

SUPPORT FOR NEW PARENTS AND BABIES IN NEW SOUTH WALES

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Economic and Social Council of the United Nations

15 November 2017

Dear Legislative Assembly Committee on Community Services,

Re: Support for new parents and babies in New South Wales

People with Disability Australia (PWDA) welcomes the opportunity to provide a disability perspective to the Legislative Assembly Committee on Community Services' inquiry into support for new parents and babies in NSW.

About PWDA

PWDA is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is also a founding member of Disabled People's Organisations Australia ([DPO Australia](#)) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. DPO's are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities. DPO Australia is made up of four national peak DPOs that have been funded by the Australian Government to represent the views of people with disability and provide advice to Government/s and other stakeholders.

Child protection and domestic violence

PWDA recommend that the work of the Legislative Assembly Committee on Community Services be informed by DPO Australia's 2014 submission to the Senate Standing Committee on Finance and Public Administration: Inquiry into Domestic Violence in Australia.¹ This submission outlines that parents with disability are up to ten times more likely than parents without disability to have a child removed from their care. It also makes recommendations that continue to be relevant to the current NSW context: for instance, the need to address the lack of comprehensive gender specific parenting and family support services, programs and measures.²

Adequacy of current services and structures for new parents

Through their involvement in the cases of many parents with disability in NSW, independent individual advocates at PWDA believe that the current supports available for new parents are inadequate for many parents with disability. They continue to see parents with disability, including parents with intellectual disability, over-represented in care and protection proceedings. These parents are often inadequately supported and/or provided inaccessible and inappropriate instructions and information. As outlined by the Intellectual Disability Rights Service (IDRS) and National Ethnic Disability Alliance (NEDA) in their respective submissions to the General Purpose Standing Committee No. 2 2016 inquiry into child protection,³ early intervention services are routinely not offered to new parents with disability. Instead,

¹ Attached as an appendix to this letter. Also available: DPO Australia, 2014. *Senate Standing Committee on Finance and Public Administration: Inquiry into Domestic Violence in Australia. Joint Submission from National Cross-Disability Disabled People's Organisations (DPO's)*, p23. Available: <http://www.pwd.org.au/documents/Submissions/SubDVSenate2014.doc>

² Recommendation 9e.

³ Available:

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/55991/0088%20Intellectual%20Disability%20Rights%20Service.pdf> and <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/56172/0105%20National%20Ethnic%20Disability%20Alliance.pdf> respectively.

these vital supports and interventions are often offered only after a crises has occurred and/or once the child(ren) is removed.

Possible changes to current services and structures for new parents

Based on the experiences of our individual advocates, PWDA recommends changes to current services, programs and structures to make these more accessible and appropriate for parents with disability.

In particular, PWDA recommends:

- That modifications or alterations be made to the Positive Parenting Program to accommodate parents with disability. This may include, for instance, providing information in an accessible format (such as Easy Read, Auslan or Braille) or changing program or service delivery to ensure the content and format is flexible and responsive to the needs of participants.
- That a specialist program be developed to support parents with disability (including parents with psychosocial disability arising from mental illness) in NSW, providing pre- and anti-natal information and supports. This must include supports for dealing with post-natal depression, parenting skills (such as information about attachment and cues) and parent craft skills (including nappy changing, feeding, settling and play skills).
- That robust referral pathways be implemented to ensure parents with disability have earlier access to independent individual disability advocates to support them through any involvement with child protection.
- That greater professional development and training be provided to child protection workers, solicitors and court clinicians, including disability awareness training and skill-building to assist people in these professions to better work with and support parents with disability.
- That the National Disability Insurance Agency (NDIA) and appropriate state based family services work together to ensure integrated strength based support for all parents with disability, focused on maintaining and building a strong family unit.

PWDA is increasingly concerned about the interaction of the National Disability Insurance Scheme (NDIS) and the child protection system in NSW. It is critical that parents with disability are able to access appropriate and tailored services through the NDIS to support their parenting as, and when, required. PWDA advocates are aware of emerging issues whereby the request for such support in an NDIS plan is triggering child protection concerns. We urge caution in this regard, and strongly

recommend that the Committee request further information from FACS and the NDIA on this issue.

PWDA thanks the Legislative Assembly Committee on Community Services for the opportunity to provide a brief response to this inquiry. We welcome further discussion regarding any of the matters we have raised, and also welcome any opportunities to provide additional background information and/or context where required by the Committee.

Yours sincerely,

A solid black rectangular box used to redact the signature of Meredith Lea.

MEREDITH LEA
Senior Policy Officer

Senate Standing Committee on Finance and Public Administration

‘Inquiry into Domestic Violence in Australia’



Joint Submission from National Cross-Disability Disabled People's Organisations (DPO's)

September 2014



First Peoples
Disability Network
Australia



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About the National Cross-Disability Disabled People's Organisations (DPO's)

[Women With Disabilities Australia](#) (WWDA) is the national cross-disability DPO for women with all types of disabilities in Australia. It operates as a transnational human rights organisation and is run by women with disabilities, for women with disabilities. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. WWDA represents more than 2 million disabled women in Australia, has affiliate organisations and networks of women with disabilities in most States and Territories, and is internationally recognised for its global leadership in advancing the human rights of women and girls with disabilities.

[First People's Disability Network Australia](#) (FPDNA) is the national cross-disability DPO representing Aboriginal and Torres Strait Islander people with disability and their families. FPDNA utilises a range of strategies in its representative role, including through the provision of high level advice to governments, and educating the government and non-government sectors about how to meet the unmet needs of Aboriginal and Torres Strait Islander people with disability.

[People with Disability Australia](#) (PWDA) is a national disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. It also has a large associate membership of other individuals and organisations committed to the disability rights movement. Founded in 1981, the International Year of Disabled Persons, PWDA seeks to provide people with disability with a voice of their own. It has a cross-disability focus representing the interests of people with all kinds of disability.

[Children with Disability Australia](#) (CDA) is the national peak body which represents children and young people (aged 0-25) with disability. CDA provides a link between the direct experiences of children and young people with disability and their families to federal government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences of and challenges for children and young people with disability and their families.

[National Ethnic Disability Alliance](#) (NEDA) is the national peak organisation representing the rights and interests of people from Culturally and Linguistically Diverse (CALD/NESB) people with disability, their families and carers throughout Australia. NEDA advocates at the federal level so that CALD/NESB people with disability can participate fully in all aspects of social, economic, political and cultural life.

This Submission to the Senate Inquiry into Domestic Violence in Australia, has been written by Carolyn Frohmader, Executive Director, Women With Disabilities Australia (WWDA), with contribution from Jess Cadwallader, Project Manager, People With Disability Australia (PWDA), for and on behalf of the national cross-disability DPO's.

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Background

Violence against women in Australia is being described in our communities as ‘a national human rights disaster’,¹ an ‘epidemic’,² and a ‘national emergency’.³ One woman is killed in Australia every week by a current or former partner. One in three women in Australia has experienced physical violence, and almost one in five has experienced sexual violence. At least 17 per cent of women in Australia have experienced violence by a partner. It is recognised that these figures are likely to be conservative, with indications that more than 67% of domestic violence incidents go unreported.⁴ As shocking as these figures are, the picture is substantially worse for some groups of women – particularly women and girls with disability, Indigenous women, and women from culturally and linguistically diverse backgrounds and communities.⁵

Describing violence against women in Australia as ‘a national tragedy’,⁶ the Australian Greens proposal for a Senate Inquiry into Domestic Violence passed the Senate with tri-partisan support on 26th June 2014, and was subsequently referred to the Australia Senate Finance and Public Administration References Committee for inquiry and report by the 27 October 2014. Through the Terms of Reference, the Senate Inquiry will examine:

- the prevalence and impact of domestic violence in Australia as it affects all Australians and, in particular, as it affects: women living with a disability, and women from Aboriginal and Torres Strait Islander backgrounds;
- the factors contributing to the present levels of domestic violence;
- the adequacy of policy and community responses to domestic violence;
- the effects of policy decisions regarding housing, legal services, and women’s economic independence on the ability of women to escape domestic violence;
- how the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate violence against women and their children; and
- any other related matters.

This Submission, along with its supporting documents, is provided to the *Senate Standing Committee on Finance and Public Administration ‘Inquiry into Domestic Violence in Australia,’* from the national cross-disability Disabled People’s Organisations (DPO’s).

¹ Phillips, J. (2014) *Domestic violence: Rachele Yeo's father urges men to address 'national human rights disaster'*. ABC News, 6 May 2014, accessed online at: <http://www.abc.net.au/news/2014-05-06/rachele-yeo-father-pleads-for-change/5427002> ; See also: Australian Domestic and Family Violence Clearinghouse (2004) Amnesty International launches worldwide campaign to stop violence against women. *ADFVC Newsletter*, 18, May 2004.

² Domestic Violence NSW (2014) *Tony Abbott: convene a national crisis summit on domestic and family violence – and film an ad denouncing the violence killing our women and children*. Accessed online June 2014 at: https://www.change.org/en-AU/petitions/tony-abbott-there-s-noexcuse-for-domestic-violence-it-s-time-for-leadership-on-this-crisis?recruiter=90503088&utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition

³ Jacques, O. (16th Jul 2014) *Wicked Campers to remove 'insensitive slogans'*. The Bulletin. Accessed online July 2014 at: <http://www.themorningbulletin.com.au/news/greens-condemn-wicked-campers-senate/2320323/>

⁴ Day, L. (2014) *Domestic violence: Service SHE braces for budget cut fallout*. ABC News, Wed 25 Jun 2014. Accessed online at: <http://www.abc.net.au/news/2014-06-25/domestic-violence3a-service-braces-for-family-budget-cut-fall/5548266>

⁵ Department of Social Services *Second Action Plan 2013-2016 – Moving Ahead* – of the National Plan to Reduce Violence against Women and their Children 2010-2022.

⁶ The Greens (June 26th, 2014) *Greens Secure Senate Inquiry into Domestic Violence*. Accessed online June 2014 at: <http://greens.org.au/node/5291>

About this Submission

It is well recognised in Australia that many people with disability have experienced, currently experience, or are at risk of experiencing violence. Whilst there are numerous instances where men and boys with disability are subjected to and experience violence, including domestic/family violence, it is clearly a gendered issue that disproportionately affects women and girls with disability. In this context, this Submission predominately focuses on women and girls with disability, whilst acknowledging that men and boys with disability who may be subject to, or at risk of, domestic/family violence, and are entitled to the same protection against violations of their human rights as women and girls with disability. Thus, this submission does also provide some specific information on violence perpetrated against men and boys with disability.

Given the magnitude of the issue of violence against people with disability, particularly women and girls, this Submission is supported by the formal tabling of a number of relevant, timely and current reports on the issue. These reports provide significant information, detail and direction for the *Senate Standing Committee on Finance and Public Administration 'Inquiry into Domestic Violence in Australia,'* including the legislative, policy, social, cultural and behavioural changes required to eliminate violence against people with disability, particularly women and girls with disability. These accompanying reports are:

Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (The Istanbul Convention)

DPP v Kumar [20 November 2013] VCC.

Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia.

Women With Disabilities Australia (WWDA), University of New South Wales (UNSW), and People with Disabilities Australia (PWDA) (2013) *Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities*. Hobart: Women with Disabilities Australia.

Frohmader, C (2013) '*Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*' - WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia; ISBN: 978-0-9876035-0-0.

United Nations General Assembly: Special Rapporteur on Violence Against Women, its Causes and Consequences [Ms Rashida Manjoo]: *Report on Violence Against Women With Disabilities* (August 2012)

Attard, M., & Price-Kelly, S. (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, People with Disability Australia, NSW.

French, P., Dardel, J., & Price-Kelly, S. (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

Multicultural Disability Advocacy Association of NSW (MDAA) (2010) '*Violence Through Our Eyes: Improving Access to Services for Women from non-English Speaking Backgrounds with Disability and Carers Experiencing Violence Project Report*'.

Robinson, S. (2013) *Enabling & Protecting: Proactive Approaches to Addressing the Abuse and Neglect of Children and Young People with Disability*. Children With Disability Australia, Melbourne.

Victorian Equal Opportunity and Human Rights Commission (2014) *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*. ISBN 978-0-9875444-9-3; Melbourne, Victoria.

Woodluck, D, Healey, L, Howe, K., McGuire, M., Geddes, V. and G. Sharon (2014) *Voices against violence*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, Melbourne, Victoria.

Key Recommendations

Given the magnitude of the issue of violence against people with disability in Australia, particularly women and girls, the national cross-disability DPO's provides the following Recommendations for the consideration of the *Senate Standing Committee on Finance and Public Administration 'Inquiry into Domestic Violence in Australia.'*

1. Consistent with recommendations from the *Committee on the Elimination of All Forms of Discrimination against Women*⁷ and recognising that existing domestic/family violence legislation in Australia is not set in a human rights framework, is piecemeal and inconsistent in definitions and scope, and focuses largely on protection from domestic/family violence, the Australian Government should investigate the feasibility of developing national over-arching *Violence Against Women* legislation. Such legislation could be modelled on the *Istanbul Convention*,⁸ which:
 - a) provides a co-ordinated, victim-centred approach to combating all forms of violence against women including domestic violence;
 - b) prioritises prevention of violence;
 - c) includes detailed measures for protection, prosecution, integrated policies, and monitoring;
 - d) gives significant attention to women and girls with disability;
 - e) applies equally to girls under the age of 18 years; and,
 - f) can also be applied to male, child and elderly victims of domestic violence.
2. The *National Disability Agreement (NDA)*,⁹ which provides the national framework and key areas of reform for the provision of government support to services for people with disability, should be reviewed and updated to include gender equality as a key principle underpinning the NDA and its five strategic policy priority areas for reform. The NDA should also include resource, monitoring and a clear benchmark with quantifiable, gendered targets for an outcome that people with disability live free from violence, abuse, exploitation and neglect.
3. Consistent with observations from the UN treaty monitoring bodies and special procedures,¹⁰ as well as recommendations from disabled people's organisations and other civil society organisations, the future *National Disability Strategy (NDS)* implementation plans *Driving Action 2015–2018* and *Measuring Progress 2019–2020* should include:

⁷ Committee on the Elimination of Discrimination against Women (2010) *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7.

⁸ The *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (also known as the *Istanbul Convention*) was developed by the Council of Europe, which includes 47 member states (28 of which are members of the European Union). The Convention entered into force on 1 August 2014. For information on the *Istanbul Convention*, go to: http://www.coe.int/t/dghl/standardsetting/convention-violence/default_en.asp

⁹ A copy of the NDA can be downloaded from: <http://www.federalfinancialrelations.gov.au/content/npa/disability/national-agreement.pdf>

¹⁰ See for example: Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia*, adopted by the Committee at its tenth session (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1; Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding Observations: Australia*, 20 October 2005. UN Doc. CRC/C/15/Add.268; CEDAW/C/AUS/CO/7 OpCit; UN General Assembly; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, 24 March 2011; UN Doc. No. A/HRC/17/10; Méndez, Juan. E. (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN Doc. A/HRC/22/53; Manjoo, Rashida (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*; UN General Assembly; UN Doc. A/67/227; Human Rights Committee, International Covenant on Civil and Political Rights; *List of issues prior to the submission of the sixth periodic report of Australia* (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); 9 November 2012; UN Doc No. CCPR/C/AUS/Q/6; UN Economic and Social Council, Committee on Economic, Social and Cultural Rights; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*; 22 May 2009, UN Doc. E/C.12/AUS/CO/4; Committee against Torture, *List of issues prior to the submission of the fifth periodic report of Australia*, 15 February 2011, UN Doc. No. CAT/C/AUS/Q/5; United Nations General Assembly (2000) Resolution adopted by the General Assembly: *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. Twenty-third special session, UN Doc. A/RES/S-23/3; United Nations General Assembly (2012) *Thematic study on the issue of violence against women and girls and disability*: Report of the Office of the United Nations High Commissioner for Human Rights. UN Doc. A/HRC/20/5.

- a) the development of specific, gendered, targeted measures to address the multiple forms and high levels of violence experienced by people with disability, with a particular focus on women, children, indigenous peoples, and CALD people with disability;
 - b) measures to address the key dynamics which render people with disability particularly vulnerable to domestic violence, such as poverty, exclusion from the community, limitations on access to justice, exclusion from services specifically designed to address violence (including justice services), and the combination of a lack of adequate accessible housing and the continued existence of specialist residential settings.
4. In keeping with the recommendations from the United Nations treaty monitoring bodies,¹¹ along with the *International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization* (2011);¹² recommendations of the *World Medical Association (WMA)* (2011); the *International Federation of Health and Human Rights Organisations (IFHHRO)* (2011);¹³ and the *Report of the UN Special Rapporteur on Torture* (2013),¹⁴ the Australian Government should adopt national uniform legislation prohibiting the use of sterilisation of girls and boys with disability, and of adults with disability in the absence of their prior, fully informed and free consent.
 5. Reflecting Australia's international obligations to advance gender equality and disability rights, and in response to consistent recommendations from the UN treaty monitoring bodies,¹⁵ the Australian Government should commission and fund a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards compliance with the UN treaties (to which Australia is a party) can be measured and monitored.
 6. As an urgent priority, and in recognition of the fact that violence against people with disability in institutional settings is a national epidemic, the Australian Government should commission and fund a *National Public Inquiry into Violence Against People with Disability in Institutions*, with a specific focus on the gendered nature of such violence, and the multiple forms of violence perpetrated against people with disability in such settings. Such an inquiry should address the 2006 and 2010 urgent observation of the *Committee on the Elimination of All Forms of Discrimination against Women*¹⁶ and the 2013 urgent recommendation of the *Committee on the Rights of Persons with Disabilities* to 'address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings'.¹⁷
 7. Recognising the need to address violence against people with disability, including domestic violence, in an intersectional way, the Australian Government should establish an independent, statutory, national protection mechanism that has broad functions and powers to protect, investigate and enforce findings related to situations of exploitation, violence and abuse experienced by people with disability, and that addresses the multiple and aggravated forms of violence and abuse that result from the intersection of 'disability' with other characteristics, such as gender, age, indigenous status and racial, cultural or linguistic status.
 8. Recognising that violence against people with disability, including domestic violence, is far more extensive than violence amongst the general population, often goes unidentified, unreported, un-investigated, inadequately investigated, or results in poor outcomes for the

¹¹ CEDAW/C/AUS/CO/7; CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CRPD/C/AUS/CO/1; CCPR/C/AUS/Q/6; A/HRC/22/53; A/67/227.

¹² FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*. Available at:

<http://www.wvda.org.au/FIGOGuidelines2011.pdf>

¹³ World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilisation*: Press Release, 5 September 2011. Available at: <http://www.wvda.org.au/sterilWMA2011.htm>

¹⁴ A/HRC/22/53

¹⁵ CRPD/C/AUS/CO/1; CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7; E/C.12/AUS/CO/4; CCPR/C/AUS/CO/5; CAT/C/AUS/Q/5

¹⁶ CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7

¹⁷ CRPD/C/AUS/CO/1

person concerned, the Australian Government, in consultation with people with disability, should:

- a) develop and adopt a *National Prevention of Violence Against People with Disability Strategy*, which includes targeted, gendered initiatives to build capacity of individuals and organisations to prevent violence against people with disability and to ensure appropriate responses when it does occur;
- b) develop a *National Risk Assessment Framework for Identifying and Responding to Violence Against People with Disability* for application in all relevant service settings, including 'mainstream' or non-specialist service settings;
- c) ensure that assessments undertaken through the *National Disability Insurance Scheme* (NDIS) include a mandatory screening assessment process for violence, abuse, neglect and exploitation; and,
- d) ensure that the *National Disability Insurance Scheme* develop crisis protocols for Plan revisions, in conjunction with state-based domestic violence pathways and protocols.

9. Recognising that a common impact of domestic violence for women with disability is the removal of their children by authorities on the basis of parental disability, the Australian Government should commission a national inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability. Such an Inquiry should:

- a) investigate reasons why in Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care;¹⁸
- b) address the over-representation of parents with intellectual disability in care and protection proceedings;¹⁹
- c) address the need for reform in the area of child removal on the basis of parental disability in the family law system;²⁰
- d) address the lack of systematic, gendered data collection and analysis;²¹
- e) address the lack of comprehensive and intensive gender specific parenting and family support services, programs and measures.²²

10. In keeping with recommendations from the *Committee on the Elimination of Discrimination Against Women*²³ and the *Committee on the Rights of Persons with Disabilities*,²⁴ and consistent with CEDAW Article 4(1) and CEDAW General Recommendation 25, the Australian Government should employ measures to ensure that women with disability are better represented in decision-making and leadership positions, and that structures, mechanisms and initiatives are established and adequately resourced, to enable and foster their participation and engagement.

¹⁸ This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. <http://www.publicadvocate.vic.gov.au/research/302/>

¹⁹ Frohmader, C. (2013) OpCit; See also: Women With Disabilities Australia: '*Parenting Issues for Women with Disabilities in Australia*' - A Policy Paper (May 2009). Available at: www.wyda.org.au/motherhd2006.htm See also: '*Disability Rights Now*' Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities; August 2012.

²⁰ See also: Office of the Public Advocate (December 2013) *Whatever happened to the village? The removal of children from parents with a disability*. Report 1: Family law – the hidden issues. OPA, Victoria.

²¹ Ibid.

²² Ibid.

²³ CEDAW/C/AUL/CO/5; CEDAW/C/AUS/CO/7

²⁴ CRPD/C/AUS/CO/1

11. That Australia, in partnership with disability representative and advocacy organisations, establishes a national coordinated strategic framework for the prevention of exploitation, violence and abuse experienced by men, women, girls and boys with disability, that include measures to:
 - a) build resilience, self-advocacy skills, protective behaviour skills, knowledge of rights and redress among people with disability;
 - b) address the specific circumstances of Aboriginal and Torres Strait Islander people with disability and people with disability from non-English speaking backgrounds;
 - c) coordinate and link diverse service systems, including disability, mental health, housing, domestic violence and sexual assault services;
 - d) reorient service policy and procedures to reflect human rights obligations; and,
 - e) raise awareness among the community and various systems, such as judicial, legal, medical, social services, health, and educational systems.
12. That Australia urgently plans for the closure of residential care and other institutional environments, and develops genuine community living options, to work in conjunction with the provision of individualised funding and self-directed supports to people with disability under the *National Disability Insurance Scheme* (NDIS).

1. The prevalence and impact of domestic violence in Australia as it affects people with disability, particularly women and girls with disability.

1.1. Conceptualising 'domestic violence' in the context of people with disability

In Australia, people with disability are at far higher risk of violence than the rest of the population. This is poorly recognised, and frequently detoxified through service setting responses which identify violence as a workplace issue to be addressed.²⁵ This is reflected in the severe and numerous barriers to access to justice that people with disability face, which impede reporting and adequate responses.²⁶

A similar situation affects the recognition of the prevalence and impact of domestic violence, especially against women and girls with disability. Women and girls experience extremely high levels of violence in their domestic settings. Problematically, however, this is not always recognised as domestic violence.

Across Australia, there is similarly no uniform definition or consensus as to what constitutes violence against women.²⁷ It is generally understood in the context of 'domestic', 'spousal', 'intimate partner' or 'family' violence, which frequently excludes the violence that people with disability experience in domestic settings. The *National Plan to Reduce Violence Against Women and their Children 2010-2022* [The National Plan], Australia's primary response to addressing violence against women in Australia, conceptualises 'domestic violence' as acts of violence that occur between people who have, or have had, an intimate relationship, with the central element of domestic violence being an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening.²⁸ The National Plan refers to 'family violence' as violence between family members, as well as violence between intimate partners. It involves the same sorts of behaviours as domestic violence, and as with domestic violence, only some aspects of family violence are criminal offences.

In Australia, the legal definition of 'domestic violence' varies across jurisdictions. Some definitions are more inclusive than others. However, despite the many and varied definitions within the various laws and policy frameworks of what constitutes 'domestic violence', 'family violence', and 'domestic relationships', most do not contain definitions which do justice to, nor encompass, the range of domestic/family settings in which people with disability may live, such as institutions. Nor do they contain definitions which capture the range of relationships and various dimensions and experiences of domestic and family violence as experienced by people with disability (particularly women and girls with disability), which may include the relationships they have with support workers, co-residents with disability and so on:²⁹

In 2009 a severely disabled teenage girl had her nose almost bitten off in a sickening attack at a government funded group home. The young girl was unable to fend off her 22-year-old male attacker who was a co-resident. The man climbed into her bed during the

²⁵ French, P., et al (2010) *Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment*. PWD, NSW.

²⁶ Australian Human Rights Commission (2014) *Equal before the law: Towards disability justice strategies*. Australian Human Rights Commission

²⁷ The 1993 United Nations Declaration on the Elimination of Violence Against Women defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life". See also: Australian Bureau of Statistics (ABS) (2006) *Personal Safety Survey Australia 2005*. Australian Bureau of Statistics, Canberra, (Re-issue) Cat. No. 4906.0.

²⁸ In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal. See: Commonwealth of Australia (2010) *National Plan to Reduce Violence against Women and their Children 2010-2022*. Council of Australian Governments.

²⁹ Frohmader, C. (2011) *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities*, (A/HRC/RES/17/11). Prepared for Women With Disabilities Australia (WWDA). Available online at: <http://wwda.org.au/issues/viol/viol2011/>; Frohmader, C. & Swift, K. (2012) Opening minds & opening doors: Re- conceptualising 'domestic violence' to be inclusive of women with disabilities in institutions. *CDFVRe@der*, Vol. 11, No. 2, pp. 7-8.

*night and tore into her face and chest with his teeth, leaving her with severe bites, black eyes, bruises and scratches all over her body. No charges were laid.*³⁰

Cases such as this are not characterised nor treated as 'domestic violence'. This is despite the fact that it occurs in a domestic setting, is difficult to escape without major upheavals in one's 'home,' and has numerous significant effects on other facets of an individual's life, influencing where they live, who they associate with and how they choose to live their lives. Instead, such cases are typically reframed and detoxified as 'challenging behaviour', 'abuse' or 'service incidents', and the response tends to be one of 'adopting behaviour management strategies' rather than involving police and domestic violence services and supports.³¹ Research shows that it is partly because people with disability's experiences of violence may not fit either historic, or contemporary definitions and understandings; and that violence perpetrated against them often goes unidentified, unreported, un-investigated, inadequately investigated, or results in poor outcomes for the person concerned.³²

In order to accomplish any appreciable reduction of violence against people with disability, it is necessary to understand its complexity, and to ensure that it is included within existing frameworks designed to address violence. Causes, interventions and prevention strategies are contingent upon the validity of definitions available. Such definitions set the scope for who is covered by domestic/family violence legislation and under what circumstances. They also provide the benchmark for translation into relevant policy frameworks, policies and service responses.

Inclusive, consistent, and comprehensive definitions of 'domestic violence' and/or 'family violence' - which include the full variety of violent acts experienced by people with disability, in the full range of domestic settings and relationships experienced by people with disability -- are critical to ensure the safety of people with disability.

Therefore, for the purposes of this Submission to the *Senate Inquiry into Domestic Violence*, 'domestic violence' and/or 'family violence' in the context of people with disability (particularly women and girls), is conceptualised as:

- a gross violation of human rights;
- a form of disability discrimination, and a form of gender-based discrimination;
- acts of physical, sexual, psychological or economic violence that occur within the family and/or domestic unit/setting, between former or current spouses/partners, and/or former or current victims/carers/support persons (whether those carers/support persons are in a paid or unpaid role), and/or ordinary members of a household, and/or whether or not the perpetrator/s share or have shared the same domestic setting with the victim;
- acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- including those acts of violence which are more unique to people with disability, particularly women and girls, and that often occur in the context of, or as a result of, their domestic setting and/or domestic relationship, including for eg: institutional violence, chemical restraint, withholding of medication, forced or coerced sterilisation, forced contraception, forced or coerced psychiatric interventions, violations of privacy, denial of control over bodily integrity; forced isolation and denial of social contact; denial of the right to decision-making; denial of provision of essential care.

³⁰ Frohmader, C. (2011); OpCit.

³¹ French, P., et al (2010) *Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment*. PWD, NSW.

³² Frohmader, C. & Swift, K. (2012) OpCit.

1.2. Prevalence and incidence

To date, there have been no national studies or research conducted to establish the prevalence, extent, nature, causes and impact of violence against people with disability in different settings. There is no systematic data collection in Australia on violence against people with disability, including domestic violence.

Despite the lack of national prevalence and incidence studies, it is however, well established that violence against people with disability in Australia, particularly women and girls, is far more extensive than violence amongst the general population.³³ Violence perpetrated against women with disability is significantly more diverse in nature and more severe than for women in general.³⁴ Compared to their peers, women with disability experience significantly higher levels of all forms of violence and are subjected to such violence by a greater number of perpetrators.³⁵

In August 2014, a Perth taxi driver was found guilty of 33 charges including rape and sexual assault of 5 women with disability who had been reliant on the maxi taxi driver for their transportation. The assaults only came to light when one of the women, a 29-year-old woman with cerebral palsy and significant communication impairment, was able to alert her carer to what had happened. When police reviewed security footage from the maxi-taxi, they discovered a further four disabled women had been sexually assaulted by the driver over a two month period.³⁶

Women with disability are 40% more likely to be the victims of domestic violence than women without disability,³⁷ and more than 70% of women with disability have been victims of violent sexual encounters at some time in their lives.³⁸ Twenty per cent of women with disability report a history of unwanted sex compared to 8.2% of women without disability.³⁹ The rates of sexual victimisation of women with disability range from four to 10 times higher than for other women.⁴⁰ Ninety per cent of Australian women with an intellectual disability have been subjected to sexual abuse, with more than two-thirds (68%) having been sexually abused before they turned 18 years of age.⁴¹

There are no known studies or prevalence and incidence data available on violence against men and boys with disability, as most of the limited existing research has focused on violence against women with disability. Anecdotally however, it is recognised that men and boys with disability also experience forms of violence that are perpetrated against them because they have a disability. For example, men and boys with disability are forced or coerced into undergoing vasectomies before they can enter into marriage or continue sexual relationships; or after they have had a child. Research conducted in the late 1990s in Australia found that it was likely that orchidectomies, or castration by surgical removal of the testes were being performed on boys and young men with disability in the absence of disease or health risks. Depo Provera and anti-androgenic medications are being prescribed to boys and men with disability to prevent sexual behaviour that is viewed as unwanted or excessive.⁴² Men and boys

³³ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) *'Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia'*; Report of the Proceedings and Outcomes of the National Symposium on Violence against Women and Girls with Disabilities; Sydney, 25 October 2013. WWDA, Hobart, Tasmania; See also: Victorian Equal Opportunity and Human Rights Commission (2014) *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*. ISBN 978-0-9875444-9-3; Melbourne, Victoria; See also: Australian Bureau of Statistics (ABS) (2012) *Australian Social Trends June 2011: Children with a disability*, Australian Bureau of Statistics, Canberra, Cat. No. 4102.0.

³⁴ Dowse, L. et al (2013) OpCit.

³⁵ Women With Disabilities Australia (WWDA) (2007b) *'Forgotten Sisters - A global review of violence against women with disabilities'*. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia.

³⁶ <http://www.abc.net.au/news/2014-08-08/perth-taxi-driver-jailed-for-10-years-for-rape-and-sexual-abuse/5658274>

³⁷ Brownridge, D. (2006) 'Partner violence against women with disabilities: Prevalence, risks and explanations', *Violence against Women*, vol. 12, no. 9, pp. 805–22.

³⁸ Frohmader, C. (2014) *'Gender Blind, Gender Neutral': The effectiveness of the National Disability Strategy in improving the lives of women and girls with disabilities*. Prepared for Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-2-1.

³⁹ Cited in Dowse, L. et al (2013) OpCit.

⁴⁰ Ibid.

⁴¹ Australian Law Reform Commission (ALRC) (2010) *Family Violence — A National Legal Response*. ALRC Final Report 114. Accessed online January 2013 at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

⁴² Communication from People With Disability Australia, 2013.

with disability also experience violence and abuse (including sexual abuse) particularly in institutional settings.⁴³

A national survey undertaken as part of the Council of Australian Government's (COAG) Reform Project 'Stop the Violence' (STVP)⁴⁴ in 2013, found that violence is present in the lives of approximately twenty-two per cent of women and girls with disability who had accessed service support⁴⁵ in the preceding 12 months. The main types of violence experienced by the women included domestic violence (80%); emotional abuse (68%); sexual violence and abuse (63%); financial abuse (58%); the withholding of care (23%), and the withholding of medication (14%). Importantly, findings from the survey provided data only on women and girls with disability who had accessed services. However, current literature, Australian Government reporting on the service use of people with disability, reports from family violence services⁴⁶ and women with disability themselves, suggest that many women and girls with disability do not and/or cannot and/or are prevented from using and/or accessing services. As highlighted by the STVP, it is highly likely that significant numbers of women and girls with disability who are experiencing or at risk of violence do not access any type of service. This suggests that the prevalence of violence against women and girls with disability is likely to be substantially higher than the already alarming 22 per cent suggested by the STVP national survey findings.

A study undertaken by the Victorian Office of the Public Advocate (OPA)⁴⁷ in 2010 examined violence against OPA clients with cognitive impairments.⁴⁸ Women comprised 76% of the study. The study found that women of all ages with a range of cognitive impairments are subjected to physical, sexual, psychological, emotional and impairment-related violence, financial abuse and neglect. The study also found that, when acts of violence are not responded to appropriately, further violence is likely to be perpetrated against the person and it is less likely that the person will report it.

Like other women who experience violence and abuse, women and girls with disability are likely to know the perpetrators of the violence as a partner or family member.⁴⁹ However, the presence of disability means that women and girls with disability experience, and face a higher likelihood of violence and abuse by others who are in their lives due to their support requirements, such as service providers, support persons or caregivers, as well as co-residents in institutional settings.⁵⁰

Crimes of violence committed against people with disability often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.⁵¹

"They asked if I could describe the person who did it and I said, "No, I'm blind." The police officer said: "Well, don't bother calling us then." He didn't seem to understand that I could give him information from the sounds that I had heard or that there might be other witnesses..... I rang the local police twice after this and both times I was told: "Don't bother calling if you're blind.""⁵²

In September 2011, a 62 year old South Australian man was sentenced to three and a half years jail for 'persistently sexually exploiting' an intellectually disabled 12 year old girl.

⁴³ Australian Broadcasting Commission (ABC) (2012) *Carers abuse their charges*. Lateline, 12/09/2012. Accessed online at: <http://www.abc.net.au/lateline/content/2012/s3589045.htm>

⁴⁴ The 'Stop the Violence Project' (STVP) emerged from WWDA's long standing commitment to addressing one of the most pressing issues for its membership: violence against women and girls with disabilities in Australia. Managed and implemented by WWDA, in conjunction with a research team at the University of New South Wales (UNSW) and a project team from People with Disabilities Australia (PWDA), the project was national in scope and its intent was to lay the groundwork for improved service provision by building the evidence-base for future reforms so that the service system is more responsive to the needs of women and girls with disabilities.

⁴⁵ Services included those in the disability, family violence and sexual assault sectors, housing/ homelessness sector, the youth services sector, child welfare, employment and training, health, aged care and the justice sector.

⁴⁶ ABC News (4 Jul 2014) *'Domestic violence service says more support needed for Aboriginal women and the disabled'*. Accessed online July 2014 at: <http://www.abc.net.au/news/2014-07-04/domestic-violence-service-says-more-support-needed-for-aborigin/5570856>

⁴⁷ OPA is an independent statutory body established by the Victorian State Government. OPA works to protect and promote the interests, rights and dignity of people with a disability. See: <http://www.publicadvocate.vic.gov.au>

⁴⁸ Office of the Public Advocate (2010) *Violence against people with cognitive impairments: Report from the Advocacy/Guardianship program at the Office of the Public Advocate, Victoria*. Prepared by Janine Dillon. Available online at:

http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence_and_disability_report_August2010.pdf

⁴⁹ In Dowse, L. et al (2013) OpCit.

⁵⁰ WWDA (2007b) OpCit., Dowse, L. et al (2013) OpCit.

⁵¹ In Frohmader, C. (2014) OpCit.

⁵² Cited in Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

Although sentenced to three and a half years jail, the man was eligible for parole in 21 months, 'because he is the sole carer for his sick wife'.⁵³

Women and girls with disability have far less chance of being believed when reporting sexual assault, domestic violence, and other forms of violence, than other women and girls.⁵⁴

"The first thing the police asked me was 'Do you believe her'? The impression was that she was making it up to get attention."⁵⁵

"The police didn't believe me when I told them what was happening. They said "You're mental. Everyone knows you're mental".⁵⁶

"I spoke to a parent who had a daughter with a disability. They were sure the daughter had been molested. They said no one would believe her and it probably wouldn't get anywhere. That is true."⁵⁷

A recent research study undertaken by the Victorian Equal Opportunity and Human Rights Commission, into the experiences of people with disability reporting crime, found that one of the strongest findings of the study 'is that people with disabilities fear that they will be seen as lacking credibility when they report a crime to police.' The study found that police are likely to assume that a prosecution will not succeed because the court may think the person with a disability lacks credibility, and that, "this becomes a self-fulfilling prophecy as cases are then not fully investigated and prosecuted."⁵⁸

A Victorian study undertaken in 2006 analysed 850 rapes reported to Victoria Police over three years, from 2000 to 2003.⁵⁹ In 92.5% of cases, the victims were female. More than a quarter of victims (26.5%) were identified as having a disability and, of this group, 15.6% had a psychiatric disability and 5.9% had an intellectual disability. The cases in the study involving victims with a disability were among those least likely to result in charges being laid against the offender and twice as likely to be determined as false.

It is widely recognised that any available data relating to incidence and prevalence of violence against people with disability, does not give the true picture of the level of risk and prevalence of violence and abuse, due to many factors and barriers experienced by people with a disability to reporting violence. Some of these factors include for example: the reinforced demand for compliant behaviours; the perceived lack of credibility; social isolation; lack of access to learning environments; lack of awareness of rights and what constitutes violence; dependence upon others; fear of losing services; lack of access to police, support services, lawyers or advocates; lack of public scrutiny of institutions; and the entrenched sub-culture of violence and abuse prevalent in institutional settings.⁶⁰

1.3. 'Domestic violence' in institutions

Many people with disability in Australia live in and experience, a vast range of 'institutional' settings and environments.⁶¹ For many, these institutional environments are their 'domestic' settings – the place they know as their home, shared with numerous others, including support workers and co-residents. Just as with conventional understandings of domestic/family violence, it is difficult for people with disability living in these settings to escape this violence: leaving the violent setting is

⁵³ Fewster, S. (2011) Cadet volunteer jailed for abusing disabled girl, 12. *Adelaide Now*, September 16, 2011. Accessed online October 2011 at: <http://www.adelaidenow.com.au/news/south-australia/community-volunteer-jailed-for-abuse/story-e6frea83-1226137785170>

⁵⁴ In Frohmader, C. (2011) OpCit.

⁵⁵ Keilty, J., & Connelly, G. (2001) Making a statement: An exploratory study of barriers facing women with an intellectual disability when making a statement about sexual assault to police. *Disability & Society*, Vol. 16, No.2, pp. 273-291.

⁵⁶ Communication to Women With Disabilities Australia (WWDA), 2014.

⁵⁷ Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

⁵⁸ Ibid.

⁵⁹ Heenan, M., & Murray, S. (2006). *Study of reported rapes in Victoria 2000–2003. Summary research report*. Melbourne: Statewide Steering Committee to Reduce Sexual Assault. Published by the Office of Women's Policy, Department for Victorian Communities.

⁶⁰ SafePlace Institute (2000) *Stop the Violence, Break the Silence Training Guide & Resource Kit*. Austin, Texas.

⁶¹ Institutional settings can include for eg: group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, supported residential services, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services.

difficult; alternative housing is difficult to access; the support to ensure the perpetrator leads is limited or difficult to access; and the violence may affect numerous aspects of their lives.

Yet despite these substantial commonalities, violence perpetrated against people with disability in institutions is rarely characterised as domestic/family violence and rarely are domestic/family violence related interventions deployed to deal with this type of violence. Existing legal definitions and traditional conceptual understandings of what constitutes domestic/family violence, only serve to perpetuate the systemic violence and abuse experienced by people with disability in institutional settings.

Violence against people with disability in institutions is Australia's hidden shame. It is an urgent, unaddressed national crisis, of epidemic proportions,⁶² yet is excluded from national policy responses relating to domestic/family violence and sexual assault, and from national policy responses relating to advancing the human rights of people with disability.

People with disability are much more likely to experience violence (particularly sexual violence) in residential and institutional settings,⁶³ where they frequently experience sustained and multiple episodes.⁶⁴ The overwhelming majority of perpetrators of sexual violence and abuse of people with disability in institutions are male caregivers. Lack of reporting and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,⁶⁵ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators.

In 2010, three intellectually disabled women living in accommodation run by the Victorian Department of Human Services were allegedly raped and assaulted after being left alone with a male carer in the state-run house.⁶⁶ The mother of one of the women said that her daughter was "covered in bruises" after the alleged attack but did not receive counselling until 10 days later, and even then the women were only given one session of one-on-one counselling.⁶⁷ The mother of one of the other women said: "Our girls haven't been safe in their own home and everybody has that basic right to be safe in their own home and their own bed."⁶⁸

In June 2011, the South Australian Health Complaints Commissioner reported that there had been five cases of rape and serious sexual assault against girls and women with disability in the past year and, in the worst case of abuse in care, a 15 year old victim had become pregnant with the suspected rapist's child but the man had disappeared before any action could be taken against him. None of the five cases resulted in any serious police action because of a lack of corroboration or the extent of the impairment of the alleged victim.⁶⁹

Josie is 39. She has an intellectual disability and she lives in a group home 'village' complex where she has her own unit and lives independently with some support provided by the on site support worker staff. There are a number of other residents with intellectual disability living in other units on the site – some live in units on their own, whilst others share. Josie is raped by a male co-resident within the grounds of the 'village' complex. She immediately discloses the rape to an on-site support worker who advises her

⁶² For example, figures from the Victorian Office of the Public Advocate (OPA) show that between 2006-2011, police examined more than 1000 cases of alleged abuse involving people with severe disabilities living in state residential care or private homes in Victoria - including 282 allegations of assault, 320 of rape, and six alleged abductions or kidnapping. See: 'Law failing to protect disabled in state care'; *The Age Newspaper*, April 24, 2011. Accessed online October 2011 at: <http://www.theage.com.au/victoria/law-failing-to-protect-disabled-in-state-care-20110423-1dse1.html>

⁶³ Dowse, L. et al (2013) OpCit.

⁶⁴ Attard, M., & Price-Kelly, S. (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, PWDA, NSW.

⁶⁵ French, P. (2007) *Disabled Justice: The barriers to justice for persons with disability in Queensland*. Queensland Advocacy Incorporated (QAI), Brisbane. Accessed online October 2011 at: http://www.qai.org.au/images/stories/docs/1987-2007/doc_199.pdf; See also: Stewart, D. Chapter 11 Institutional culture and people with intellectual disabilities: Experiences of an inquirer. In Hauritz, M. Sampford, C. & Blencowe, S. (Eds) (1998) *Justice for People with Disabilities – Legal and Institutional Issues*. The Federation Press, Leichhardt, NSW; See also: French, P. et al (2010) OpCit.

⁶⁶ Mickelborough, P. (2010) Mentally disabled women 'raped by carer' in state-run house. *Herald Sun*, October 11, 2010. Accessed online October 2011 at: <http://www.heraldsun.com.au/news/victoria/mentally-disabled-women-raped-by-carer-in-state-run-house/story-e6frf7kx-1225936849896>

⁶⁷ Grace, R. (2010) Rape claims levelled against DHS worker. *The Age*, October 11, 2010. Accessed online October 2011 at: <http://www.theage.com.au/victoria/rape-claims-levelled-against-dhs-worker-20101011-16erd.html>

⁶⁸ Mickelborough, P. (2010) OpCit.

⁶⁹ Ibid.

to “try to keep out of his way” and that “if he does it again” the staff will “cut his penis off”. The rape is not reported to the police and Josie is not offered any support or counselling.⁷⁰

An investigation by the NSW Ombudsman in 2011 into residents with psychological and intellectual disability living in boarding houses licensed by the state government, found that residents had been physically and sexually assaulted by staff and other residents, had died in appalling circumstances, and been denied basic rights, including contact with their families.⁷¹

In 2011, the Victorian Ombudsman was forced to intervene after the Victorian Department of Human Services failed to properly act against two staffers who dragged a 39-year-old intellectually disabled man along the carpet, resulting in carpet burns across his back.⁷²

A disabled woman in her 50s was “digitally raped” by a staff member while showering in a government-owned group home in Victoria. An incident report was made after the woman told another worker what happened, but that report was later rewritten by a supervisor. The worker who allegedly raped the woman was then transferred to another home and the matter was not referred to police.⁷³

There is often no consequence if a staff member assaults a client. These are ‘invisible’ crimes. There is a presumption the client does not have the capacity to understand the crime.⁷⁴

Australian research about sexual assault has highlighted the risks for people with a disability, especially women and girls, in institutional and residential settings, including the way that perpetrators can often deliberately target people with disability, particularly those who are least able to resist or make a formal complaint. The common scenario of perpetrators moving between services, either by choice, or as a result of intervention by management, is another serious dimension in the abuse of people with disability in institutional environments.

“Offenders will often move from facility to facility. When suspicions arise in one place they will move on. We were contacted recently about an offender who has now sexually assaulted in at least three different facilities. However because he hasn’t been formally charged he is still working with an agency which provides locums to disability and aged care services. He always targets clients with little or no verbal communication.”⁷⁵

Formally tabled with this Submission, is a document that highlights just some of the issues for people with disability living in institutions. The document is a copy of the sentencing comments from a recent Australian court case, *DPP v Kumar* (20 November 2013), whereby a casual worker employed at a supported accommodation facility in Victoria, was sentenced to 18 years’ jail for multiple counts of rape and other sexual offences perpetrated against three women with disability and one man with disability. This document illustrates the nature of violence perpetrated against women and girls with disability in institutions, and is just one example of this widespread, unaddressed national issue.

Although harrowing reading, the transcript highlights (amongst other things) the extreme powerlessness and vulnerability of people with disability, especially women, in institutions, the lack of credibility they are given when trying to report violence, the existence of, and culture within institutions as breeding grounds for the perpetration of violence, and the tendency of staff and

⁷⁰ Communication to WWDA.

⁷¹ NSW Ombudsman (2011) *More than board and lodging: the need for boarding house reform*. NSW Ombudsman, Sydney. See also: Horin, A. (2011) Shocking abuse and neglect revealed in boarding houses across NSW. *The Sydney Morning Herald*, August 17, 2011; Accessed online October 2011 at: <http://www.smh.com.au/lifestyle/life/shocking-abuse-and-neglect-revealed-in-boarding-houses-across-nsw-20110816-1jwbk.html>

⁷² Tomazin, F. (April 24, 2011) Law failing to protect disabled in state care. *The Age Newspaper*. Accessed online at: <http://www.theage.com.au/victoria/law-failing-to-protect-disabled-in-state-care-20110423-1dse1.html>

⁷³ In Dow, A. *State dealing with 300 cases of disabled abuse by carers*. The Age Newspaper; April 2, 2014; accessed online at: <http://www.theage.com.au/victoria/state-dealing-with-300-cases-of-disabled-abuse-by-carers-20140401-35wqs.html>

⁷⁴ Cited in Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

⁷⁵ Cited in Coulson-Barr, L. *Safeguarding People’s Right to be Free from Abuse. Key considerations for preventing and responding to alleged staff to client abuse in disability services*. Disability Services Commissioner, Victoria. Accessed online March 2014 at: http://odsc.vic.gov.au/public/editor_images/annual%20reports/dsc_occ_paper_no_1.pdf

management to minimise and essentially cover up, acts of violence perpetrated against people with disability. Importantly, it demonstrates that violence against people with disability in institutional settings is in fact, 'domestic violence' because it occurs in the home, and that it needs to be conceptualised as such to ensure an adequate response.

Another document formally tabled with this Submission, entitled '*Accommodating Violence: The experience of domestic violence and people with disability living in licensed boarding houses*', provides detailed information on the lived experiences of people with disability in institutional settings. The study, undertaken in 2010, found that domestic violence is a daily lived experience of people with disability living in licensed boarding houses and that this situation exists predominately due to failures in legislative frameworks, policy guidelines, administrative procedures, accessibility of services and support.⁷⁶

Violence against people with disability in institutions in Australia – particularly women and girls - has consistently been identified as an urgent issue requiring national leadership, and a national public policy response. For a number of years now, women with disability, disabled people's organisations, human rights organisations, and the United Nations (amongst others), have called for urgent action by Australian governments to address violence, exploitation, and abuse experienced by women and girls with disability in institutions. This was reinforced by participants at the 2013 National Symposium '*Stop the Violence Against Women and Girls with Disabilities*',⁷⁷ where there was unanimous and unequivocal consensus calling for urgent action on this issue. Recent media reports⁷⁸ on the systemic and gendered nature of violence against people with disability in institutions throughout Australia further demonstrate and reinforce the need for urgent national action on this issue.

1.4. Issues of intersectionality

In understanding violence against people with disability, including 'domestic' violence, it is necessary to consider the specific intersections that some face due to the place and space they occupy in society. Poverty, race, ethnicity, religion, language, age, gender, sexuality and other identity status or life experience can further increase the risk and likelihood of group or individual violence against people with disability.⁷⁹

There is no data in Australia on the incidence of violence against Indigenous people with disability, nor any research that examines the impact of such violence. However, it is widely acknowledged that Indigenous Australians have rates of ill-health and disability substantially higher than other Australians. Australian Bureau of Statistics data shows that nationally, 50% of Indigenous Australians aged 15 years and over have a disability or long-term health condition. Over half are female (51%). Violence against Indigenous people is approximately 10 times higher than against the non-Indigenous population.⁸⁰

The term 'family violence' has always been the preferred terminology in describing Indigenous situations because it encompasses a wide range of physical, emotional, sexual, social, spiritual, cultural and economic abuses that occur within intimate relationships, families, extended families, kinship networks and communities. Indigenous women are 35 times more likely to suffer family violence and 80 times more likely to sustain serious injury requiring hospitalisation, and 10 times more likely to die

⁷⁶ Attard, M., & Price-Kelly, S., (2010) OpCit.

⁷⁷ The 'National Symposium on Violence Against Women and Girls with Disabilities' was held in Sydney on October 25th 2013, as a component of WWDA's National COAG Reform Project on Violence Against Women and Girls with Disabilities. See: www.stvp.org.au

⁷⁸ The Age Newspaper (November 20, 2013) 'Former Yooralla worker Vinod Kumar jailed for attacking vulnerable women in his care'; at: <http://www.theage.com.au/victoria/former-yooralla-worker-vinod-kumar-jailed-for-attacking-vulnerable-women-in-his-care-20131120-2xuh3.html> See also:

The Age Newspaper (November 21, 2013) 'Yooralla senior executives accused of ignoring warning signs on rape claims'; at:

<http://www.theage.com.au/victoria/yooralla-senior-executives-accused-of-ignoring-warning-signs-on-rape-claims-20131120-2xvin.html> See also: ABC 7.30

Report (May 2013) 'Report reveals psychiatric care's shocking sexual assault statistics'; at: <http://www.abc.net.au/7.30/content/2013/s3758227.htm>; See

also: ABC 7.30 Report (December 2013) 'Protecting disabled people in group homes'; at: <http://www.abc.net.au/7.30/content/2013/s3915884.htm> See

also: *The Disability Clothesline*: <https://www.facebook.com/groups/disabilityclothesline> and/or <http://disabilityclothesline.weebly.com/> See also: Dow, A.

State dealing with 300 cases of disabled abuse by carers. The Age Newspaper; April 2, 2014; accessed online at: <http://www.theage.com.au/victoria/state-dealing-with-300-cases-of-disabled-abuse-by-carers-20140401-35wgs.html>

⁷⁹ Ortoleva, S. & H. Lewis (2012) *Forgotten Sisters – A Report on Violence against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences*. Northeastern Public Law and Theory Faculty Research Papers Series No. 104-2012. Northeastern University, Boston, USA.

⁸⁰ Memmott, P., Stacy, R., Chambers, C. & C. Keys (2001) *Violence in Indigenous Communities*.

Attorney-General's Department. Available at: <http://www.crimeprevention.gov.au/Publications/FamilyViolence/Documents/violenceindigenous.pdf>

due to family violence, than non-Indigenous women.^{81,82} Indigenous women are also less likely than non-Indigenous women to disclose their experiences of violence, with studies showing that around 90 per cent of violence is not disclosed.⁸³ The national survey undertaken during the *STVP Project* found that half of the Aboriginal and Torres Strait Islander services that responded to the survey identified and recorded violence against women and girls with disability as an issue facing its client base.⁸⁴

Although there is no known prevalence data on violence against women and girls from culturally and linguistically diverse (CALD) backgrounds, research has found that immigrant and refugee women are more likely to be murdered as a result of domestic violence,⁸⁵ and that cultural values and immigration status enhance the complexities normally involved in domestic violence cases.⁸⁶ It is recognised that CALD women with disability are less likely than other women to report acts of violence, particularly domestic violence and sexual assault, due to multiple and intersecting barriers, which include linguistic barriers, cultural barriers and lack of knowledge or awareness of the criminal justice system.⁸⁷

Women and girls with disability living in rural and remote communities are more susceptible to violence, exploitation and abuse with few supports available to seek redress.⁸⁸ Although there is evidence of a higher reported incidence of sexual assault and domestic and family violence in rural and remote communities than in urban Australia,⁸⁹ research has found that violence, particularly domestic violence, is common in the lives of women with disability in rural areas of Australia, with many 'suffering in silence', 'trapped' within their homes, with the perception they have no alternative but to remain in violent relationships.⁹⁰

There is very little research in the Australian context on the incidence, prevalence and impact of violence and abuse in the lives of young people with disability, and no known research of the gendered nature of such violence and abuse. According to Children with Disability Australia (CDA), children and young people with disability experience violence, abuse and neglect at rates considerably higher than their peers who do not have disability, and much of this within their domestic settings (institutional or otherwise). CDA reports⁹¹ that:

- children with communication impairments, behaviour difficulties, intellectual disability and sensory disability experience higher rates of violence and abuse;
- violence, abuse and neglect of children and young people with disability is likely to be under-reported;
- children and young people with disability are often abused on multiple occasions; and,
- the impact of violence, abuse and neglect of children and young people with disability is significant.

A 2012 report by the Victorian Disability Services Commissioner, found that children with a disability are at particularly high risk of experiencing violence, with one review of research finding that they are three to four times more likely to experience sexual abuse than their peers, with many not having the language or ability to communicate the abuse.⁹²

⁸¹ In Frohmader, C. (2011) OpCit. See also Sutton, C. *Violence against Aboriginal women 80 times worse*. Perth Now Newspaper, June 10, 2013; accessed online at: <http://www.perthnow.com.au/news/violence-against-aboriginal-women-80-times-worse/story-fnhnv0wb-1226661209335?nk=15a73840245f7154a7d4daaca2fc800f>

⁸² VicHealth (2011) *Preventing violence against women in Australia: Research summary*. Victorian Health Promotion Foundation. Available at: <http://www.vichealth.vic.gov.au>.

⁸³ Cited in Woodlock, D., Western, D. & Bailey, P. (2014) OpCit.

⁸⁴ Dowse, L. et al (2013) OpCit.

⁸⁵ Commonwealth of Australia (2009) *Time For Action: The National Council's Plan For Australia To Reduce Violence Against Women And Their Children 2009–2021- A Snapshot*. Department of FaHCSIA, Canberra, March 2009.

⁸⁶ Bartels, L. (2010) *Emerging issues in domestic/ family violence research*. Research in Practice Report No. 10, Australian Institute of Criminology, Canberra.

⁸⁷ Dowse, L. et al (2013) OpCit; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) OpCit; See also: Multicultural Disability Advocacy Association of NSW (MDAA) (2010) *'Violence Through Our Eyes: Improving Access to Services for Women from non-English Speaking Backgrounds with Disability and Carers Experiencing Violence Project Report'*. See also: National Ethnic Disability Alliance (NEDA) (2001) *Domestic Violence and Women from a NESB with Disability*. Paper prepared by NEDA, 2001.

⁸⁸ Ibid.

⁸⁹ Commonwealth of Australia (2009) *Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

⁹⁰ Meekosha, H. (2012) *Rural Women & Girls With Disabilities: Economic Empowerment & Political Participation*. Presentation to the 56th Session of the United Nations Commission on the Status of Women, Tuesday, February 28, 2012, New York.

⁹¹ Robinson, S. (2013) OpCit.

⁹² Cited in Coulson-Barr, L. OpCit.

1.5. The impact of violence against people with disability

Like many other people who experience violence and abuse, the impact and effects for people with disability, especially women and girls, are profound, long-term and wide-ranging – with the impact over time of different types of violence and of multiple episodes found to be cumulative.⁹³ There is now extensive and indisputable evidence of the impact of violence against women and girls in our society. Researchers have identified a litany of psychological, emotional, health, financial, and behavioural effects of all forms of violence against women.⁹⁴

Of significance is the fact that the consequences of violence against women and girls with disability are pervasive, due to the length of time that they endure such violence, the severity of the violence, the fact there are often multiple perpetrators of the violence, and that many women and girls with disability are unable to ever disclose the violence or seek help to stop it. Indeed, even when they do disclose, such disclosures are frequently not taken seriously, because it is assumed that either women are lying or exaggerating, that the accusation is a result of interpersonal conflict rather than assault, or because of assumptions made about the effects of someone's disability:

Natalie is 50 years old and is a resident at a psychiatric hospital. She has been diagnosed with intellectual disability, schizophrenia, epilepsy, and she is deaf. She lived with her family until her parents were unable to care for her personal needs, and then moved into a residential care facility. During the first three years, Natalie complained that a night worker was hurting her. She also began to experience delusions during this time. Her complaints were not taken seriously and Natalie eventually stopped talking about the abuse. However, she began to have violent outbursts and staff reports reveal that she was restrained, sometimes for several hours, due to these outbursts. When the violence escalated to endanger other residents, Natalie was moved to the psychiatric hospital where she could be placed under stricter medical supervision. At the hospital Natalie began to wet her bed at night and to pull out large sections of her hair. She was also heavily medicated. A new case manager experienced in working with survivors of sexual assault began to suspect that Natalie had been sexually abused. With the help of an interpreter, Natalie disclosed that for over three years, a night worker at the residential care facility had regularly come into her room and sexually assaulted her. The case manager scheduled a medical exam where it was discovered that Natalie had a sexually transmitted disease.⁹⁵

The recent study undertaken by the Victorian Equal Opportunity and Human Rights Commission found that the impact of violence is particularly severe for women with disability, people with cognitive impairments and people with communication disabilities, and that there are particular risks for those in residential settings. The study found that crimes committed against people with disability in residential settings, including crimes of violence, are less likely to be reported, and if they are, it is often the residential service staff who become the contact point for reporting crime rather than the police.⁹⁶

Population-based studies suggest that 40-72% of all women who have been physically abused by a partner are injured at some point in their life.⁹⁷ Research has found that domestic violence is the most common cause of injury to women - comprising 21% of all traumatic injuries.⁹⁸ Many women have acquired a disability as a direct result of violence perpetrated against them, including domestic violence as experienced in institutions. For example, a 2003 Western Australian study found that 38% of women with disability serviced by that State's violence and/or disability services in a two-year period had acquired their disability as a direct result of violence perpetrated against them.⁹⁹

⁹³ WWDA (2007b) OpCit.

⁹⁴ Ibid. See also: VicHealth (2011) OpCit.

⁹⁵ In Frohmader, C. (2014) OpCit.

⁹⁶ Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

⁹⁷ WWDA (2007b) OpCit.

⁹⁸ Cited in Fraser, K. (2003) *Domestic Violence and Women's Physical Health*. Australian Domestic and Family Violence Clearinghouse. Accessed online March 2014 at: http://www.adfvc.unsw.edu.au/pdf%20files/physical_health.pdf

⁹⁹ Cockram, J. (2003) *Silent Voices: Women With Disabilities and Family and Domestic Violence*. A joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University, Perth, Australia.

*"When I was 16 years old, my boyfriend bashed me almost to death. He beat me so badly I suffered a severe brain injury and was in a coma for four months. That evening when he bashed me he repeatedly stomped on and kicked my head. While lying in my hospital bed my family and nursing staff could see the imprint of his shoe in my very swollen face."*¹⁰⁰

*In 2003, a 31 year old man raped and assaulted a colleague after a work function in Victoria. After raping his victim in the stairwell of a building, the man walked out of the building, looked up and down the street, and then returned to repeatedly stomp on her head. The 30 year old woman was admitted to hospital with facial fractures, a partly amputated right ear, brain damage and serious vaginal and anal injuries.*¹⁰¹

In addition to its human costs, violence places an enormous economic burden on societies in terms of increased health care expenditures, lost productivity and increased use of social services. In Australia, domestic violence has been identified as the single biggest health risk to Australian women of reproductive age, and the leading contributor to death, disability and illness in women aged 15 to 44.¹⁰² There is now extensive evidence of the financial costs of violence against women in Australia.¹⁰³ Research undertaken as part of the *National Plan to Reduce Violence against Women and their Children 2010-2022* found that, in relation to women with disability, the estimated cost to the Australian economy of violence perpetrated against women with disability in 2021-22 will be \$3.9 billion, representing 25% of the total cost of the total cost of violence in 2021-22.¹⁰⁴

A common impact of violence (particularly domestic violence) for people with disability is the very real risk and likelihood that their children will be removed from their care if they disclose the violence. Recent data demonstrates that a parent with a disability (usually a mother) is up to ten times more likely than other parents to have a child removed from their care, with the child removed by authorities on the basis of the parent's disability, rather than any evidence of child neglect.¹⁰⁵ There is substantial anecdotal and documented evidence of women with disability in Australia having their children removed by authorities due to family violence, and of Courts awarding custody of the children to the violent partner.¹⁰⁶ Fear of being incorrectly perceived as an unfit mother by a court on the basis of disability has frequently discouraged mothers with disability from separating from a violent partner.¹⁰⁷

*Lucy has been married for five years to her husband who is 25 years her senior. Lucy's husband has been married before and has children from two former relationships. Lucy's husband has a long history of violence, including domestic violence, and has been imprisoned in the past for violence offences and breach of Apprehended Violence Orders. Lucy and her husband have a three year old daughter. Lucy has a past history of mental illness but has been non-episodic for more than 10 years. The marriage eventually breaks down due to the domestic violence perpetrated against Lucy by her husband. A custody dispute ensues. The Court awards full custody of the child to Lucy's husband, on the grounds that Lucy has a "mental illness". Lucy spends the next 12 years fighting to get her daughter back, to no avail.*¹⁰⁸

In March 2013, the Australian Council of Human Rights Agencies (ACHRA) identified discrimination against 'potential and actual parents with disability' as one of three urgent priority human rights

¹⁰⁰ Cited in: Commonwealth of Australia (2009) *Background Paper to Time for Action*: OpCit.

¹⁰¹ Munro, I. (2003) 'Monster' who raped and beat colleague jailed for 16 years. *The Age*, November 7, 2003. Accessed online at: <http://www.theage.com.au/articles/2003/11/06/1068013329595.html?from=storyrhs> See also: Supreme Court of Victoria (2003) *R v Empey* [2003] VSC 422 (6 November 2003). Available online at: <http://www.austlii.edu.au/au/cases/vic/VSC/2003/422.html>

¹⁰² WWDA (2007b) OpCit.

¹⁰³ Commonwealth of Australia (2009) *The Cost of Violence against Women and their Children*. The National Council to Reduce Violence against Women and their Children; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

¹⁰⁴ Ibid.

¹⁰⁵ This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. <http://www.publicadvocate.vic.gov.au/research/302/>; See also: *Disability Rights Now* (2012) OpCit.

¹⁰⁶ Frohmader, C. (2014) OpCit. See also: OPA (2012) OpCit.

¹⁰⁷ Frohmader, C. and Ortoleva, S. (July 2013) *The Sexual and Reproductive Rights of Women and Girls with Disabilities*; Issues Paper commissioned by the ICPD International Conference on Human Rights, The Hague, July 2013. Available at: http://www.wwda.org.au/issues_paper_srr_women_and_girls_with_disabilities_final.pdf

¹⁰⁸ Cited in: Frohmader, C. (2014) OpCit.

matters requiring national leadership and action.¹⁰⁹ This echoes recommendations made to successive Australian governments for many years by Disabled People's Organisations (DPOs) and civil society organisations who have called for a National Public Inquiry into the legal, policy and social support environment that gives rise to the removal and/or threat of removal of babies and children from parents with disability. Advocates have called on governments to ensure that such an Inquiry address the over-representation of parents with intellectual disability in care and protection proceedings, as well as the need for urgent reform in the area of child removal on the basis of parental disability in the family law system.¹¹⁰

The extensive and indisputable evidence of the severe impact of violence against people with disability (particularly women and girls) in our society means little if this issue is not addressed as a national priority.

¹⁰⁹ Australian Council of Human Rights (ACHRA) *Communiqué from Australian Council of Human Rights Agencies meeting*, 18-19 March 2013. Wednesday, 20 March 2013. Accessed online March 2014 at: <http://www.humanrightscommission.vic.gov.au/index.php/news-and-events/media-releases/item/568-communic%C3%A9-from-australian-council-of-human-rights-agencies-meeting-18-19-march-2013>

¹¹⁰ In Frohmader, C. (2014) OpCit; See also: Office of the Public Advocate (December 2013) OpCit.

2. The factors contributing to the present levels of domestic violence

For people with disability, structural inequality and disability discrimination are significant determinants of violence, including domestic violence. It is important to note that structural inequality is intersectional, meaning that the various elements of the discrimination or inequality they may face – as women, as people with disability, as of Aboriginal or Torres Strait Islander people – intersect and interact to produce very different experiences of violence for different people. Grappling with the interactions between gender, ability, race and other elements of structural inequality is essential to an adequate response.

To support this, in this section, we provide first an account of gender inequality, followed by an elaboration of other intersecting factors. It is important to note that research has also clearly demonstrated that individual level factors, such as alcohol and drug use or childhood exposure to violence, are neither necessary nor sufficient conditions for violence against women to occur.¹¹¹ In other words, these are structural issues and must be addressed as such.

2.1. Gender inequality

Research shows that the most significant determinants of violence against women are:

- the unequal distribution of power and resources between men and women, and institutional, cultural and individual support for (or weak sanctions against) gender inequality; and,
- an adherence to rigidly defined gender roles expressed institutionally, culturally, organisationally and individually.¹¹²

These factors are frequently exacerbated and altered for women and girls with disability due to the structural inequality and disability discrimination they also face.

Gender equality means that women and men have equal conditions for realising their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefit from the results. It implies a fair distribution of resources between men and women, the redistribution of power and caring responsibilities, and freedom from gender-based violence.¹¹³ Yet in Australia, women and girls with disability have fewer opportunities, lower status and less power and influence than men and boys with disability.¹¹⁴ Gender-based assumptions and expectations place women with disability at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions.¹¹⁵

Women with disability in Australia have less power and fewer resources than men and other women. They are much more likely to live in poverty than people in the general population, have to work harder to secure their livelihoods, and have less control over income and assets. They are more likely to be unemployed than men with disability; less likely to be in the paid workforce; have lower incomes from employment than men with disability; are more likely to experience gender biases in labour markets; and are more concentrated than men with disability in precarious, informal, subsistence and

¹¹¹ According to the Victorian Health Promotion Foundation, these factors can exacerbate the frequency or severity of violence, but only when they occur in conjunction with the key determinants related to gender norms, gender inequality and power. See VicHealth (2011) OpCit.

¹¹² VicHealth (2007) *Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria*, Victorian Health Promotion Foundation, Carlton. See also: Action Aid UK, *Gender Equality: The key task to ending violence against women*. Accessed on line April 2014 at: <http://www.gadnetwork.org/storage/csw/Violence%20Against%20Women%20and%20Girls%20-%20Gender%20Equality.pdf>; See also: UN Women, *Speech by UN Secretary-General Ban Ki-moon for UN commemoration of International Women's Day 2014*. Accessed on line April 2014 at: <http://www.unwomen.org/ru/news/stories/2014/3/secretary-general-iwd-speech>

¹¹³ In Frohmader, C. (2014) OpCit.

¹¹⁴ Women With Disabilities Australia (WWDA)(2010) *Gendering the National Disability Care and Support Scheme: WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry*. Available online at: http://wwda.org.au/wp-content/uploads/2013/12/WWDA_SubPCInquiry2010.pdf

¹¹⁵ In Frohmader, C. (2014) OpCit.

vulnerable employment. They are more likely than disabled men to be affected by the lack of affordable housing, due to the major gap in overall economic security across the life-cycle, and to their experience of gender-based violence which leads to housing vulnerability, including homelessness.

Women with disability face barriers in accessing adequate maternal and related health care and other services for both themselves and their child/ren. They are more likely than men with disability to face medical interventions to control their fertility, and experience significantly more restrictions, negative treatment, and violations of their sexual and reproductive rights. Like many women, they share the burden of responsibility for unpaid work in the private and social spheres, including for example, cooking, cleaning, and caring for children and relatives. Compared to men with disability and other women, they have significantly lower levels of participation in governance and decision making at all levels. Importantly, they are much less likely to receive service support than men with disability.¹¹⁶ This evidence highlights the fact that violence, including domestic violence, has its root causes in the social, economic and political inequalities experienced by women with disability.

A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. However as noted by the 2013 *'Stop the Violence Project'* (STVP), women and girls with disability are at high risk of gender-based and other forms of violence based on social stereotypes and biases that attempt to dehumanise or infantilise them, exclude or isolate them, target them for sexual and other forms of violence, and put them at greater risk of institutionalised violence. A combination of factors at the societal and individual level – such as exclusion from participation in community life due to prejudices, stigma and discrimination, lack of access to quality education, employment and livelihood, as well as access to healthcare and other support services and resources - result in marginalisation, disempowerment, dehumanisation and the systemic denial of the rights of women and girls with disability.¹¹⁷

2.2. Structural inequality and disability discrimination

People with disability, particularly women with disability, have identified a raft of factors which contribute to the pervasive and extensive violence perpetrated against them, including domestic violence. It is outside the scope of this Submission to examine all these factors in detail, however, some of the key factors include:

2.2.1. Poverty and lack of economic independence – Poverty and lack of economic opportunities are major factors contributing to the experience of, and risk of violence. Limited opportunities to be self-supporting, especially where children are involved, restrict options for people with disability in leaving violent relationships or domestic settings. 45% of Australians with disability live in or near poverty, a rate 2.5 times that in the general population. This is more than double the OECD average of 22%, meaning that Australia ranks last of the 27 OECD countries.¹¹⁸ Recent migrants are also overrepresented in or near poverty,¹¹⁹ meaning that people with disability from culturally or linguistically diverse backgrounds are likely to experience even higher levels of deprivation. Similarly, people from Aboriginal and Torres Strait Islander backgrounds experience both higher rates of disability,¹²⁰ and greater levels of poverty than the rest of the population.¹²¹

Women with disability bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society. Women with disability's economic inequalities and discrimination against them in areas such as employment, income, access to other economic resources and lack of economic independence reduce their capacity to act and take decisions, and increases their exposure to, and risk of violence.¹²²

¹¹⁶ Ibid.

¹¹⁷ Dowse, L. et al (2013) OpCit.

¹¹⁸ PriceWaterhouseCoopers, (2011) *Disability Expectations: Investing in a better life, a stronger Australia*

¹¹⁹ Davidson, P. with P. Dorsch & H. Gissane (2012) *Poverty in Australia: ACOSS Paper 194*, Australian Council of Social Service

¹²⁰ Australian Institute of Health and Welfare. (2011) *Aboriginal and Torres Strait Islander people with disability: wellbeing, participation and support* IHW 45. AIHW.

¹²¹ Davidson, P. with R.Evans, P. Dorsch & H. Gissane (2012) *Poverty in Australia: Third Edition*, Australian Council of Social Service

¹²² WWDA (2007b) OpCit.

2.2.2. Place of residence - for many people with disability, their 'place of residence' is a factor which contributes to their experience and risk of violence. People with disability are likely to have their housing options severely constrained by housing affordability and accessibility. They are far more likely to live in institutional residential settings. Those living in institutional and residential settings experience violence perpetrated by a number of people who come into contact with them, in the course of their domestic life. These can include other residents, co-patients, a relative and/or a carer, whether family member or paid service provider.

Many people with disability living in institutional or residential settings have limited access to police, support services, lawyers or advocates, and are trapped within the entrenched sub-culture of violence and abuse prevalent in institutional and residential settings. They can experience social isolation and lack of access to learning environments; are often economically, physically and psychologically dependent on others; and are socialised or compelled to tolerate a high degree of personal indignity, mishandling, and even violence, abuse, exploitation and neglect as an incident of service delivery to them.¹²³

In addition, people with disability are frequently forced to live outside metropolitan areas due to the cost of housing,¹²⁴ which limits their access to services, including those which can address domestic violence. Those living in rural and remote communities are particularly disadvantaged as a result of inaccessible environments and lack of services, information, awareness and education. While disability support and violence support services are much needed in such communities, these are often seen as secondary to more basic needs such as provision of nutritious food, shelter, and security. As a result, people with disability, particularly women and girls in such locations, are more susceptible to violence, exploitation and abuse with few supports available to seek redress. Since rural and remote communities have high proportions of Indigenous women and girls with disability, this group is particularly at risk.¹²⁵

2.2.3. Exclusion from the labour market – people with disability experience discrimination and negative stereotypes which, although illegal, may impede gaining and retaining employment. This is exacerbated for people with disability with intersectional barriers, although there is limited research into these smaller demographics. As noted above, people from culturally and linguistically diverse backgrounds are likely to face higher levels of poverty due to their exclusion. Aboriginal and Torres Strait Islander people experience lower levels of employment, at a rate that reflects similar trends to that of non-indigenous people with disability.¹²⁶

Women with disability experience discrimination and negative stereotypes from both a gender and disability perspective which compounds their exclusion from the workforce. Working-age women with disability who are in the labour force are half as likely to find full-time employment (20%) as men with disability (42%); twice as likely to be in part-time employment (24%) as men with disability (12%); and regardless of full-time or part-time status, are likely to be in lower paid jobs than men with disability.¹²⁷ Research has found that women with disability have extremely limited access to job opportunities and when they are employed, they face higher rates of sexual harassment, violence, abuse and discrimination in the workplace than women without disability.¹²⁸

2.2.4. Dependence on others – many people with disability are in positions where they are reliant on others to provide care and support for a range of needs - from basic requirements such as eating and dressing - to more complex ones such as transportation. The imbalance of power and control built into caregiving relationships can support overt and subtle violence against people with disability by those closest to them. Often these relationships play out in

¹²³ Ibid.

¹²⁴ WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>;

¹²⁵ Dowse, L. et al (2013) OpCit; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) OpCit;

¹²⁶ Australian Institute of Health and Welfare. (2011) *Aboriginal and Torres Strait Islander people with disability: wellbeing, participation and support* IHW

45. AIHW.

¹²⁷ In Frohmader, C. (2014) OpCit.

¹²⁸ Ibid.

environments isolated from any significant formal or informal scrutiny. The power imbalance can be so pervasive that it permeates program policy, agency culture, professional practice, and the personal dynamics in paid relationships.¹²⁹

- 2.2.5. Credibility and fear of disclosure** - many people with disability are not believed when they disclose their experiences of violence and this is even more likely the case for people with intellectual disability, who are often labelled as 'liars' or 'exaggerating the incident', or 'having a poor memory', or 'being too vulnerable to suggestion' or 'attention seeking'.¹³⁰

Women with disability may be reluctant to report violence for similar reasons that other women do not report violence, such as fear of retaliation, shame, dependency, blame and so on. However, the difficulties of disclosing violence are further compounded for women with disability, who may risk losing essential care and/or services, or the only home that can accommodate their needs. Not disclosing violence means that such women are far more likely to remain in violent relationships and abusive situations and therefore be vulnerable to further violence.¹³¹

Many women with disability also face the very real fear of losing their children if they disclose their experiences of violence. Threats to take children away are common in violent and abusive relationships involving women with disability, and research has found that women with disability often lose custody of their children to the violent partner when going through the family law system. In what they see as 'the best interests of the child', judges often decide that a parent who has no disability, even a violent parent, is more capable of caring for a child than a woman with a disability.¹³²

- 2.2.6. Lack of access to the criminal justice system** - People with disability, especially women and girls, who experience violence are without effective recourse to justice due to legal systems which are permeated by social norms that reinforce gender inequality and disability discrimination.¹³³

Research has also found that discriminatory attitudes and negative police culture, including the tendency to blame the victim; refusal to investigate allegations of violence; treating crimes of violence as a 'service incidents'; failing to make reasonable adjustments; assuming that a prosecution will not succeed because the court may think the person lacks credibility; along with negative or paternalistic stereotypes of people with disability – contributes to the pervasive and extensive violence perpetrated against people with disability, particularly women and girls.¹³⁴

For some people with disability, especially those with child custody concerns, or with personal or cultural histories which may make them suspicious of the intervention of police or other state services, reporting is likely to be understood to be too risky.

In addition, in some cases evidence laws, conventions within courts, and incorrect perceptions of credibility may impede the participation of people with disability in criminal proceedings. All too often, women with disability are let down by the criminal justice system, subject to discriminatory, insensitive, aggressive and/or doubting attitudes from those working within it.

- 2.2.7. Lack of awareness and knowledge** - research has found that there remains a significant lack of awareness and understanding of the extent, nature, incidence, and impact of violence

¹²⁹ Mandeville, H. & Hanson, M. (2000) Understanding Caregiver Abuse as Domestic Violence: Systemic Change in Wisconsin. Cited in Abramson, W., Emanuel, E., & Hayden, M. (Eds) (2000). Feature issue on violence and women with developmental and other disabilities. *IMPACT*, Vol. 13, No. 3. Minneapolis: Institute on Community Integration, University of Minnesota.

¹³⁰ Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

¹³¹ WWDA (2007b) OpCit.

¹³² In Frohmader, C. (2014) OpCit. See also: DisAbleD Women's Network (1992) *Family Violence against Women with Disabilities*. DisAbleD Women's Network (DAWN), Ontario, Canada.

¹³³ Australian Human Rights Commission (2014) *Equal before the law: Towards disability justice strategies*. Australian Human Rights Commission

¹³⁴ WWDA (2007b) OpCit; See also: Victorian Equal Opportunity and Human Rights Commission (2014) OpCit.

against people with disability, particularly the gendered nature of such violence, at the individual, community, service provider, and criminal justice system levels.¹³⁵

People with disability, particularly women and girls, are regularly deprived of the information, education and skills to recognise and address violence. People with disability, particularly those who live in institutional and residential settings, are taught and 'rewarded' for, unquestioning compliance. In such settings, criminal behaviours may be normalised. Many do not recognise the violence perpetrated against them as a crime, are unaware of how to seek help and support; or are actively prevented from seeking help and support. There is a dearth of accessible information and education resources about violence against people with disability - for people with disability themselves, the service sector, and the broader community.

2.2.8. Lack of access to crisis accommodation and support - the lack of accessible refuges and other crisis services, and/or exclusionary policies and practices which deny people with disability access, is a significant factor contributing to people with disability, especially women, remaining in violent relationships and being subjected to violence for significantly longer periods of time than their peers. Lack of emergency funds for personal care and other disability related costs; tenancy transfers; carer allowance transfers, along with issues such as lack of accessible transport, are also major factors.

2.2.9. Service system issues - the lack of appropriate, available, accessible and affordable services, programs and support is a major factor contributing to the pervasive and extensive violence perpetrated against people with disability, particularly women and girls. There is poor identification and recording of violence, including the lack of violence screening tools and frameworks, at all levels of the disability, justice and domestic violence service systems.

There is an acute lack of specialist skills and services to address violence perpetrated against indigenous women with disability and CALD women with disability; and a clear lack of coordination and collaboration between the disability sector and the violence against women sector which results in the fragmentation of services.¹³⁶ Service providers across all sectors may share the same stereotypes and myths held by society at large regarding women with disability.

Limitations in workers' awareness of the broader issues of accessibility and disability, negative or ambivalent attitudes about providing access, lack of knowledge of the complex nature and multiple forms of violence against people with disability, limited recognition of the sexuality of people with disability, and a tendency to focus on the disability rather than the violence, may all stem from this. Resources, attitudes and narrow prescriptions of responsibility are often the reasons for women's services and generic services maintaining exclusionary practices.¹³⁷

2.2.10. Lack of participation, access to decision-making, and representation - participation of people with disability as citizens is at the basis of the recognition of their dignity, and key to addressing violence. Access to decision-making, political participation and representation are essential markers of equality, and thus support the prevention of violence. People with disability are frequently denied the exercise of their legal capacity through both formal and informal means. People with disability, especially intellectual disability, may be struck from the electoral role. Guardianship may be used to address service inadequacies, but denies individuals with disability their autonomy.

People with disability in Australia are often excluded from, and denied opportunities to participate in, decision-making about issues that affect their lives and those of their families, community and nation. A national statutory body designed to monitor, promote and provide

¹³⁵ Ibid. See also: Dowse, L. et al (2013) OpCit; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) OpCit.

¹³⁶ Ibid.

¹³⁷ WWDA (2007b) OpCit.

decision-making support should be established to enable the exercise of legal capacity through adequately supported decision-making.¹³⁸

The empowerment of women is vital in any framework to tackle violence against women and girls, and this is even more potent for women with disability, who have made it clear that empowerment for them comes from speaking and/or acting in their own interests; the presence of a collectivity and a basis in self-determination; and a discourse of human rights.¹³⁹

Organisations, groups and networks of women with disability play an essential role in efforts to promote the rights of women and girls with disability to freedom from all forms of violence, including domestic violence. However, in Australia, the national organisation of and for women with disability (WWDA) is poorly funded and with only one paid employee, has limited capacity to address the epidemic of violence against women with disability. Of the 8 Australian State/Territory Governments, there is only one (Victoria), which provides operational funding for a disabled women's organisation.

Independent Disabled People's Organisations (DPO's) including the national DPO representing children and young people with disability; the national DPO representing indigenous people with disability; the national cross-disability DPO; and the national DPO representing CALD people with disability – are also poorly funded with limited capacity to prevent and address the violence perpetrated against the people with disability they represent. The United Nations has recently recommended that the Australian Government address this under-resourcing of independent DPO's.¹⁴⁰

¹³⁸ People with Disability Australia, The Australian Centre for Disability Law and The Australian Human Rights Centre. (2014) *Submission to the Australian Law Reform Commission (ALRC): Equality, Capacity and Disability in Commonwealth Laws Discussion Paper*. Accessed via <http://pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>

¹³⁹ Frohmader, C. (2011) OpCit.

¹⁴⁰ CRPD/C/AUS/CO/1

3. The adequacy of policy and community responses to domestic violence.

Australia is a signatory to seven core international human rights treaties,¹⁴¹ all of which create obligations to promote equality, denounce discrimination against people with disability; people from culturally and linguistically diverse backgrounds; people from Aboriginal and Torres Strait Islander backgrounds; and against women. They also create obligations to prevent and address violence, including domestic violence, against people with disability, including women with disability. International human rights law condemns violence against women in all its forms, whether it occurs in the home, schools, in institutions, the workplace, the community or in other public and private institutions, and regardless of who perpetrates it.

The UN Special Rapporteur on violence against women, its causes and consequences has noted:

*no form of interpersonal violence against women is devoid of structural violence – as in all places, such abuse is underpinned by beliefs about the perpetrator's right to harm another, based on societal notions of gender and rights.*¹⁴²

The Australian Government has consistently articulated its commitment to meeting its obligations under the treaties it has ratified,¹⁴³ and has made it clear that it views freedom from violence as a prerequisite to women's exercise and enjoyment of human rights.¹⁴⁴ In addition, the Australian Government recognises and acknowledges that:

- violence against women with disability in Australia is 'widespread';¹⁴⁵
- women with disability are extraordinarily vulnerable to violence and abuse;¹⁴⁶
- women with disability experience significant barriers in accessing domestic/family violence and sexual assault services and support;¹⁴⁷
- more needs to be done to reduce violence against women with disability;¹⁴⁸
- a range of targeted responses are required to prevent and address violence against women with disability,¹⁴⁹ and,
- violence against women and girls with disability is 'utterly unacceptable'.¹⁵⁰

3.1. The legislative context

In Australia, there is no national, coordinated legislation to prevent and address violence against women, including family/domestic violence.¹⁵¹ No existing Commonwealth or State/Territory domestic/family violence legislation is framed in a human rights framework setting it in the context of Australia's obligations to the core international human rights treaties to which it is a party.

Legislation in federal and State and Territory jurisdictions sets the foundation for the rights of women to be protected against violence, and the States and territories carry primary responsibility for legislative measures to criminalise, prosecute and punish perpetrators for acts of domestic/family violence. Yet domestic and family violence legislation differs across States and Territories providing

¹⁴¹ The Convention on the Elimination of All Forms of Discrimination against Women on 18 December 1979 ([1983] ATS 9); the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966 ([1980] ATS 23); the International Covenant on Economic, Social and Cultural Rights on 16 December 1966 ([1976] ATS 5); the Convention on the Rights of the Child on 20 November 1989 ([1991] ATS 4); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 10 December 1984 ([1989] ATS 21); the Convention on the Elimination of All Forms of Racial Discrimination on 21 December 1965 ([1975] ATS 40); Convention on the Rights of Persons with Disabilities [2008, ATS 12].

¹⁴² Manjoo, R. (2011) *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/17/26, para 24.

¹⁴³ Commonwealth of Australia (2010) *Australia's Human Rights Framework*, Attorney-General's Department, Canberra.

¹⁴⁴ Australian Government (2012) 'Responses by Australia to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report of Australia on 20 July 2010.' Accessed February 2013 at: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.AUL.CO.7.Add.1.pdf>

¹⁴⁵ In Frohmader, C. (2011) OpCit.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Department of Social Services *Second Action Plan 2013-2016 – Moving Ahead* – of the National Plan to Reduce Violence against Women and their Children 2010-2022.

¹⁴⁹ Ibid.

¹⁵⁰ Senator the Hon Michaelia Cash, Correspondence to WWDA, 8th April 2014.

¹⁵¹ Australian Government (2012) OpCit.

different levels of protection and definitions of what constitutes 'family violence' and what constitutes a 'domestic relationship'. For example, domestic/family violence legislation in some jurisdictions recognises violence between persons who live together in the same household (that is, without being in a relationship) as family violence. Other jurisdictions recognise meaningful personal relationships between people outside conventional definitions. Some legislation protects persons in carer relationships, including paid carers; some cover relationships with paid and unpaid carers as long as the relationship is 'family like'; whilst others cover unpaid carers only. Other family violence legislation, however (such as in Tasmania and Western Australia) does not address relationships with carers at all.¹⁵²

Research has found that the lack of a clear definition and legal recognition of the problem of violence against women and girls with disability in legislation results in low priority being given to the issue within service environments, where the service sector is largely governed by a range of specific legislative frameworks designed to ensure effective service delivery that addresses one area alone such as disability or gendered violence.¹⁵³ Even in those jurisdictions with broader legislative definitions of domestic/family violence, policy, procedures and protocols which should enact this breadth frequently do not. For example, new referral pathways for people experiencing domestic violence are currently being introduced in NSW, which has a broader definition of 'domestic violence' in its Personal Violence Act 2007. However, the NSW Police is limiting their engagement in the pilot project to 'intimate partner violence,' meaning that various elements of the pathways, such as the Domestic Violence Safety Assessment Tool, would completely exclude any occurrence of violence not between intimate partners, and thus the majority of domestic violence experienced by people with disability.

The Commonwealth *Family Law Act 1975*, amended in 2011 through the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, contains no over-arching objects or principles, and is not set in a human rights framework. It provides non-exhaustive examples of what constitutes 'family violence'; however the examples provided in the Act are still relatively limiting for addressing the dimensions of domestic and family violence as experienced by people with disability. The definition of 'family member' and 'relative' in the amended *Family Law Act 1975* do not appear to be broad enough to encompass the range of 'domestic relationships' that many people with disability may be in, such those living in institutional and residential settings. The limiting definition does not cover paid and/or unpaid carers, which makes it problematic in providing protection and or redress for people with disability who experience domestic/family violence at the hands of carers.

An analysis of existing domestic/family violence legislation in Australia indicates that 'protection' from domestic/family violence is the primary concern. Yet good practises in legislation that addresses violence against women, encompass not only the criminalisation of all forms of violence against women and the effective prosecution and punishment of perpetrators, but also the prevention of violence, and the empowerment, support and protection of survivors. Prioritising prevention in legislation should include provision for a range of measures to be undertaken to this end, including for example: awareness-raising campaigns, education and sensitisation of the media, information on human rights and violence against women and girls (including those from marginalised and vulnerable groups) at all levels of educational curricula, and through awareness and promotion of the safety of women in public spaces and in cyberspace.¹⁵⁴

Comprehensive, inclusive and coherent human rights-based legislation is fundamental for an effective and coordinated response to preventing and addressing violence against women and girls with disability.¹⁵⁵ Yet it is clear that most domestic/family violence legislation in Australia is not set in a human rights framework, is piecemeal and inconsistent in definitions and scope, and focuses largely on protection from domestic/family violence. For women with disability, this means, in effect, that their experiences of domestic/family violence are not properly recognised across the legal system,

¹⁵² Frohmader, C. (2011) OpCit.

¹⁵³ Dowse, L. et al (2013) OpCit; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) OpCit.

¹⁵⁴ United Nations Department of Economic and Social Affairs (2010) *Handbook for Legislation on Violence against Women*, Division for the Advancement of Women, New York. See also: The Advocates for Human Rights (2011) *Developing Legislation On Violence Against Women And Girls*, UN Women, <http://www.endvawnow.org/en/modules/view/8-legislation.html>

¹⁵⁵ Ibid.

they are given less protection than their counterparts who do not have disability, and the likelihood of them benefiting from integrated and coordinated responses, including prevention, is compromised.

Australia has clear obligations under international human rights law to enact, implement and monitor legislation addressing all forms of violence against women and girls with disability, including those to which they are more vulnerable, such as forced sterilisation, forced institutionalisation and forced abortion.¹⁵⁶ The Australian Law Reform Commission (ALRC) in its 2012 *National Inquiry into Family Violence and Commonwealth Laws*,¹⁵⁷ recommended that in relation to people with disability, the term 'family violence' should be inclusive of the types of family violence experienced by people with disability, including: domestic, sexual or physical assault; stealing and financial exploitation including misappropriation of social security payments and other benefits and concessions; neglect and deprivation of things such as shelter, nutrition and essential medical treatment; specific types of abuse related to their disability such as withholding equipment, food and medication; and forced sterilisation and abortion.¹⁵⁸ This is important not only to ensure legal protection but also to promote a culture where no form of violence against people with disability is tolerated.¹⁵⁹

3.2. The policy context

The primary policy responses to addressing violence against people with disability in Australia (particularly women with disability), are the 12 year *National Plan to Reduce Violence Against Women and their Children 2010-2022*, the *National Framework for Protecting Australia's Children*, and the *National Disability Strategy* (NDS).

However, in relation to addressing violence against women and girls with disability, the *National Plan* has significant limitations, in that there is little emphasis on girls with disability, it focuses only on traditional notions of domestic/family violence and sexual assault, and fails to address the many other forms of violence perpetrated against women and girls with disability (such as violence in institutions and residential settings; sexual and reproductive rights violations; restrictive practices; seclusion and restraint; deprivation of liberty). These forms of violence currently fall 'outside' the scope of the *National Plan*. Whilst the second three year action plan of the National Plan [*Moving Ahead 2013-2016*], does prioritise women with disability by providing the opportunity to 'prioritise and implement key outcomes from the Stop the Violence Project',¹⁶⁰ the STVP was itself, limited in scope as its focus was on building the evidence base to reform service provision for women with disability who are experiencing or at risk of violence. The Project was unable to 'address the myriad issues and complexities inherent in the multiple forms of violence perpetrated against women with disabilities.'¹⁶¹

Although the key decision-makers responsible for action under the *National Framework for Protecting Australia's Children* are the Disability and Community Services Ministers around Australia, there is very limited reference to disability across the six intended outcomes. Indeed, the primary action in relation to children with disability is to 'enhance support' to achieve Outcome 3, in which the disability of a child is problematically understood as a 'risk factor' for child abuse or neglect. The other 5 outcomes, which include ensuring that 'child sexual abuse and exploitation is prevented and survivors receive adequate support,' include no reference to disability. Essentially, this means that the only appearance that children with disability make in the *National Framework for Protecting Australia's Children* is where their disability is treated as a cause of the abuse they experience: a clear case of blaming the victim.

¹⁵⁶ United Nations General Assembly (2012) *Thematic study on the issue of violence against women and girls and disability*. Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/20/5)

¹⁵⁷ Australian Law Reform Commission (ALRC) (2012) *Family Violence and Commonwealth Laws—Improving Legal Frameworks* (ALRC Report 117). Last accessed online July 2014 at: <http://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117>

¹⁵⁸ Australian Law Reform Commission (ALRC) (2012) *Family Violence and Commonwealth Laws – People with Disability*. Accessed online 2013 at: <http://www.alrc.gov.au/CFV-disability>

¹⁵⁹ Ibid.

¹⁶⁰ Department of Social Services *Second Action Plan 2013-2016 – Moving Ahead* – of the National Plan to Reduce Violence against Women and their Children 2010-2022.

¹⁶¹ Dowse, L. et al (2013) OpCit; See also: Women With Disabilities Australia (WWDA), People with Disabilities Australia (PWDA) and the University of New South Wales (2013) OpCit.

The *National Disability Strategy* (NDS) is the ‘foundation of Australia’s work to advance disability rights’¹⁶² and sets out a national policy framework for guiding Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The NDS was developed in 2010 and formally endorsed by the Council of Australian Governments (COAG) in February 2011. The NDS is supported by three Implementation Plans developed over its ten-year life span. The first implementation plan - *Laying the Groundwork: 2011–2014*¹⁶³ - details actions to be taken in policies and programs across all areas of government. The NDS contains limited measures to address violence against people with disability, identifying only that there is a need to ‘develop strategies to reduce violence, abuse and neglect of people with disability’. The first NDS Implementation Plan contains only one specific action to achieve this, which is to: ‘ensure that the *National Plan to Reduce violence against women and their Children 2010–2022* and the *National Framework for Protecting Australia’s Children* have priority action to improve the safety and wellbeing of women and children with disability.’

Regrettably, the NDS, its first National Implementation Plan, its fifty-three priority areas for future action, its State/Territory implementation plans, and its mechanisms and trend indicators for monitoring, review and evaluation - all remain completely un-gendered, and do not enable the capacity at any level to address, monitor or evaluate the gender dimensions of any element of the NDS.

This type of policy ‘siloeing’, and lack of understanding of the intersectional and gendered nature of violence against people with disability, contributes to women with disability who experience, and who are at risk of experiencing violence, falling through violence prevention legislation, policy, program and service delivery gaps.¹⁶⁴ Whilst it is heartening to see a commitment from Governments to progress the key outcomes from the STVP in the Second Action Plan of the *National Plan*, it is of concern that the multiple forms and complex nature of violence perpetrated against people with disability (particularly women with disability) currently sit in a legislative and policy vacuum.

Domestic violence against children and adults with disability fall into a number of policy ‘gaps’ as a result of the failure to grapple with the intersectional nature of the violence that they experience. The 12-year *National Plan to Reduce Violence Against Women and their Children 2010–2022* is only linked to the *Convention on the Elimination of Discrimination against Women* (CEDAW), and so is primarily focused on meeting human rights obligations in relation to gender discrimination. The *National Disability Strategy* (NDS) is only linked to the *Convention on the Rights of Persons with Disabilities* (CRPD), and so is primarily focused on meeting human rights obligations in relation to disability discrimination. The *National Framework for Protecting Australia’s Children* is only linked to the *Convention on the Rights of the Child* (CRC), and so is solely focussed on meeting human rights obligations in relation to the protection of children. Whilst the various Conventions are critical to the underlying human rights frameworks of these various policies, prevention of violence against people with disability is equally a key obligation relating to civil and political rights; economic, social and cultural rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination.

What this means in practice, is that there is no comprehensive and properly intersectional human rights policy framework in Australia to address all forms of violence against people with disability, especially women with disability, and no legal, administrative or policy framework for the prevention, protection, investigation and prosecution of all forms of violence, exploitation, and abuse of people with disability.

3.3. The human rights imperative

The United Nations treaty monitoring bodies have made strong recommendations to Australia in relation to violence against people with disability (particularly women and girls with disability). Yet

¹⁶² Woolcott, P. (2013) Australia’s appearance before the Committee on the Rights of Persons with Disabilities: *Australia’s Opening Statement*, 3 September 2013. In: Frohmader, C. (2013) *Report from the United Nations Committee on the Rights of Persons with Disabilities (CRPD) 10th Session - Review of Australia*. Available online at: <http://www.da.org.au/papers/confpaps/confpaps2011/>

¹⁶³ The National Disability Strategy 2010–2020 Report to COAG 2012 incorporates the first implementation plan ‘*Laying the Groundwork 2011–2014*’ and the evaluation framework for the life of the Strategy. Available online at: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012>

¹⁶⁴ Dowse et al (2013) OpCit.

successive Australian Governments have demonstrated an apathy and scant disregard for these recommendations. In practice, this means that people with disability (particularly women and girls with disability) continue to experience widespread and pervasive gender-based and disability-based violence, in many different settings and environments.

The *Committee on the Rights of Persons with Disabilities*,¹⁶⁵ has expressed its concern at the high rates of violence perpetrated against women and girls with disability, and has recommended States Parties take urgent action to address and prevent such violence.¹⁶⁶ Most recently, in October 2013, the Committee, in its Concluding Observations following its Review of Australia's compliance with the *Convention on the Rights of Persons with Disabilities* (CRPD), expressed its "deep concern" at the high rates of violence perpetrated against women and girls with disability¹⁶⁷ and recommended that Australian Governments act urgently to:

- address and investigate, without delay, violence, exploitation and abuse experienced by women and girls with disability in institutional settings;
- include a more comprehensive consideration of women with disability in public programmes and policies on the prevention of gender-based violence; and,
- ensure access for women with disability to an effective, integrated response system.

In relation to data collection, information and research on women with girls with disability (including on violence), the Committee strongly recommended that Australia develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations contained in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. Specifically, the Committee recommended that the Australian Government:

*"commissions and funds a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the Convention can be measured."*¹⁶⁸

Recognising involuntary sterilisation as a form of violence, the Committee emphasised its "deep concern" at the ongoing practice, including *"the failure of Australia to implement the recommendations from the Committee on the Rights of the Child (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the Human Rights Council (A/HRC/17/10), and the Report of the UN Special Rapporteur on Torture (A/HRC/22/53), which addresses concerns regarding sterilisation of children and adults with disabilities."* The Committee urged the Australian Government to adopt national uniform legislation prohibiting the use of sterilisation of boys and girls with disability, and of adults with disability in the absence of their prior, fully informed and free consent.¹⁶⁹

The *Committee on the Elimination of Discrimination against Women* (CEDAW) has made very strong recommendations regarding the need for urgent action by Australian governments in relation to women with disability.¹⁷⁰ The Committee has expressed its deep concern about the pervasive and high levels of violence experienced by women and girls with disability, as well as the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, services and support, and lack of targeted measures to prevent and address violence against disabled women and girls. The Committee has called on the Australian Government to take urgent measures to address the violence

¹⁶⁵ The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention by the States Parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. See: <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>

¹⁶⁶ See: Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain*. UN Doc. No: CRPD/C/ESP/CO/1; 19 October 2011; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru*. UN Doc. No: CRPD/C/PER/CO/1; 9 May 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: China*. UN Doc. No: CRPD/C/CHN/CO/1; 27 September 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Hungary*. UN Doc. No: CRPD/C/HUN/CO/1; 27 September 2012; Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Tunisia*. UN Doc. No: CRPD/C/TUN/CO/1; 13 May 2011.

¹⁶⁷ Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session* (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1; Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FAUS%2FCO%2F1&Lang=en

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7, Op Cit.

and abuse experienced by women and girls with disability, and has recommended that Australia address, as a matter of priority, violence and abuse experienced by women with disability living in institutions or supported accommodation.¹⁷¹

The CEDAW Committee has also recommended that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, are fully sensitised to all forms of violence against women, and that the Australian Government create public awareness of violence against women as an infringement of women's human rights. Recognising forced sterilisation of women and girls with disability as a form of violence, the CEDAW Committee has also urged the Australian Government to enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disability in the absence of their fully informed and free consent.¹⁷²

The CEDAW Committee has recommended, that in the context of Australia's ratification of the *Convention on the Rights of Persons with Disabilities*, coupled with the human rights violations and disadvantage experienced by women and girls with disability, the Australian Government undertake as a matter of urgency, a comprehensive assessment of the situation of women with disability in Australia.¹⁷³

The Committee has further recommended the Australian Government adopt urgent measures to ensure that women with disability are better represented in decision-making and leadership positions and, provide disaggregated data and information on women with disability in all future periodic reports to CEDAW, so as to provide 'a full picture of the implementation of all the provisions of the Convention.' The Committee further urged Australia to develop the necessary infrastructure to ensure that all women with disability have access to all health services.¹⁷⁴

The UN *Human Rights Committee*, which monitors compliance with the *International Covenant on Civil and Political Rights* (ICCPR), has expressed its concern at the disturbing levels of violence perpetrated against women in Australia, and has requested the Australian Government provide specific information on all measures it is taking to eliminate violence against women, particularly women with disability. The *Human Rights Committee* has also requested the Australian Government to provide information on steps taken to adopt legislation prohibiting forced sterilisation of women and girls with disability.¹⁷⁵

In monitoring Australia's compliance under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Committee on Economic, Social and Cultural Rights* has strongly recommended that Australia strengthen its efforts towards the adoption of concrete measures to enable persons with disability to fully enjoy the rights guaranteed by the ICESCR. It has also recommended that the *National Plan to Reduce Violence against Women and Their Children (2010-2022)* be framed and operationalised in a comprehensive human rights framework.¹⁷⁶

In recognising violence against women as a form of torture (and other cruel, inhuman or degrading treatment or punishment), the *Committee Against Torture* (CAT) has requested that the Australian Government (in its upcoming review under the Convention) provide it with specific information

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, 3 February 2006, CEDAW/C/AUL/CO/5.

¹⁷⁵ Australia is due to report to the United Nations Human Rights Committee on Australia's compliance with the *International Covenant on Civil and Political Rights* (ICCPR). It is required to submit its response to the List of Issues Prior to Reporting (LOIPR),¹⁷⁵ (adopted by the Human Rights Committee at its 106th session in late 2012) by 1 April 2013 and is scheduled to appear for review by the Human Rights Committee in 2014 - 2015. Under the heading of 'Violence Against Women', the LOIPR for Australia includes two specific question relating to violence against women and girls with disabilities, to which the Australian Government is expected to respond:

- In the light of the Committee's previous recommendations (CCPR/C/AUS/CO/5, para. 17), and the State party's follow-up responses (CCPR/C/AUS/CO/5/Add.1, Add.2 and Add.3), please provide updated information on the legislative, administrative and other measures taken towards the elimination of all forms of violence against women, especially perpetrated against indigenous women and women with disabilities. Additionally, please provide updated information on the availability and adequacy of legal and social services for women victims of domestic violence and sexual assault, especially in rural and remote areas.
- Please provide information on whether sterilization of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilizations.

¹⁷⁶ Committee on Economic, Social and Cultural Rights (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, 12 June 2009; UN Doc. E/C.12/AUS/CO/4

regarding violence against women, in particular violence against women with disability and indigenous women, including their access to sexual assault and crisis accommodation services.¹⁷⁷

The UN *Committee on the Rights of the Child*, which monitors compliance with the *Convention on the Rights of the Child* (CRC), has made very strong recommendations to Australia regarding violence against children with disability, particularly girls with disability. In its 2012 assessment of Australia, the *Committee on the Rights of the Child* made a raft of recommendations around violence prevention, including for example, the need to ensure the implementation of the recommendations of the United Nations study on violence against children, paying particular attention to gender; and the need to ensure that the prevention of sterilisation of women and girls who are affected by disability and are unable to consent, is operationalized under the *National Plan to Reduce Violence against Women and Their Children (2010-2022)*.¹⁷⁸ The Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women,¹⁷⁹ and clearly articulated that States parties to the CRC are expected to prohibit by law the non-therapeutic sterilisation of children with disability.¹⁸⁰

The *Human Rights Council*, in undertaking the *Universal Period Review*¹⁸¹ of Australia in 2011, made a number of recommendations to Australia regarding the need to accelerate its efforts to address violence perpetrated against 'vulnerable groups'. It highlighted the importance of Australian Governments working in partnership to accelerate implementation of the *National Action Plan to Reduce Violence against Women and Their Children (2010-2022)*, so as to effectively address prevalence of violence against these 'vulnerable groups'.¹⁸² The *Human Rights Council* also endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disability. It specified that the Australian Government should enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent.¹⁸³

¹⁷⁷ Committee Against Torture (2011) List of issues prior to the submission of the fifth periodic report of Australia (CAT/C/AUS/5); 15 February 2011; UN Doc. CAT/C/AUS/Q/5.

¹⁷⁸ Committee on the Rights of the Child (2012) Consideration of reports submitted by States parties under article 44 of the Convention; *Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; UN Doc. CRC/C/AUS/CO/4

¹⁷⁹ Ibid.

¹⁸⁰ CRC General Comment No.9 [at para.60] states: 'The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.' See: Committee on the Rights of the Child (CRC), General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, UN Doc. CRC/C/GC/9.

¹⁸¹ The Universal Periodic Review (UPR) is a process undertaken by the United Nations and involves the review of the human rights records of the 192 Member States once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The ultimate aim of the Review is to improve the human rights situation in all countries and address human rights violations wherever they occur. For more information see: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

¹⁸² UN General Assembly, Human Rights Council (2011) *Report of the Working Group on the Universal Periodic Review: Australia*; 24 March 2011; A/HRC/17/10

¹⁸³ UN General Assembly Human Rights Council (2011) UN Doc A/HRC/17/10, Op Cit.

4. The effects of policy decisions regarding housing, legal services, and women's economic independence on the ability of women to escape domestic violence.

A report released in November 2011 by Price WaterhouseCoopers,¹⁸⁴ found that people with disability are more likely to be living in poverty in Australia than any other developed country, they have the worst quality of life in the developed world, and the nation ranks in the bottom third of Organisation for Economic Co-operation and Development (OECD) nations in employing those with a disability (21st out of 29 OECD countries). The report showed that in Australia, there was an employment rate of 39.8 percent for people with disability compared with 79.4 per cent for those without a disability.

Women with disability are less likely to be in paid work (or looking for work) than other women, men with disability or the population as a whole. Over the last decade, the unemployment rate for women with disability in Australia has remained virtually unchanged (8.3%) despite significant decreases in the unemployment rates for men with disability, and the rest of the population.¹⁸⁵ As noted above, Aboriginal and Torres Strait Islander people with disability also face very high levels of unemployment.

The current federal government's planned welfare reforms, which would include people with disability being cut off the Disability Support Pension (DSP) *"if they have the capacity to work"*,¹⁸⁶ including those deemed *"not to have a permanent disability, or those who have only episodic mental illnesses"*,¹⁸⁷ has grave implications for people with disability, experiencing, or at risk of experience violence.

Denying access to the DSP for all except those with no capacity to work will inevitably result in extreme hardship and poverty.¹⁸⁸ The link between poverty and violence, particularly domestic and family violence, is well established. Assumptions that women with disability who experience violence and who receive income support payments can simply 'find employment' or undertake mutual obligation requirements – is naïve and potentially harmful. The ability of a woman to leave a violent or abusive situation is predicated on many factors – including having enough resources to support herself away from the perpetrator/s. If the perpetrator is the woman's carer or support person, and/or if the woman has children, this magnifies the issue.

Leaving a violent relationship requires that a safe, long-term alternative living arrangement be available for a woman and her children. For women with few financial resources this is a major impediment. It is well known that women with disability do not have access to crisis accommodation services such as women's refuges. Across the country, there is a lack of low cost housing, and a severe lack of appropriately modified or accessible housing. Private rental is often not an option for people with disability due to the critical shortage of private rental housing, lack of modifications, prohibitive cost, and discrimination. People with disability carry the additional costs of their disability, which not only compound their lack of options in the housing market, but is a critical factor in their ability to escape a violent or abusive situation.¹⁸⁹

Recent Federal Government cuts to family violence services, including legal services, have serious implications for people with disability experiencing violence, particularly women with disability. Aboriginal women with disability who experience family violence, and who already have very limited

¹⁸⁴ Price Waterhouse Coopers (2011) *Disability Expectations - Investing In A Better Life, A Stronger Australia*. Accessed online November 2011 at: <http://www.pwc.com.au/industry/government/publications/disability-in-australia.htm>

¹⁸⁵ In Frohmader, C. (2011) OpCit.

¹⁸⁶ Lewis, R. (June 30, 2014) Mentally ill may lose disability support pension, welfare head Patrick McClure suggests. *The Australian Newspaper*, June 30, 2014, accessed online July 2014 at: <http://www.theaustralian.com.au/national-affairs/mentally-ill-may-lose-disability-support-pension-welfare-head-patrick-mcclure-suggests/story-fn59niix-1226971977282>

¹⁸⁷ Carswell, A. (July 1, 2014) Disability support pension savings in doubt under federal government's welfare boost plan for Newstart. *The Daily Telegraph*, July 1, 2014, accessed online July 2014 at: <http://www.dailytelegraph.com.au/news/nsw/disability-support-pension-savings-in-doubt-under-federal-governments-welfare-boost-plan-for-newstart/story-fni0cx12-1226972934657>

¹⁸⁸ O'Halloran, M. (June 30, 2014) Dear Tony Abbott: Hurting the most vulnerable is not welfare reform, but cruelty. *The Sydney Morning Herald*; accessed online July 2014 at: <http://www.smh.com.au/comment/dear-tony-abbott-hurting-the-most-vulnerable-is-not-welfare-reform-but-cruelty-20140630-zsr8m.html>

¹⁸⁹ WWDA (2009) *Submission to the National Human Rights Consultation*. WWDA, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>;

access to legal advice and representation, are at significant risk due to the recent cuts to the *National Family Violence Prevention Legal Service* (NFVPLS). The FVPLS program was created because Aboriginal victims – mostly women - were falling through the cracks. Aboriginal women remain 31 times more likely to be hospitalised as a result of violence and 15 times more likely to seek support from homelessness services to escape family violence.¹⁹⁰ Yet there is now the very real likelihood that these women and their children will have nowhere to go.

The alarmingly high rates of violence against women and girls with disability are not by-products of disability as vulnerability, but rather consequences of the entrenched social exclusion they experience - multiple forms of discrimination, poverty, exclusion from the labour market, social isolation, lack of services and support, lack of autonomy, inaccessible housing and public environments.¹⁹¹ Policies that increase stigmatisation and obstacles to receipt of income support are likely to not only actively discourage women with disability from leaving abusive situations, but will leave them in situations whereby they have little alternative but to continue to live with, or be exposed to the perpetrator/s of the violence inflicted on them.

¹⁹⁰ National Family Violence Prevention Legal Services (18 August 2014) *New threat for Family Violence Prevention Legal Services*. Media Release. Accessed online August 2014 at:

<http://www.fvpls.org/images/files/MR%2018082014%20National%20Forum%20Response%20to%20Indigenous%20Advancement%20Strategy.pdf>

¹⁹¹ WWDA (2009) OpCit.

5. How the Federal Government can best support, contribute to and drive the social, cultural and behavioural shifts required to eliminate violence against women and their children.

Given that the most significant determinants of violence against women are gender inequality and an adherence to rigidly defined gender roles, there is an urgent need for leadership at the national level to address not only patriarchal gender structures and the closing of the gender gap, but also to address *"the ingrained sexism and entrenched masculinity that permeates everything from our daily interactions all the way up to our highest institutions"*.¹⁹²

Importantly, there is also a clear need for national leadership to recognise and address the underlying structural inequality and disability discrimination that lies at the root of the pervasive and extensive violence (including domestic violence) perpetrated against people with disability, particularly women and girls. The need for reform to address the fragmentation and inconsistency in domestic and family violence legislation in Australia, is also a critical issue requiring leadership to eliminate violence against women and their children.

5.1. Closing the gender gap

In 2013, the World Economic Forum released the *Global Gender Gap Report*,¹⁹³ which found that in Australia the gender gap has widened significantly in the last few years. In 2006 Australia was ranked 15th out of 136 countries. In 2013, Australia had slipped to 24th on the gender gap index, just below the United States. Women in Australia are still largely paid less than men for the same jobs, with the current pay gap existing for another 70 years at the current rate of progress.¹⁹⁴ Since 2009, the status of female employment in the workforce has not improved; the female workforce participation rate has declined, more males than females have entered the workforce, and the female unemployment rate has risen significantly more than males.¹⁹⁵ Women often experience more difficulty than men in finding a first job, and are more likely to work part-time. Gender segregation in the labour markets is evident, with women under-represented in the business sector and heavily concentrated in health, welfare, education, and administrative jobs. Women still bear the burden of the unpaid tasks of daily domestic life, such as childcare and housework.¹⁹⁶ This situation is significantly worse for women with disability.

Women are still significantly under-represented in leadership, decision-making and political representative structures. In contemporary Australia in 2014, men head up 97.6% of the top 500 companies in Australia. 68.7% of federal parliamentarians are men. 83.3% of federal government ministers are men. 94.7% of federal cabinet ministers are men. 68.9% of chairs of Commonwealth government Boards are men. Men make up 60% of senior executive service managers in the Australian Public Service. 69.1% of Commonwealth judges and magistrates are men.¹⁹⁷ What is particularly alarming about these statistics, which were released in February 2014, is that in every category, the situation is the worst it has ever been for Australian women for more than a decade. The participation of women with disability in leadership and decision-making positions in all areas of Australian public and political life is substantially worse than for other women.¹⁹⁸

¹⁹² Meagher, T. (2014) *The Danger of the Monster Myth*. Accessed online May 2014 at: <http://whiteribbonblog.com/>

¹⁹³ Since 2006, through the *Global Gender Gap Report* series, the World Economic Forum has been quantifying the magnitude of gender-based disparities and tracking their progress over time. The Global Gender Gap Index seeks to measure one important aspect of gender equality: the relative gaps between women and men, across a large set of countries and across four key areas: health, education, economics and politics. To complement this information, the Country Profiles contain a comprehensive set of supporting information that provides the broader context on gender parity laws, social norms, policies and outcomes within a country. For further information, see: <http://reports.weforum.org/global-gender-gap-report-2013/>

¹⁹⁴ Milman, O. (July 2014) *Australian women still 75 years behind on pay equality, says Oxfam*. The Guardian. Accessed online July 2014 at: <http://www.theguardian.com/world/2014/jul/14/australian-women-still-75-years-behind-on-pay-equality-says-oxfam> See also: Sedghi, S. (15 July 2014) *Australian women face 70-year wait for pay equality: Oxfam report*. ABC News, Accessed online July 2014 at: <http://www.abc.net.au/news/2014-07-14/australian-women-face-70-year-wait-for-pay-equality-report/5594082>

¹⁹⁵ Goldman Sachs (2014) *Labour market recovery and progress on female participation? In Australia and New Zealand Economic Analyst*; Issue Number: 14/06; March 27, 2014.

¹⁹⁶ OECD (2012) *Closing the Gender Gap: Act Now*. Executive Summary. Accessed online July 2014 at: <http://www.oecd.org/gender/Executive%20Summary.pdf>

¹⁹⁷ Australian Bureau of Statistics (ABS) (2014) *Gender Indicators, Australia*, Feb 2014. Cat. 4125.0. Accessed online July 2014 at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4125.0Main+Features1Feb%202014?OpenDocument>

¹⁹⁸ In Frohmader, C. (2014) OpCit.

The *Committee on the Elimination of Discrimination against Women* (CEDAW) has made it clear that in order to improve women's position in society and to close the gender gap, specific measures must be adopted *'towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.'*¹⁹⁹ The Committee has consistently expressed its concern at Australia's failure to adopt temporary special measures in the form of compulsory targets and quotas to address the under-representation of women in decision-making bodies, in political and public life and the persistent inequality of their access to education, employment opportunities and health care services. For more than a decade the Committee has recommended that, in accordance with article 4, paragraph 1, of the CEDAW Convention and the Committee's General Recommendation No. 25, the Australian Government adopt temporary special measures to increase the number of women in political and public life and to ensure that the representation of women in political and public bodies reflects the full diversity of the population, including women with disability, indigenous women, and women from ethnic minorities.²⁰⁰

For almost a decade, international human rights treaty monitoring bodies, including the CEDAW Committee, have expressed concern at Australia's slow progress in ensuring the equal participation of women with disability in leadership and decision-making positions in public and political life, and have urged successive Australian governments to address this issue.²⁰¹ Most recently, the CRPD Committee has recommended that Australian Governments take initiatives to increase the resources available for independent organisations of persons with disability in order enable meaningful participation, consultation and engagement between Government and persons with disability.²⁰²

Achieving gender equality is intrinsic to eliminate all forms of violence against women and their children. Although Australia's Prime Minister, Tony Abbott has clearly articulated his Government's commitment to ensuring *'genuine and complete equality between men and women'*,²⁰³ the Federal Government must closely examine what this commitment looks like in practice, and implement all necessary measures to ensure such a commitment is actually realised. This includes ensuring that Federal Government and its leadership and decision-making structures, reflect and represent the makeup of men and women in our society – which is of course, 50% women, 50% men. It also includes ensuring that gender equality is embedded in the development and implementation of public policy and programs, and *"taken seriously in central, mainstream, "normal" institutional activities and not simply left in a marginalised, peripheral backwater of specialist women's institutions."*²⁰⁴

As Australia's Sex Discrimination Commissioner, Elizabeth Broderick has clearly articulated:

*"Public policy has the capacity to either perpetuate or eliminate discrimination and gender inequality. It is only by making gender a central consideration in the development and implementation of public policy that we can hope to advance gender equality and women's human rights in Australia. The risk in failing to do so is that public policy responses will not only perpetuate existing forms of oppression against women and limit women's and men's autonomy, but will also create new forms of gender oppression and undermine broader efforts to achieve equality."*²⁰⁵

5.2. Developing uniform, national 'violence against women' legislation

¹⁹⁹ CEDAW General Recommendation No.25, at para 10.

²⁰⁰ CEDAW/C/AUS/CO/7; CEDAW/C/AUL/CO/5.

²⁰¹ Ibid; CRPD/C/AUS/CO/1

²⁰² CRPD/C/AUS/CO/1

²⁰³ Hon Tony Abbott MP, Prime Minister of Australia, *Address to the International Women's Day Parliamentary Breakfast*, 4 March 2014. Accessed online March 2014 at: <https://www.pm.gov.au/media/2014-03-04/address-international-womens-day-parliamentary-breakfast> See also: *The Coalitions Policy for Women* (September 2013) accessed online March 2014 at: <http://paweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20%E2%80%93%20Women%E2%80%93%20final.pdf>

²⁰⁴ Hilary Charlesworth, cited in Broderick, E. (2012) *Applying a gender perspective in public policy: What it means and how we can do it better*. Address given to the International Women's Day Forum APS Human Rights Network Meeting, Canberra, 9 March 2012. Accessed online April 2014 at: <https://www.humanrights.gov.au/news/speeches/applying-gender-perspective-public-policy-what-it-means-and-how-we-can-do-it-better>

²⁰⁵ Broderick, E. (2012) *Applying a gender perspective in public policy: What it means and how we can do it better*. Address given to the International Women's Day Forum APS Human Rights Network Meeting, Canberra, 9 March 2012. Accessed online April 2014 at: <https://www.humanrights.gov.au/news/speeches/applying-gender-perspective-public-policy-what-it-means-and-how-we-can-do-it-better>

The importance of legislation in combating violence against women has been well documented. The law provides the institutional framework for defining and responding to violence against women - it sets the boundaries of what is deemed acceptable and unacceptable; it has the potential to provide clear definitions of the various forms of violence and those actions that are defined as criminal; and it sends out a strong message that violence against women is a public issue not a private concern. Legislation is also one of the most important routes whereby protection, redress, and justice are created.²⁰⁶

Comprehensive, inclusive and coherent human rights-based legislation is fundamental for an effective and coordinated response to preventing and addressing violence against people with disability.²⁰⁷ Yet, as discussed earlier, most domestic/family violence legislation in Australia is not set in a human rights framework, is piecemeal and inconsistent in definitions and scope, and focuses largely on protection from domestic/family violence. This is particularly problematic for women with disability, as their experiences of domestic/family violence are not properly recognised across the legal system, they are given less protection than other women, and the likelihood of them benefiting from integrated and coordinated responses, including prevention, is compromised. It is, in many respects, peculiar that Australia has nine separate sets of legislative approaches to deal with violence against women, including domestic and family violence.

The *Committee on the Elimination of All Forms of Discrimination against Women* (CEDAW) has consistently expressed its concern at lack of federal legislation or minimum standards for protection of women against violence (including domestic violence) in Australia, and has repeatedly recommended that Australia develop national legislation to prevent and address violence against women, in all its forms.²⁰⁸

The *Council of Europe*,²⁰⁹ the continent's leading human rights organisation, which includes 47 member states (28 of which are members of the European Union) is leading the way internationally in addressing violence against women, through the development of the *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (also known as the *Istanbul Convention*).²¹⁰ Three years after it's opening for signature in Istanbul, the Convention entered into force on 1 August 2014.²¹¹ The framework the Convention creates is a blueprint for a co-ordinated, victim-centred approach to combating all forms of violence against women and domestic violence. It is based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It recognises the obligation of the state to fully address it in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators. The Convention applies equally to girls under the age of 18 years. It defines and criminalises the various forms of violence against women as well as domestic violence and includes for example, female genital mutilation, forced marriage, forced abortion and forced sterilisation. The *Istanbul Convention* prioritises prevention of violence, and includes detailed measures for protection, prosecution, integrated policies, and monitoring. It gives significant attention to women and girls with disability. Whilst the Convention addresses domestic violence as a form of gender-based violence, it does not lose sight of male, child and elderly victims of domestic violence, to whom the convention may be applied if states parties wish.

One way the Federal Government could drive the social, cultural and behavioural shifts required to eliminate violence against women and their children, would be to develop uniform, national 'violence against women' legislation, modeled on the Istanbul Convention.

5.3. Combating gender and disability based stereotyping

²⁰⁶ Goldfarb, S. (2005) *Combating Violence Against Women in the Legal Domain*. Paper prepared for the 'Violence Against Women: Good practices in combating and eliminating violence against women' Expert Group Meeting. Organised by the UN Division for the Advancement of Women in collaboration with the UN Office on Drugs and Crime. Vienna, Austria.

²⁰⁷ United Nations Department of Economic and Social Affairs (2010) OpCit.

²⁰⁸ CEDAW/C/AUS/CO/7.

²⁰⁹ The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. See: <http://www.coe.int/en/web/about-us/who-we-are>

²¹⁰ For information on the *Istanbul Convention*, go to: http://www.coe.int/t/dghl/standardsetting/convention-violence/default_en.asp For a copy of the Istanbul Convention, go to: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

²¹¹ To date, 14 member states of the Council of Europe have ratified this new human rights treaty and another 22 states have signed it. The convention is open for accession by states which are not Council of Europe members.

Patriarchal ideology often underlies gender relations, the shaping of institutions, organisations and systems according to the life patterns and experiences of men, the widespread sexualisation of women's bodies suggesting their permanent sexual availability, and gender-biased customs and traditions - all of which contribute to treating women as subordinate members of the family or society. Prejudices, customs, traditions and other practices based on the inferiority of women or on stereotyped roles for women and men abound. These prejudices and stereotypes influence gender relations and interpersonal relationships, and also affect how women are treated and perceived by public institutions and societal structures, including the legal system.

Equally, stereotypes of disability continue to inform societal practices that dehumanise, devalue and marginalise people with disability,²¹² particularly women with disability. Disability is still largely characterised as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.²¹³ Violence against women with disability is legitimised and fostered by assumptions prevalent in social attitudes. Women with disability are typically perceived as less than fully human, child-like, asexual, dependent, incompetent and helpless, passive, insecure, genderless, in need of care and protection, and with minimal rights and values.²¹⁴ Alternatively, women with developmental disability in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of babies born with impairments, often a justification for violations of their reproductive rights, such as sterilisation. These perceptions, although very different, often result in women with disability being denied the right to participate in decision-making processes that affect their lives, and contribute to the high incidence of violence perpetrated against them.²¹⁵

Challenging gender and disability based stereotyping is not something that can be quickly fixed. However, there are numerous successful programs for addressing these kinds of issues in an international context. For example, in the United States, the Centre for Disease Control and Prevention has taken a public health, preventative approach to sexual violence, which has led to innovative and well-resourced new programs of public education taking place in community centres, in schools, in medical services and other support service locations.²¹⁶ Some of these approaches seek to ensure that a program with a coherent message is delivered across a range of settings to address people at work, play, study and home. This bears some resemblance to PWDA's training program which is designed for both service provider professionals and women with intellectual disability and takes a preventative approach to domestic violence.

This kind of conscious and deliberate cultural change appears to be key to addressing ingrained and prevalent problems such as domestic violence against women and people with disability. However, this kind of transformation does require political will and strong leadership from all Australian governments. It requires a commitment to ensuring that educational curriculum at all levels embeds and systematically addresses issues such as equality between women and men, non-stereotyped gender roles, mutual respect and non-violent conflict resolution in interpersonal relationships; respect for diversity, disability, gender and human rights awareness.

5.4. Addressing structural inequality and disability discrimination

Addressing violence against people with disability requires addressing the structural inequality and discrimination that underpins and reinforces gender inequality and disability discrimination. In practice this means promoting substantive equality for people with disability, particularly women with disability. One of the most meaningful ways the Federal Government can ensure substantive equality, and eliminate violence against people with disability, is by actively ensuring and pursuing domestic implementation of the human rights treaties to which Australia is a party, and by respecting and implementing the concluding observations and recommendations made to Australia by the human rights treaty monitoring bodies.

²¹² Healey, L. (2014) *Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2013.

²¹³ Frohmader, C. (2013) OpCit.

²¹⁴ Ibid.

²¹⁵ Frohmader, C. (2011) OpCit.

²¹⁶ For more information, see Centre for Disease Control and Prevention: <http://www.cdc.gov/violenceprevention/sexualviolence/>

In relation to domestic violence experienced by people with disability, there are two major aspects of the CRPD that should be considered. Last year, the Committee on the Rights of Persons with Disabilities made two key observations in relation to institutions. In relation to Article 16, freedom from abuse, the Committee expressed concern regarding the high rates of violence experienced by women and girls with institutional settings, and recommended that Australia *‘investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and that it take appropriate measures on the findings.’* In relation to Article 19, living independently and being included in the community, the Committee recommended that Australia *‘take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence.’*²¹⁷

²¹⁷ Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia*, adopted by the Committee at its tenth session (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1