

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND
ISSUES IN NSW**

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Inquiry into Domestic Violence Trends and Issues in NSW

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People with Disability Australia Incorporated



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Introduction

People with Disability Australia (PWD) welcomes the opportunity to provide a submission to the Standing Committee's Inquiry into domestic violence trends and issues in NSW. PWD has strongly advocated for a number of years for a range of cross-sectoral solutions to improve the prevention, detection and response to domestic violence experienced by people with disability, especially those living in supported accommodation and residential care settings. Our experience on this issue is drawn from our individual and systemic advocacy work and the lived experience of people with disability. Our submission is provided with specific reference to this group and the trends and issues directly affecting them.

About PWD

PWD is a national peak disability rights and advocacy organisation. Our primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD 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, People with Disability Australia seeks to provide people with disability with a voice of our own. We have a cross-disability focus representing the interests of people with all kinds of disability. PWD is a non-profit, non-government organisation.

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 respected and celebrated.

During 2009-2010 PWD was funded by the NSW Office for Women's Policy under its Domestic and Family Violence Grants Program to undertake the Disability and Domestic Violence in Residential Settings Project. This project examined the incidence, detection and response to domestic violence experienced by women with disability living in licensed boarding houses. The final report of this project, *'Accommodating Violence – The experience of domestic violence and people with disability living in licensed boarding houses'* incorporates:

- an extensive literature review completed by the Australian Domestic and Family Violence Clearing Houses drawing on Australian and international literature on women with disability and domestic violence, disability and accommodation and violence and abuse within the residential disability and aged-care sectors;
- a series of findings based on consultations with key stakeholders, a legislative, policy and service system analysis; and
- recommendations for structural interventions aimed at addressing the key issues identified.

This report is attached as part of our submission as we believe it will valuably inform the issues being considered by this inquiry. A number of the key issues outlined below, as well as the associated citations are drawn from the final report of the Disability and Domestic Violence in Residential Settings Project, *'Accommodating Violence – The experience of domestic violence and people with disability living in licensed boarding houses'*.

Evidence of the problem

Discrimination and human rights violations in Australia are ‘both systemic and systematic’; gender based discrimination and violence against women with disability is just one area that requires a concentrated commitment for change (National People with Disabilities and Carer Council 2009).

A literature review, completed by the Australian Domestic and Family Violence Clearinghouse as part of PWD’s Disability and Domestic Violence in Residential Settings Project reveals how women with disability remain one of the most marginalised groups in Australian society. Largely excluded from other mainstream disability and women’s movements, women with disability experience compounded disadvantage through the intersection of disability and gender, which renders them silent and invisible (Salthouse 2007; Salthouse & Fromhader 2004; WWDA 2007a & 2008).

Evidence suggests that women with disability are at least twice as likely as women without disability to experience violence and abuse throughout their lives, and that women living in institutional and residential settings are particularly susceptible to abuse (French 2009; Lievore 2005; Marsland et al. 2007; Rand et al. 2009; WWDA 2007b).

Reasons why people with disability are at greater risk of violence and abuse than their non-disabled peers include:

- social isolation which limits opportunities to form healthy relationships or to provide opportunity to tell someone about the abuse;
- increased dependency on others; for some this includes intimate personal care which increases vulnerability;
- learned compliance and powerlessness;
- less physically able to defend themselves or remove themselves from situations of harm;
- societal values, discrimination and stereotypes;
- limited knowledge and access of services;
- lack of credibility and tendency to be believed;
- lack of information, education particularly on sexuality and healthy relationships;
- communication difficulties; and
- lack of choice or control over their circumstances (Department of Communities 2007).

There is also substantial Australian and international research evidence available which shows links between disability service models and practices and increased vulnerability. Such research suggests that where the following high risk characteristics exist, a person with disability’s risk of violence and abuse also increases:

- environments of a congregate or institutional nature and those which lack privacy and personal space can contribute to an underdeveloped sense of personal space and boundaries;

- cultures of control and depersonalisation which teach or reinforce compliance;
- practices which limit an individual's autonomy or opportunity to develop and/or maintain independent living skills;
- inactivity and isolation from community activities and/or poor funding of external services which limit service access;
- staff practices which obstruct external services and/or the promote misinformation about external services can discourage engagement;
- cultures of hierarchy amongst residents and staff which create unjust balances of power, including gender power imbalances. Such practices may also reward practices of intimidation, verbal abuse and physical assaults between residents. Whether a direct victim, or a victim by way of being a witness, such practices reinforce control and cooperation through fear;
- limited financial independence with board and lodging fees or other charges taking between 80-100 per cent of the persons income;
- lack of tenancy rights and few alternative options for accommodation and support renders people without choice and reinforces dependence;
- congregation of people who have experienced long term institutionalisation and normalised experiences of poverty, deprivation, abuse and exploitation;
- staff who lack formal training or access to professional development and/or highly transient or casualised workforce; and
- service policies and practices: violence categorised as 'abuse' and a 'disability service issue' rather than a crime; 'abuse' framed within a response model rather than primary prevention; lack multidisciplinary coordinated responses (Fitzsimmons, 2011; Brown, 2011; Marsland, et al 2007; Sobsey 1994).

Furthermore, women with disability who experience abuse within residential settings face significant barriers in accessing appropriate services and legal redress. Reasons for these shortcomings include structural or systemic barriers such as:

- community attitudes;
- cultures of silence and bullying within organisations;
- the failure of key service providers and institutions such as the police and courts to believe disclosures of abuse;
- a lack of education for women with disability regarding human rights and sexuality;
- the ignorance of disability issues of mainstream service providers; and
- poor accessibility of domestic violence services, refugees and lack of alternative safe accommodation and support.

These findings were further substantiated through the course of PWD's Disability and Domestic Violence in Residential Settings Project, as women with disability and service providers involved in the

project spoke of physical violence, sexual assault, verbal abuse, living in fear of the threat of harm, acts of intimidation, financial exploitation, having services or activities withheld, and people suffering retribution for decisions, choices or complaints they had made. Yet despite this high prevalence of such incidents occurring between people with a 'domestic relationship', the research project also revealed there were no reports of these incidents being managed as domestic violence incidents by any stakeholders involved.

Key Issues

• Human Rights Context

Australia has ratified seven of the nine United Nations (UN) Human Rights Conventions, each of which implicitly protects the rights of people with disability.

Of primary importance to this inquiry is the:

- UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which enshrines key principles of equality and an agenda for national action to end discrimination against all women; and
- UN Convention on the Rights of Persons with Disabilities (CRPD), which resolves to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disability, and to promote respect for their inherent dignity. Article 16 in particular, outlines the duty of Governments to respect, protect, fulfil and promote human rights of people with disability from all forms of exploitation, violence and abuse.

In July 2010 the UN Committee on the Elimination of Discrimination against Women made a number of concluding observations with respect to Australia obligations under CEDAW. The committee expressed its concern about the high levels of violence experienced by women, particularly those living in institutions or supported accommodation and recommended, as a matter of priority, that the State party address, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation. This recommendation gives a direct mandate to this Inquiry.

Recommendations for Action

- Any recommendations or outcomes arising from this Inquiry must:
 - take a human rights approach and have regard to Australia's commitments under CEDAW and CRPD; and
 - ensure the NSW government's full compliance and implementation of its the obligations under these Conventions.
- **Definition of 'domestic relationship'**

Many people with disability live in group homes, large residential facilities, boarding houses and institutional settings which differ from the traditional family setting. The power imbalance between service providers, primary carers and the person with disability as the 'care recipient' can increase the risk of violence, abuse, neglect and exploitation as can the congregation of people with disability.

It is for these reasons that PWD fully supports the current definition of ‘domestic relationship’ nominated under the *Crimes (Domestic and Personal Violence) Act 2007*. We believe it is vital for the interests of persons with disability that ‘domestic relationship’ continues to be defined as including long term co-residents of residential facilities as well as those who have had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person.

- **Understanding of Domestic Violence and Disability**

Disability Sector understanding of Domestic Violence

Varied understanding of what constitutes domestic violence is a key barrier in domestic violence prevention, detection and response within the disability sector. The common misunderstanding of domestic violence as violence which only occurs in intimate partner relationships, or traditional family settings, has in our view led to a failure to recognise and respond to the domestic violence which occurs within different kinds of domestic relationships more commonly found in disability residential settings, such as resident-resident or resident to carer relationships.

The fact that the vast majority of domestic violence services are also geared toward women in partner relationships and/or with children also serves to reinforce this misunderstanding as well as create service access barriers to those who fall outside of this narrow target group focus.

As a key policy reference point, the guiding policy developed by NSW Community and Family Services - Ageing, Disability and Home Care (ADHC) for all ADHC operated services and funded non-government providers titled the ‘Abuse and Neglect Policy’ also perpetuates this misunderstanding as it fails to recognise that domestic violence is broader than violence occurring through personal, intimate relationships.

PWD also believes that generic use of the term ‘abuse’ (also common to the ADHC Abuse and Neglect Policy), as a substitute term to describe a range of violence including sexual assault, physical, emotional, financial and systemic abuse, domestic violence, constraints and restrictive practices, and neglect also leads to a more diminished response than if the adverse treatment of people with disability is defined in language which commonly identifies it as an offence or crime. The result of generic labelling is a lack of understanding of personal violence often experienced by people with disability being consistent with NSW legislative protections, how the *Crimes (Domestic and Personal Violence) Act 2007* can be used as a tool to protect people with disability, or how domestic violence services may be used as a form of support.

Recommendations for Action

- The NSW Government adopts the *Crimes (Domestic and Personal Violence) Act 2007* definitions consistently across all of its agencies, services, programs and policies so that they are explicitly inclusive of, and recognise, personal violence between people with disability who may be co-residents and/or their carers.
- As the guiding disability policy and procedure for disability support services for people with disability in NSW it is essential that amendments are made to the Department of Ageing, Disability and Home Care’s Abuse and Neglect Policy to ensure consistency with the *Crimes (Domestic and Personal Violence) Act 2007* understanding and definition of domestic violence, its inclusiveness of

residential settings, recognition of personal violence between people with disability who may be co-residents and/or their carers and its mechanisms for response.

- Promoting access to information and training on the definition of domestic violence, indicators of violence and abuse and best practice response is essential for all disability service providers.

Whilst the current NSW Domestic and Family Violence Action Plan - *Stop the Violence, End the Silence*, Priority Area 3 nominates a strategy to embed into Human Services (ADHC) staff training program, a component on domestic violence and women with a disability, and appropriate referral pathways, such a strategy must be extended to all non-government service providers as well as those operating licensed residential centres for people with disability.

Mainstream sector understanding of Disability

Within the domestic violence and justice sectors there is also an urgent need for improved awareness and understanding of disability, how to adequately support victims with disability, appropriate referral pathways as well as better systems to support victims with disability through the justice system.

Reports from domestic violence workers gathered during consultations undertaken as part of PWD's Disability and Domestic Violence in Residential Settings Project indicated domestic violence services felt that responding to victims with disability who lived in residential settings was made all the more difficult on account of the lack of alternative accommodation and support options available. Such services were considered essential to keeping a victim safe and without such supports, little could be done. Some expressed a lack of confidence in other government agencies to respond with the necessary alternative accommodation and support services, others did not know what referral options were available for advocacy, criminal justice support or case management.

Part of consultation for PWD's Project involved calls to various domestic violence support lines to 'test' these key referral points for their effectiveness in responding to issues relating to people with disability in residential settings such as licensed boarding houses. This exercise provided evidence that staff at these key referral points:

- lacked disability awareness;
- had little understanding of the unique circumstances, barriers and supports required by men and women with disability experiencing domestic violence in residential settings, including the difference between different disability service types;
- had little confidence in the referral information offered, only offering referrals that 'should' or 'might' be able to provide further information and assistance;
- demonstrated a complete absence of information regarding ADHC, the key government agency in NSW responsible for disability services;
- operated within its own silo of information.

Domestic violence service providers and Police Domestic Violence Liaison Officers also spoke of the negative experience legal and court processes can have on a victim and expressed a lack of confidence in the legal system as an avenue to seek redress for people with disability. Barriers highlighted included

the bias against people with disability being viewed as unreliable witnesses and magistrates being reluctant to issue protective orders because s17 of the *Crimes (Domestic and Personal Violence) Act* requires them to consider the effect the order might have on the accommodation needs of relevant parties or others indirectly affected by an order prohibiting or restricting access to a residence. These issues would be relevant in all cases which involved a person with disability and a co-resident, or person with disability and staff member.

Both the 1999 and 2006 NSW Ombudsman Special Reports to Parliament on policing domestic violence identified similar issues of concern in policing of domestic violence and victims with disability, including:

- inadequate provision of victim support, not providing the involved parties with adequate information or expressing inappropriate attitudes towards the victim of the domestic violence incident. This is further compounded when the person has a disability;
- delays in initial response to domestic violence incidents which may result in adverse consequences for people with disability as, they traditionally already have problems accessing suitable services; and
- disability awareness and attitudinal training is required to address inappropriate attitudes and prejudice in relation to domestic violence and adequate victim support to victims with disability.

Recommendations for Action

- The NSW Department of Premier and Cabinet ensure that all agencies involved in the implementing the NSW Domestic and Family Violence Action Plan - *Stop the Violence, End the Silence* deliver consistent and effective responses to all women, including women with disability living in residential settings such as ADHC operated, funded or licensed services.

The NSW Domestic and Family Violence Action Plan, must be reviewed to ensure that all actions and initiatives implemented explicitly address the needs of people with disability and ensure:

- enhanced accessibility, appropriateness and affordability of generic and mainstream services to people with disability;
 - where necessary specific mechanisms are established to support people with disability including appropriate referral pathways and cross sector interagency mechanisms established; and
 - staff are trained to ensure competencies in attitudes, knowledge and skills required to meet the needs of people with disability.
- Training initiatives on domestic and family violence issues for relevant professionals in both government and non-government sectors e.g. police, magistrates, GPs, mental health workers and relevant front line staff, must incorporate a disability awareness and practice components and be implemented as a priority.
 - The NSW Police Force consult disability peak bodies to review the subject content and material contained in its Continuing Police Education program during its annual and external review process,

so as to ensure the gender specific needs of people with disability are addressed.

- The NSW Police Force Code of Practice is updated in its next scheduled review in 2012 to:
 - a) include additional referral information about disability advocacy support services and Government agencies, such as ADHC, available to support people with disability experiencing domestic violence within family settings as well as residential service settings;
 - b) include additional safeguards and strategies to ensure proactive police responses and approaches are afforded to people with disability involved in domestic violence, including those living in residential settings; and
 - c) ensure Crime Management Units within Local Area Commands establish partnerships with key disability support services to establish partnerships for victim support and follow-up.

People with disability understanding of domestic violence and rights to freedom from exploitation, violence and abuse

As mentioned above there are a number of key factors which place people with disability at greater risk of violence and abuse than the general population. We contend that many of these factors are caused or exacerbated by people with disability's lack of access to information and education on their rights.

A lack of knowledge amongst people with disability of basic human rights, including self-protection from situations of domestic or personal violence, was yet another issue highlighted in PWD's *Accommodating Violence* report. Years of lost opportunity, lack of support, being institutionalised and disempowered by long term systemic neglect are the principle factors leading to this information deficit.

Initiatives from PWD, such as providing forums for people with disability living in licensed boarding houses on sexuality, healthy relationships and support options available, have made a significant impact on some residents' ability to respond to risks of abuse. However, more of these opportunities are needed to ensure far more people are equipped to both protect themselves and know where and how to get support.

Recommendations for Action

- Accessible (plain and easy English) information targeting people with disability living in a range of settings must be prioritised for development to aid understanding of domestic violence, its prevention, detection and response.
- As a primary prevention and intervention strategy an ongoing state-wide training initiative must be established for people with disability to receive information on sexuality, respectful relationships, domestic violence and human rights as well as avenues for support and redress.
- Model programs such as the Living Safer Sexual Lives: Respectful Relationships program funded by the Australian Government to develop, trial and evaluate a peer led primary prevention of violence

against women program for people with intellectual disabilities and other cognitive disabilities should inform the design and implementation of such a training initiative.

- **Access to mainstream domestic violence services and supports**

The lack of accessibility and inclusiveness of domestic violence services and supports including refuges/shelters, medical, psychological and other support, housing, advocacy and legal services for women with disability experiencing or at risk of experiencing violence, is well documented and is widely recognised as a barrier to women with disabilities escaping the violence perpetrated against them (WWDA 2007).

The National Disability Strategy Consultation – Shut Out report also notes this reality and highlights in particular the inaccessibility of the Supported Accommodation Assistance Program (SAAP) emergency accommodation. It is of significant concern to PWD that the very systems and supports established for the prevention, detection and response to domestic violence fail to afford women with disability the care, protection, safety and redress they are entitled to.

Recommendations for Action

- The legislative, policy and practice framework of the Supported Accommodation Assistance Program (SAAP) should be developed and/or re-developed within a human rights model. This would include the need for SAAP legislation, policy framework, service standards, accountability frameworks, codes, and guidelines to include in a measurable way, implementation of relevant human rights treaties, including the Convention on the Rights of Persons with Disabilities (CRPD) (WWDA 2008).
- Every women's refuge in NSW should be required to develop a Disability Discrimination Act (DDA) Action Plan that complies with the Disability Discrimination Act 1992 and the UN Convention on the Rights of People with Disabilities. This requirement must be built into service agreements as a requirement of funding. DDA Action Plans must be lodged with, and approved by, the Human Rights & Equal Opportunity Commission (HREOC) (WWDA 2008).

- **Third party applications for AVO's**

Domestic violence by its very nature works against the ability of the individual to ensure or seek self-protection. Well known factors including:

- fear;
- shame or embarrassment;
- denial or minimisation of events by perpetrators in control;
- emotional bonds and dependency on the perpetrator;
- an individual's lack of knowledge, information and resources;
- their social isolation as a result of the offender controlling who they have contact with and/or being denied access to services and support;

are common factors influencing whether or not a victim will disclose or report domestic and family violence to Police. Add to this factors which uniquely affect people with disability experiencing domestic violence, such as:

- dependency on the carer who may be the perpetrator for support, communication or access to the community;
- the link between accommodation and provision of support needed to meet basic needs;
- a lack of alternative options for accommodation and support;
- limited education and awareness of rights including the context to understand that what they are experiencing is domestic violence;
- limited knowledge of how to seek support;
- limited access to independent advocacy support; and
- the effect disclosure might have on the accommodation needs of others indirectly affected by living in a shared accommodation service;.

only serve to compound the improbability of being able to speak out and/or being heard.

It is for these reasons that PWD strongly believes that the current provisions of the *Crimes (Domestic and Personal Violence) Act*, which stipulate that only the victim or Police can initiate an Apprehended Violence Order (AVO) application on behalf of themselves, or a victim in need of protection, is too restrictive. We strongly believe that this limits essential protection to some people, particularly people with disability who are at risk of or experiencing personal or domestic violence.

PWD's practical experience supporting people with disability, particularly those with a cognitive impairment, has highlighted that on many occasions the person with disability lacks the skills, knowledge, understanding, means or capacity to initiate this action or seek the support of the Police to do so on their behalf. PWD's Disability and Domestic Violence in Residential Settings Project also highlighted limitations in Police response to domestic violence incidents in residential settings such as licensed boarding houses. Factors which appear to limit Police include:

- few referrals reaching the police regarding domestic violence incidents of people with disability in licensed boarding houses;
- police issuing 'warnings' to residents rather than initiating AVO's, making referral to the domestic violence support services or other victim support options;
- the victim's (or perpetrator) reliance on specific accommodation and support to meet disability support needs, therefore limiting alternation options;
- lack of understanding of support and advocacy options available to people with disability to ensure consistency and continuity needed in victim follow-up processes, or support necessary for perpetrators with disability in their interaction with the criminal justice system;
- no information sharing, local programs or protocols between the NSW Police Force, and the disability sector;

- despite Police Domestic Violence Liaison Officers having specialist skills and understanding of domestic violence and issues affecting key target groups like people with disability, it is the general duty police who respond to domestic violence call outs, many of whom lack disability awareness training or expertise.

PWD's recent extensive advocacy work with people with disability who lived at Grand Western Lodge - a licensed boarding house in the Central West of NSW, who were subject to a range of allegations of violence, abuse and exploitation and subsequent removal orders granted under the Guardianship Act - also provides us with a valuable insight into how systems failures can further contribute to this issue (PWD 2010-2011).

In our view these people with disability were, like many others experiencing domestic violence, disempowered by the very abuse they experienced. In this instance none of the 48 people with disability living in this residential facility were in a position to speak out or seek help to address their alleged experiences of domestic violence. This includes making an application for an AVO.

Added to this was the unfortunate reality that the very systems in place to protect these persons failed. This included ADHC's failure to effectively execute its licensing and monitoring functions under the *Youth and Community Services Act 1973* (NSW Ombudsman 2011) and the Police adequately responding to indicators of risk. The outcome of these failures only served to increase the vulnerability of people who are already vulnerable and at risk of harm.

PWD strongly believes that had there been the option for a third party to make an application for an AVO, these persons would have been afforded their rights to protection sooner. It is our view that there is an overwhelming need for a limited category of third parties (close friends, relatives, service providers, appointed guardians and advocates) who should have standing to apply for AVOs on behalf of people who lack capacity or means to make the complaint themselves.

Strong arguments for this action are documented in the 2003 Law Reform Commission's Report into Apprehended Violence Orders, with the Commission making specific comment on this issue, as well as the following recommendation:

Authorised third parties should be allowed to make applications on behalf of people with an intellectual disability, people under Guardianship orders and people with certain physical disability.

However, no action has been taken to implement this recommendation to date.

PWD acknowledges the risk that such a provision could be used inappropriately to interfere with the autonomy of the person, however, we believe that measures can be introduced to minimise such risks, such as a requirement on the third party to present evidence to substantiate the complaint. We also believe it is a heavy handed use of the law to have to require a person of be subject of a guardianship order just so that they can be removed from violence or for an application for an AVO could be taken out.

Recommendations for Action

- The NSW Government make an amendment to domestic violence legislation to authorise third parties to make applications on behalf of people with disability.

PWD would be pleased to clarify aspects of our submission if required, and welcome the opportunity to appear before the Committee at a public hearing that may be associated with this Inquiry.

This submission does not need to be kept confidential.

Contact Information

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