, identifying key priority areas for reform, which do not include women with disabilities:

- A National Domestic Violence Order (DVO) national law model

¹ 2010-2020 *National Disability Strategy* at p24.

² Committee on the Rights of Persons with Disability, ‘Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its Tenth Session (2–13 September 2013)’ (United Nations, 4 October 2013). 13.

³ May, J. (2015, February 13) Disability sector funding cuts attacked by former UN committee chairman. *The Sydney Morning Herald* <http://www.smh.com.au/federal-politics/political-news/disability-sector-funding-cuts-attacked-by-former-un-committee-chairman-20150211-13c51o.html>

⁴ Department of Social Services (DSS), (2016). *The National Plan to Reduce Violence against Women and their Children 2010 – 2022 (Third Action Plan)*. [online] Canberra. Available at: <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> [Accessed 19 Jan. 2017].

- National standards to ensure those who use violence are held to account at the same standard across Australia,
- Strategies to keep women safe from technology-facilitated abuse.⁵

The Australian Government has acknowledged the serious nature of women with disabilities escaping domestic violence on the same level as women without disability. Australian Prime Minister Malcolm Turnbull has stated that ‘We must elevate this issue to our national consciousness and make it clear that domestic, family or sexual violence is unacceptable in any circumstances’⁶, which must include disability as a priority; however, at the ground breaking October 2016 COAG summit on addressing violence against women included only 1.5 per cent of delegates were women with disabilities.⁷

The local level – Australian Capital Territory

In 2016, the Australian Capital Territory legislated and passed the Family Violence Act 2016.⁸ Unfortunately, this new legislation further erodes the options for women with disabilities escaping violence as it removes previous ambiguities about their domestic circumstances and excludes the types of domestic arrangements of many women with disabilities. Women with disabilities live in such places, and circumstances, because government policy prefers those places, yet they are outside the provisions of the Family Violence Act 2016. This results in denial of coverage by domestic violence protection orders, leaving common assault provisions as the only alternative to seeking protections or redress, both are inadequate in responding to women with disabilities escaping violence in their home.

The ACT government has aligned a great deal of ACT legislation with NSW, but for some reason it has failed to provide people with disabilities the right to be safe in their own homes. Instead it continues to actively support and promote models of living which stand outside domestic violence law and which are proven, despite the best intentions of everyone involved, to result in high levels of violence and abuse.

The ACT *Domestic Violence and Protection Orders Act 2008* provide victims of violence in domestic relationships a “greater level of protective response”. Although people with disabilities experience high rates of violence, this Act does not recognise the relationships common among people with disabilities as “domestic”. For example, relationships in disability supported accommodation and informal arrangements such as home-sharing¹. People with disabilities are excluded from the “greater level of protective response” afforded to other members of the community. Domestic violence legislation must extend protection to all people with disabilities regardless of their domestic settings.

Advocacy for Inclusion works consistently with women with disabilities who are experiencing violence and have found the contexts in which these crimes occur are not recognised by the wider community as being forms of violence. For example, violence between residents in disability residential care facilities or perpetrated by caregivers.

3. The Domestic Violence Situation in the Australia

Women with disabilities are highly marginalised in Australian society and are often denied their rights under Article 3 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW):

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women,

⁵ Australian Government, 2016, *Family and Domestic Violence Strategy 2016–2019*. [online] Canberra: Department of Social Services (DSS). Available at: <https://www.humanservices.gov.au/sites/default/files/12899-1511-family-domestic-violence-strategy.pdf>

⁶ Australian Government, 2015, *Women’s Safety Package to Stop the Violence*. [online] Available at: http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/4094095/upload_binary/4094095.pdf;fileType=application%2Fpdf#search=%22media/pressrel/4094095%22

⁷ COAG National Summit on Reducing Violence against Women and their Children, 2016 see <https://coagvawsummit.pmc.gov.au/>

⁸ *Family Violence Act 2016*, 2016, Canberra: Attorney-General—Justice and Community Safety Directorate.

*for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*⁹

Women with disabilities experience domestic violence in situations similar to women without disabilities; they will be assaulted by someone who is known to them, will most likely be assaulted by a man and it will most likely be in private, in their 'place of residence', or in the home of a friend or relative^{10 11}. In Australia, twenty-two percent of women and girls with disabilities have been affected by violence and women with disability are at increased risk of sexual violence¹². Australian Bureau of Statistics data shows that in 2014, three times as many female victims (465) were assaulted due to domestic violence in the ACT¹³. Current statistics do not indicate how many of these women have disability.

In many respects, protection and response measures are not afforded to women with disabilities in Australia, resulting in the denial of their human rights according to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD). We are particularly concerned that due to a lack of access to justice, the human rights of women with disabilities fleeing domestic violence are violated under Article 16 of the CRPD.

4. Isolation and Social Exclusion

Isolation is a primary factor contributing to the difficulties faced by women with disabilities understanding domestic violence legislation, services available and the means of accessing them safely. Isolation, both social and physical, can heighten vulnerability by the absence of family, social support and the lack of means to report abuse, particularly if the perpetrator is a carer or family member. The combination of lack of resources, isolation, social marginalisation and the potential requirement of reporting the violence to police is a deterrent for women with disabilities experiencing violence.

In various settings where women with disabilities reside violence may be perpetrated by a number of people who come into contact with the woman in her domestic life. These may include other residents, co-patients, a relative and/or a caregiver, whether family member or paid service provider.¹⁴ For women who have made the choice to leave an abusive situation, accessible, appropriate and reliable service provisions and transport on short notice is almost impossible to find, particularly for women with disabilities who have high support and mobility needs. This issue can become more profound in situations where the perpetrator may be the sole source of transport, heightening the isolation and social exclusion and creating a large barrier to escape.

5. Barriers in accessing and organising support upon escape

In our experience, domestic violence services are not catered to support the various levels of needs of women with disabilities. Several programs in the ACT provide women with funding to remove themselves from a violent situation but women still have to organise their own supports with the funding. This creates a large barrier particularly for a woman whose disability had been aggravated by the violence and stress of rebuilding her supports after escaping. This is an added stress upon the woman when support and services are not available and ready for her escape. Our experience shows that many women are unable to overcome this initial barrier to safety.

⁹ UN Convention on the Elimination of All Forms of Discrimination against Women, *Article 3*, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

¹⁰ ANROWS, 2015, What does it take? Developing informed and effective tertiary responses to violence and abuse of women and girls with disabilities in Australia: State of knowledge paper see http://anrows.org.au/sites/default/files/3_3.4%20Landscapes%20Disability.pdf

¹¹ UN Women, 2006, *Forms of violence against women*. Retrieved from <http://www.endvawnow.org/en/articles/296-forms-of-violence-against-women-.html>

¹² Plummer, S.-B., & Findley, P. A. (2012). *Women with disabilities' experience with physical and sexual abuse: Review of the literature and implications for the field*. *Trauma, Violence & Abuse*, 13(1), 15-29.

¹³ ABS, 2014, *Recorded Crime - Victims, Australia, 2014*, cat. 4510.0

¹⁴ KPMG Consulting, 2000, 'Information resources on domestic violence for women with disabilities': Issues Paper; Prepared for the Commonwealth Office of the Status of Women; Canberra

Facilities without ramps and lifts, communication equipment; attendant care via support workers; interpreter services for Deaf/Hard of Hearing; information in alternative formats such as Easy English; suitably trained staff in disability and so on, are not ready for women with disabilities seeking shelter. In addition, women with disabilities with children who flee violent situations run the risk of losing custody of their children because child protection authorities may question their ability to care for them alone on top of their own support needs.^{15 16}

The issue of disability specific supports being readily unavailable, and women with disabilities being expected to respond to escaping violence while simultaneously reorganising entire support arrangements from scratch, is prevalent. The consequence of support services not being readily available is that women with disabilities remain in the relationship for ease of retaining disability supports, particularly if the perpetrator is the primary caregiver.

6. Not always family-like living arrangements

Not all relationships in which women with disabilities experience violence can be defined within a family-like context. Any definition of 'domestic violence' needs to be sufficiently broad to cover spousal relationships, intimate personal relationships (including dating relationships and same sex relationships), family relationships (with a broad definition of relative), and formal and informal care relationships.

Women with disabilities live in a diverse range of domestic settings including, a community based group home or residential institution, a boarding house, hospital, psychiatric ward, or nursing home. It is highly common that women with disabilities who have only experienced living in supported accommodation have no knowledge about alternatives and no readily accessible means to acquire that knowledge. It is under these living arrangements that many women with disabilities are particularly isolated, with limited ability to have relationships and confidants outside the 'family' where the abuse is taking place.

The types of violence experienced by women with disabilities include physical violence, sexual assault, verbal abuse, and living in fear of the threat of harm. Many live with intimidation, financial exploitation, and suffer retribution for decisions, choices or complaints they have made¹⁷. Women with disabilities face different forms of violence than women without disabilities. For example, forced sterilisation and abortion,¹⁸ chemical restraint, withholding of aids and equipment, having services or activities withheld, continual belittling and demeaning treatment based on the disability, and threats to remove children.

Contrary to the obligations under CRPD article 19,¹⁹ many women with disabilities are still living in situations, or with people, not of their choosing. "Many people with disability are effectively forced to live in institutions or residential care facilities in order to receive social and personal care supports"²⁰ This result in conflict between house mates and often escalates to violence. Others are unable to get the level of support or care they need and are forced to rely on people who are physically or sexually abusive.

¹⁵ McConnell, D., & Bjög Sigurjónsdóttir, H. (2010). see

http://www.washhouse.org.au//index.php?option=com_content&task=view&id=11&Itemid=18

¹⁶ Advocacy for Inclusion, 2013, Counting them in: Parents with disabilities and the ACT Child Protection System, Submission to the ACT Out of Home Care Strategy 2015-2020, see

http://www.advocacyforinclusion.org/Site%20Data/Publications/Submissions/2014/Submission_to_Proposed_OOHCS_4June2014FINAL.pdf

¹⁷ Advocacy for Inclusion, 2015, Submission to the Senate Inquiry into Violence against PwD in Institutions, see Senate Inquiry into violence against PwD in institutions 2015\Submission to Senate Inquiry into institutional violence against FINAL.pdf

¹⁸ Women with Disabilities Australia, 2011, *Sterilisation of Women and Girls with Disabilities - An update on the issue in Australia*, www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/WomenwithDisabilitiesAustralia.pdf

¹⁹ UN Convention for the Rights of Persons with Disabilities, 2006, *Article 19*. "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."

²⁰ CRPD Civil Society, 2012, Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities.

Some experts call this violence a “structurally induced crime”²¹, created by living circumstances over which neither victim nor perpetrator have control. Many cases worked on by Advocacy for Inclusion exhibit these characteristics. It is a serious problem with the ACT disability support system with no serious recognition and response by government. Rather the government continues to actively support such living circumstances as the primary housing solution for people with disabilities in the ACT. Women with disabilities are often afraid to speak up as they fear that they will upset their service provider or their carer. Others have significant communication barriers and violence is overlooked or covered up.

Male residents in residential care facilities are often cited in the literature as the most common perpetrators of sexual abuse against women with intellectual disability.^{22 23 24 25} In these facilities the behaviour may be diminished because it is seen to be an indication of the perpetrator’s disability.^{26 27} Further, disability accommodation providers often do not respond to such incidents of violence or sexual assault appropriately. For example, in our experience, service providers seek to remove the victim from their home instead of the perpetrator. This is also discussed in a report from the Ombudsman Victoria shows that victims of sexual assault in residential care facilities are often removed from the home instead of the perpetrator.²⁸ This means that the victim cannot access justice as they feel punished for the incident when they wanted to remain in that home.

In our individual advocacy work, we note a level of complacency towards violence by disability service providers when we raise issues of violence in their facilities with them. It seems to be systemically accepted. Disability support staff seem inured to it after years of having no alternative to offer, or perhaps having succumbed to a “culture of violence”. It seems that workers and managers in the disability service system are also not trained to recognise and respond appropriately to these incidents. This means that women with disabilities can be subjected to violence and abuse in their home for years.

Despite the heightened vulnerability and instances of violence experienced by women with disabilities, there is little in the way of legislative protections, programs and resources in response. For example, crisis accommodation appropriate to the needs of women with disabilities scarcely exists in Australia. Some women with disabilities have specific and significant support needs that would never be catered for in a women’s domestic violence shelter.

A coordinated approach to ensuring services and reasonable adjustment is immediately provided is urgently required, as misinformation and ignorance about disabled people that is common among the general public, health and human service professionals makes it difficult for agencies to provide the same quality services to their disabled clients. Such adjustments include providing staff training on the prevalence of disability, domestic violence and their direct consequences. They also include a need for shelters to coordinate vital disability supports rather than expecting women with disabilities escaping violence to do this.

There is also minimal research and no standard national data collection on the type and extent of abuse and violence experienced by women with disabilities. The Australian Bureau of Statistics (ABS) is the major national data collector on the status of people with disabilities in Australia; however, it does not collect data on experiences of violence or abuse.

²¹ French, P., 2007, *Disabled justice: The barriers to justice for persons with disability in Queensland*, For Queensland Advocacy Incorporated.

²² Community Services Commission & Intellectual Disability Rights Service, 2001, *Crime prevention in residential services for people with disabilities, A discussion paper*, Sydney: Community Services Commission.

²³ People with Disability, 2007, *SADA Action Strategy Project, Sexual assault in disability and aged care residential settings, NSW regional consultations findings and recommendations*, Sydney: Author.

²⁴ Wilson, C., & N. Brewer, 1992, The incidence of criminal victimisation of individuals with an intellectual disability, *Australian Psychologist*, 27(2), 114-17.

²⁵ Wilson, C., 1990, *The incidence of crime victimisation among intellectually disabled adults* (Report Series No. 92), Adelaide: Australasian Centre for Policing Research.

²⁶ Attard, M., 2007, Senior Project Officer, Sexual Assault in Disability and Aged Care Action Strategy Project. Interviewed by A. Powell, 18 December 2008. Cited in Sullen, M., & Powell, A., Op. Cit.

²⁷ Worth, C., 2008, Manager, South East Centre Against Sexual Assault (SECASA). Interviewed by A. Powell, 22 January 2008. Cited in Sullen, M., & Powell, A., Op. Cit.

²⁸ Ombudsman Victoria, 2006, *Improving responses to allegations involving sexual assault*. Melbourne: Government of Victoria.

7. Conclusion

Women with disabilities are some of the most vulnerable members of the Australian community to all forms of violence and abuse. However, women with disabilities experience more barriers than the rest of the community in accessing shelter and services when escaping domestic violence. Consequently, many are unable to realise their right to be free from violence and exploitation.²⁹ The barriers include:

- Inadequate awareness and understanding among the community of the experience of violence against women with disabilities, including a lack of research and data collection;
- Denial among the community that the types of violence experienced by women with disabilities is actually violence;
- Lack of legislative recognition and protections afforded to women with disabilities as victims of violence;
- Lack of support, programs, resources and information appropriate and accessible for women with disabilities to help them be free from violence;
- Mishandling by disability accommodation providers of incidents of violence against women with disabilities, including lack of training among staff on how to respond to such incidents;
- The particular vulnerability of women with disabilities, including their dependence on abusive care givers or partners, dependence on supports provided within a violent residential care setting, fear of consequences of reporting incidents due to this power differential, and for many a conditioning to violent treatment over a lifetime.

²⁹ UN Convention for the Rights of Persons with Disabilities, 2006, *Article 16*.