

**Submission  
No 104**

**INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW  
SOUTH WALES**

**Organisation:** People with Disability Australia

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## People with Disability Australia (PWDA)

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### Legislative Council Inquiry into Elder Abuse

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**Submission**

**February 2016**

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## About People with Disability Australia

- 1. People with Disability Australia Incorporated (PWDA)** is a national disability rights and advocacy organisation of and for people with disability. We operate within the human rights framework and provide advice and information; individual, group and systemic advocacy; training and education; and a representative voice of people with disability in New South Wales, nationally and internationally. We were founded in 1980, in the lead up to the International Year of Disabled Persons (1981), to provide people with disability with a voice of our own. We have a fundamental commitment to self-help and self-representation for people with disability, by people with disability.
2. 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. Our purpose is to be a leading disability rights, advocacy and representative organisation of and for all people with disability, which strives for the realisation of our vision of a socially just, accessible, and inclusive community.
3. We have a cross-disability focus – membership is open to people with all types of disability. Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement. Our services are not limited to members; they are available to people with all types of disability and their associates.
4. We are governed by a board of directors, drawn from our members across Australia, all of whom are people with disability. We employ professional staff to manage the organisation and operate our various projects. Many of our staff are also people with disability.

## Introduction

5. PWDA warmly welcomes the Legislative Council Inquiry into Elder Abuse; indeed it is timely given the national focus on violence against people with disability, including older people, through the recent Senate Inquiry into Violence, Abuse and Neglect of People with Disability in Institutional and Residential Settings.<sup>1</sup> The Senate Report made a number of recommendations relevant for consideration by the Legislative Council including: the call for a Royal Commission into violence, abuse and neglect of people with disability, the establishment of a national disability complaints mechanism for investigating and eliminating violence, the implementation of nationally consistent workplace regulation and training alongside a registration scheme for disability workers, and improvements to the accessibility of the justice system for people with disability; all of which are relevant to older people with disability in NSW.<sup>2</sup>
6. PWDA's submission to this Inquiry builds upon our long history of advocacy to raise awareness of and reform structural practices which lead to violence, abuse, neglect and exploitation of people with disability, many of whom are older and at increased risk of harm. As such the information provided is drawn from a body of PWDA publications including Accommodating Human Rights,<sup>3</sup> Rights Denied,<sup>4</sup> Everyone, Everywhere,<sup>5</sup> the #endtheviolence campaign,<sup>6</sup> and our submissions to the Senate Inquiry into Violence, Abuse and Neglect of People with Disability in Institutional and Residential Settings,<sup>7</sup> the 2014-15 Senate Inquiry into Domestic Violence,<sup>8</sup> and feedback informing the development of the NSW Domestic Violence Disclosure Scheme in 2015,<sup>9</sup> all of which are attached as supplementary materials to this submission. Additionally, PWDA provides training about human rights to people in boarding houses as part of our NSW ADHC funded boarding house project, many of whom are over 50 and experience violence, abuse and exploitation as a regular feature of their lives.
7. Approximately one third of PWDA's individual advocacy clients are people with disability over 55 years of age.<sup>10</sup> Anonymised case studies illustrating some of their experiences are used within the submission as examples of ways in which older people with disability experience violence, abuse and neglect.
8. In making this submission PWDA recognises that some older people have experienced disability from a young age, and that others have acquired disability as a result of aging.<sup>11</sup> Although their overall life experiences may be different, many commonalities arise in their experiences as older people with disability. The submission is also premised on the fact that there are acute similarities between services provided to people with disability, and those provided to older people. Institutional responses to aging such as aged care

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<sup>1</sup> See [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect) for more information.

<sup>2</sup> The Senate Report is available at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)

<sup>3</sup> Available at: <http://pwd.org.au/documents/pubs/AccommodatingHumanRights2003.rtf>

<sup>4</sup> Available at: <http://pwd.org.au/documents/pubs/RightsDenied2010.doc>

<sup>5</sup> Available at: <http://pwd.org.au/documents/pubs/EveryoneEverywhere2009.rtf>

<sup>6</sup> Available at: <https://endtheviolence.good.do/etv/tellyourlocalmp/>

<sup>7</sup> Available at: [http://pwd.org.au/documents/Submissions/ACDA\\_Sub\\_Sen\\_Inquiry\\_Violence\\_Institutions.pdf](http://pwd.org.au/documents/Submissions/ACDA_Sub_Sen_Inquiry_Violence_Institutions.pdf)

<sup>8</sup> Available at: <http://www.pwd.org.au/documents/Submissions/SubDVSenate2014.doc>

<sup>9</sup> Available at: <http://www.pwd.org.au/documents/Submissions/DVdisclosureschemesubmission.docx>

<sup>10</sup> PWDA Annual Report 2015. Available at: [http://pwd.org.au/documents/56010\\_PWD\\_Annual\\_Report\\_1415\\_WEB\\_V2.pdf](http://pwd.org.au/documents/56010_PWD_Annual_Report_1415_WEB_V2.pdf)

<sup>11</sup> ABS statistics reflect that in Australia, the number of people with disability significantly increases from 365,600 between the ages of 35-44, to 553,400 from 45-54. Similar trends are shown for NSW. See ABS (2012) *Disability, Ageing and Carers, Australia*. Cat no. 4430.0 for more information. Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02012?OpenDocument>

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facilities, nursing homes and hospice care resemble boarding houses, group homes, respite care services and residential disability services in many ways. The experiences of older people with disability residing in institutional settings will be the primary focus of this submission.

9. Older people with disability make up a significant proportion of all older people in NSW and as such their experiences are vital for the Inquiry to consider. In 2012 the ABS reported that 59.5% of people with disability in NSW were over the age of 55.<sup>12</sup> This does not include the significant number of people with disability who live in institutional settings as the ABS does not collect this data,<sup>13</sup> the experiences of this cohort thus remain marginalised by design.
10. It has also been estimated that there will be 2.3 million people in NSW aged 65 years and over in 2050,<sup>14</sup> meaning that older people will comprise 24% of the NSW population, a jump from 14% in 2012. Subsequently, there will likely be an increase in the numbers of older people with disability living in NSW.
11. The NSW Government has a Disability Inclusion Plan and Framework as part of its commitment to implementation of the National Disability Strategy (NDS) and in turn the UN Convention on the Rights of Persons with Disabilities (CRPD). The Government outlines its commitment to the UN Principles for Older Persons<sup>15</sup> (the UN Principles) in the NSW Interagency Policy Preventing and Responding to Abuse of Older People<sup>16</sup> (the NSW Interagency Policy). These principles were developed to recognise the different experiences that older people have in enjoying their rights, and it is positive that the NSW Government is placing an emphasis on the rights of older people. However, this must urgently be expanded to include a focus on the rights of older people with disability.
12. Despite the significant number of older people with disability currently living in NSW, specific intersectional human rights promotion and protection mechanisms recognising and responsive to this demographic remain non-existent or inadequate. This is a matter of considerable concern, especially as the NSW Government itself has stated that ‘as the population ages the rates of abuse of older people are expected to increase.’<sup>17</sup> PWDA reiterates the significance of this Inquiry for older people with disability, and encourages the Committee to make specific recommendations targeted at preventing and responding to violence against older people with disability.

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<sup>12</sup> Ibid. 807,000 out of 1.35 million people with disability in NSW are over the age of 55.

<sup>13</sup> Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. pp 69-70. Available at: [http://pwd.org.au/documents/Submissions/ACDA\\_Sub\\_Sen\\_Inquiry\\_Violence\\_Institutions.pdf](http://pwd.org.au/documents/Submissions/ACDA_Sub_Sen_Inquiry_Violence_Institutions.pdf)

<sup>14</sup> Family and Community Services. (2014) *Preventing and responding to abuse of older people: NSW interagency policy*. NSW Government. p 5. Available at: [http://www.ageing.nsw.gov.au/\\_data/assets/pdf\\_file/0018/300465/FACS\\_NSW-Interagency-Policy.pdf](http://www.ageing.nsw.gov.au/_data/assets/pdf_file/0018/300465/FACS_NSW-Interagency-Policy.pdf)

<sup>15</sup> United Nations Principles for Older Persons, adopted by General Assembly resolution 46/91 on 16 December 1991. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

<sup>16</sup> Family and Community Services (2014), op. cit.

<sup>17</sup> Ibid p 5.

## Recommendations

### Violence experienced by older people with disability

PWDA recommends:

- That NSW supports the call for the creation of a Royal Commission into violence, abuse, neglect and exploitation of people with disability in all settings, and that this public inquiry addresses the gender and age-related dimensions of violence, abuse, neglect and exploitation.
- That the NSW Government implements a public health approach to violence against people with disability, building on primary prevention strategies such as educating people with disability about violence, and how to respond to it, building the knowledge and skills of at-risk groups, running community awareness campaigns aimed at shifting current attitudes and beliefs, as well as making reforms to policies and legislation.
- That NSW collaborates with other states and territories to establish a national system for reporting and investigating violence, abuse, neglect and exploitation of people with disability in all settings.

### Failure to recognise legal capacity

PWDA recommends:

- That staff in mainstream and disability specific institutions receive training about the inherent legal capacity of people with disability.
- That all NSW Trustee and Guardian staff receive mandatory training on supported decision-making.
- That NSW reforms guardianship and other related state legislation to fully recognise and promote the legal capacity of all people with disability.
- That NSW establishes a supported decision-making framework that promotes and supports people to effectively assert and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms.<sup>18</sup>

### Domestic violence

PWDA recommends:

- That an overarching NSW policy and procedures guide be developed to ensure that all services implement best practice when reporting allegations of violence against people with disability, including a mandatory training and professional development curriculum which incorporates information about the prevention, detection and reporting of violence against people with disability.
- That the NSW Interagency Policy be extended to include all residential aged care services, providing a coordinated response to violence in these settings.
- That the NSW Government fund PWDA and Domestic Violence NSW to implement *Women with Disability and Domestic and Family Violence: A Guide for Policy and Practice* to increase the accessibility of domestic and family violence services across NSW.

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<sup>18</sup> Based on a recommendation made in Frohmader, C., & Sands, T. (2015), op. cit., p 13. NSW Legislative Council Inquiry into Elder Abuse, February 2016

- That people with disability are actively considered within domestic violence initiatives, such as the Domestic Violence Disclosure Scheme. For instance, disability service providers, aged care facilities, nursing homes and other such services should be required to check support workers for a history of all forms of violence.
- That the Safer Pathways referral pathway, Safety Action Meetings, and Safety Action Plans are made inclusive of people with disability. For example, modifying the Domestic Violence Safety Assessment Tool (DVSAT) to include specific risk factors experienced by people with disability.
- That the NSW police receive additional training about domestic violence involving older people with disability, to ensure they can identify and respond effectively to forms of domestic violence experienced by people with disability, not just interpersonal violence.
- That all people with disability are able to choose the gender of their co-residents, and of the people who are providing intimate care to them.
- That NSW provide additional funding for the provision of attendant care for people with disability who are escaping domestic violence. The current Victorian *Disability and Family Violence Crisis Response Initiative*,<sup>19</sup> which provides short term funds of up to \$9,000 for disability related supports, should inform the creation of a NSW equivalent.
- That the NSW Ombudsman be given stronger power in relation to cases of violence, abuse, neglect and exploitation, and that the Disability Reportable Incidents Scheme be extended to include all types of institutions in which people with disability and older people reside.
- That NSW contributes funds to the Australian Bureau of Statistics to increase the scope of the Personal Safety Survey and of the Disability, Ageing and Carers survey, to include institutional and residential settings in which older people with disability are overrepresented.

### **Torture or cruel, inhuman or degrading treatment or punishment**

PWDA recommends:

- That NSW develops legislation prohibiting the use of restrictive practices in all settings and establishes a monitoring mechanism to ensure their elimination.
- That NSW prohibits the use of seclusion and isolation as a means of behaviour management for people with disability.
- That NSW establishes a zero-tolerance approach to restrictive practices, and comprehensively rejects their use in all settings.
- That NSW whistle-blower protections be extended to include staff of non-government disability and mental health services.
- That complaint bodies work alongside the Official Community Visitors to perform outreach to target population groups.
- That the role and responsibilities of Official Community Visitors in NSW be expanded to include stronger reporting and investigative powers alongside the NSW Ombudsman.
- That appropriate independent organisations are funded to provide training to older people with disability on how to recognise and respond to violence, including restrictive practices, and make complaints.

<sup>19</sup> See <http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/family-violence2/disability-and-family-violence-crisis-response> for more information.

## **Barriers to accessing justice**

PWDA recommends:

- That mandatory training packages are developed for and delivered to justice system personnel working with people with disability, including police, prison officers, lawyers, judicial officers, court staff and judges.
- That all justice system personnel are aware of the special provisions available for vulnerable witnesses – including people with intellectual disability – under the *Evidence Act 1995* (NSW) and *Criminal Procedure Act 1986* (NSW), and that the availability of these provisions are communicated to people with disability, and their implementation adequately supported.
- That complaint bodies develop forms and documentation in Easy English and Pictorial formats, to ensure their services are accessible to all people with disability.

## **Violation of the right to live independently and be included in the community**

PWDA recommends:

- That the NSW government provide funding for existing social networks, such as Probus Clubs, to become more inclusive for older people with disability, as a way to protect older people against violence.
- That the NSW Government amend construction legislation and regulation to ensure that at least the Silver Standard of universal design principles is achieved in all new housing.
- That the NSW Government provides funding for landlords in the private rental market to make changes to their properties to increase accessibility.



## Violence experienced by older people with disability

13. People with disability in Australia experience violence, abuse and neglect in epidemic proportions.<sup>20</sup> This is in no small part due to the intersectional discrimination experienced by people with disability when various forms of discrimination such as age, gender, disability or social position, for example, intersect to create new, unique forms of discrimination. However, this is frequently not recognised and its aggravating effects are often not understood.<sup>21</sup> While the CRPD<sup>22</sup> is the principle, internationally recognised instrument detailing how human rights law applies to people with disability, it is not the only human rights document that relates to people with disability. An intersectional approach to violence experienced by people with disability must draw upon all of the human rights instruments to which Australia is a party.<sup>23</sup> Australia must meet its obligations to protect people with disability, 'but also to promote a culture where no form of violence against people with disability is tolerated.'<sup>24</sup>
14. Throughout this submission, the term 'violence' will be used to refer to the various manifestations of 'elder abuse', as the term 'elder abuse' disguises the reality of the violence experienced. Institutional settings in particular often label violence as abuse, incidents or issues. This downplaying minimalises, trivialises and normalises the perpetration of different types of violence.<sup>25</sup>
15. Older people with disability experience high rates of violence; with research showing that 75% of reported cases of elder abuse involve older people with cognitive impairment.<sup>26</sup> Like other people with disability, older people with disability experience violence in a variety of ways including:<sup>27</sup>
  - Financial violence: stealing money; forcing someone to change their will; taking control of money, property or investments; misusing Power of Attorney; or refusing to pay for essential medication, support services and disability related equipment.
  - Physical violence: physical assaults; the use of physical restraints; or the use or misuse of medication as restraints.
  - Sexual violence: sexual assault; demanding sexual activities; or inappropriate touching during care giving.

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<sup>20</sup> See Frohmader, C., & Sands, T. (2015), op. cit. for more information.

<sup>21</sup> Intersectional discrimination is experienced when various forms of discrimination, based on age, gender, identity, ethnicity, culture, sexuality, religion, social position, and other experiences, intersect to create new, unique forms of discrimination. See Frohmader, C., & Sands, T. (2015), op. cit., pp 8, 19 for more information.

<sup>22</sup> Ratified by Australia in 2008.

<sup>23</sup> Australia is a party to the seven key international human rights treaties: The *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention on the Rights of the Child* (CRC); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); and the *Convention on the Rights of Persons with Disabilities* (CRPD).

<sup>24</sup> Frohmader, C., & Sands, T. (2015), op. cit., p 58. See also United Nations General Assembly (2012) *Thematic study on the issue of violence against women and girls with disability*. Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/20/5).

<sup>25</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit. See also: Frohmader, C. (2007) *'Forgotten Sisters - A global review of violence against women with disabilities'*, WWDA Resource Manual on Violence Against Women With Disabilities, WWDA, Tasmania, Australia; Sherry, M. (2003) *'Don't Ask, Tell or Respond: Silent Acceptance of Disability Hate Crimes'*, <http://wwda.org.au/wp-content/uploads/2013/12/marksherry2.pdf>; Sobsey, R. (1994) *'Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance?'* Baltimore: Paul H Brookes Publishing Co; Sorensen, D. (1997) 'The Invisible Victims', *IMPACT*, 10, pp 4-7.

<sup>26</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 17.

<sup>27</sup> Drawn from French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., pp 23-27.

- Psychological or emotional violence: harassment; humiliation; intimidation; verbal abuse; forced isolation; threatening institutionalisation; threatening to withdraw care or medication; threatening violence against the person, their family members, pets or support animals; denying or trivialising the person's disability; preventing contact with family, friends and community; or preventing access to services.
  - Neglect: withholding food, water, medication, support services, or disability related equipment; or refusing or delaying assistance when it is immediately required.
16. These forms of violence may be perpetrated by a variety of perpetrators, including but not limited to: intimate partners; family members (such as sons, daughters and grandchildren); formal, paid carers; informal, unpaid carers; disability support workers, staff in institutional facilities; and co-residents in institutional facilities.
17. Settings in which older people with disability may experience violence include private homes, group homes, boarding houses, disability services, respite centres, residential institutions, hospitals, aged care facilities, nursing homes and hospice care.
18. Vincent's story is an all too common example of the myriad of rights abuses experienced by older people with disability in NSW.

Vincent is a man in his mid-fifties with psychosocial disability who lived in a boarding house for approximately 15 years. Many of his co-residents were around Vincent's age, and some had been living in the boarding house for as long as 24 years.

During his time at the boarding house, Vincent experienced and witnessed countless cases of violent physical assault and psychological abuse. These offences were predominantly committed by the boarding house proprietor, but also by other residents under his instructions. Vincent said that the proprietor was a 'dominating bully' who everyone obeyed.

When Vincent first arrived at the boarding house, the proprietor beat him every day, punching him in the face and body, causing bleeding and significant bruising. Reportedly all new residents went through this process to teach them who was 'in charge'. After two weeks they were considered 'broken in', and most subsequent beatings were carried out by other residents on the proprietor's orders. These beatings were so severe that on one occasion, a resident broke his knuckles punching another resident in the face.

The physical assaults did not cease. One time, the proprietor instructed another resident to shut Vincent up by using his fists and he was severely beaten. Vincent believed he was to blame for this incident, as he had been making noise.

During the time Vincent lived at the boarding house many people died, and he witnessed people trying to kill themselves. Vincent believes that this was because of the violence occurring in the boarding house. One night Vincent watched a co-resident choke on his dinner and die right in front of him; the staff did nothing to help.

Vincent did not receive any money during the time he lived in the boarding house. His Disability Support Pension was paid directly to the proprietor, who would also write to Vincent's parents, telling them that they needed to send more money for their son's care. They always complied, as they were afraid that Vincent would be evicted from the boarding house if they didn't.

Vincent slept in a small room with two other men and conditions were very crowded. Vincent and other residents were heavily medicated with the proprietor giving the residents injections every two weeks to keep them calm and placated.

On one occasion, Vincent attempted to escape the boarding house. He walked and hitchhiked to a neighbouring town and waited for a train to take him to a major city. However, while waiting for this train he was spotted by a boarding house staff member, who proceeded to take him straight back to the boarding house despite this being against his will.

Vincent's sister eventually helped him leave the boarding house, but this took five years to achieve.

**PWDA recommends:**

- That NSW supports the call for the creation of a Royal Commission into violence, abuse, neglect and exploitation of people with disability in all settings, and that this public inquiry addresses the gender and age-related dimensions of violence, abuse, neglect and exploitation.
- That the NSW Government implements a public health approach to violence against people with disability, building on primary prevention strategies such as educating people with disability about violence, and how to respond to it, building the knowledge and skills of at-risk groups, running community awareness campaigns aimed at shifting current attitudes and beliefs, as well as making reforms to policies and legislation.
- That NSW collaborates with other states and territories to establish a national system for reporting and investigating violence, abuse, neglect and exploitation of people with disability in all settings.

## Violations of human rights

### Failure to recognise legal capacity

Lisa asked PWDA to help her frail, elderly parents, as she believed they were being exploited financially. Her father, Ned, has dementia and Alzheimer's disease, and her mother, Joanne, was also in receipt of disability services. Ned and Joanne were living with Lisa's brother Geoff. Ned and Joanne were totally dependent on Geoff for care, support and all of their transport.

It came to light that Geoff was attempting to assume full control of Ned's assets, and had made a guardianship application to become his parents' financial manager. In addition, Geoff had obtained statements from two GPs stating that Ned was unable to look after his assets, despite the fact that Ned had never been to see these doctors. Ned wanted to seek the advice of his lawyer, but Geoff did not allow him to visit.

When PWDA spoke with Ned's lawyer, the extent of the violence and exploitation became clear. Ned's lawyer stated that Geoff had been restricting all contact that Ned and Joanne had with Lisa; Geoff would often mock his father, and put him down; Ned felt like a slave in Geoff's home, as he didn't want to live there, yet was forced to do so; that Geoff charged Ned and Joanne rent; and that Geoff had Ned and Joanne's passports in his possession, and was not allowing them access to these and other important documents.

PWDA encountered significant barriers to the provision of advice and advocacy, as Geoff screened calls between Ned and his advocate. This further isolated Ned and Joanne, meaning that they were not informed of changes to their guardianship arrangements. Lisa applied for guardianship to challenge Geoff's claims, but ultimately a public guardian was appointed to assist Ned to make financial and lifestyle decisions.

19. Substitute decision-making and guardianship arrangements violate the rights of older people with disability to 'enjoy legal capacity on an equal basis with others in all aspects of life,' as outlined by Article 12 of the CRPD.<sup>28</sup>
20. Legal capacity consists of the capacity to have rights, and the capacity to act on those rights through the recognition of a persons will and preference by the law. Some people with disability may require support to express their will and preference, and Article 12 of the CRPD obligates State Parties to provide the supports required for them to do so.<sup>29</sup> The type of support required will vary between individuals, for example, someone with intellectual disability may require decision-making support to help them choose what time of day they receive services, or someone who is deaf may require a sign language interpreter to facilitate negotiations about selling their house.<sup>30</sup>

<sup>28</sup> CRPD Article 12; see also *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities*, August 2012. p 71. Available at: <http://www.afdo.org.au/media/1210/crpd-civilsocietyreport2012-1.pdf>

<sup>29</sup> People with Disability Australia (PWDA), the Australian Centre for Disability Law (ACDL) and the Australian Human Rights Centre (AHRCentre). (2014) *Australian Law Reform Commission (ALRC): Equality, Capacity and Disability in Commonwealth Laws Discussion Paper*, p 6. Available at: <http://www.pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>

<sup>30</sup> People with Disability Australia. (2009) *Everyone, Everywhere: Recognition of Persons with Disability as Persons before the Law*. pp 33, 44. Available at: <http://pwd.org.au/documents/pubs/EveryoneEverywhere2009.rf> ; PWDA, ACDL and AHRCentre (2014), op. cit., p 6.

21. However, in practice, these decision-making supports are rarely fully explored or implemented, with the use of substitute decision-making often superseding the use of supported decision-making.<sup>31</sup>
22. Substitute decision-making can occur informally, whereby family or friends are involved in decision-making processes. Informal forms of substitute decision-making frequently involve a substitute decision-maker making decisions for another without their input, and without considering their rights, will and preferences (as seen in the above case study).
23. Guardianship is a formal substitute decision-making regime; one which aims to act in the 'best interests' of the person under guardianship, but which often fails to take into consideration the rights, will and preferences of these individuals.
24. Currently, NSW guardianship arrangements focus on whether or not a person has capacity to make their own decisions, rather than focusing on the types of support that would enable older people with disability to make their own decisions.<sup>32</sup> Not supporting people with disability to make important decisions, manage their affairs or exercise their legal capacity, or indeed failing to recognise someone's legal capacity at all, often leads to an increased risk of violence and ill treatment.<sup>33</sup>
25. Such ill treatment can arise when guardianship arrangements are co-opted by the very people who are supposed to uphold the human rights, will and preferences of the older person with disability.<sup>34</sup> Substitute decision-making can result in people with disability being forcibly institutionalised, being subject to involuntary treatments, including the use of restrictive practices, and having their resources appropriated through financial abuse.<sup>35</sup>
26. The CRPD outlines that neither supported nor substitute decision-making should be implemented without continual engagement with the person with disability themselves.<sup>36</sup> This is touched upon in the NSW Interagency Policy, which states that the views of older people must be taken into account, even when they are unable to make their own decisions, but it does not go on to elaborate how this is to be achieved or what the extent of their involvement must be.<sup>37</sup>
27. The NSW Interagency Policy also makes a Commitment on behalf of the NSW Government that older people at risk of abuse should be 'empowered to make their own decisions and to practice self-determination.'<sup>38</sup> This 'Commitment' is insufficient. In order to ensure older people with disability are empowered to be involved in their own decisions, the NSW Government must ensure that supported decision-making is funded, promoted and prioritised as good practice. A dedicated focus on supported decision-making would also help to shift stereotypes, myths and community attitudes regarding the legal capacity of people with disability, to ensure that the presumption of legal capacity is embedded in all facets of Australian society.

<sup>31</sup> Committee on the Rights of Persons with Disabilities, *General Comment No.1 – Article 12: Equal recognition before the law*, 11<sup>th</sup> session, UN Doc CRPD/C/GC/1 (19 May 2014), p 1, para 3.

<sup>32</sup> *Disability Rights Now* (2012), op. cit., p 72.

<sup>33</sup> Frohmader, C., & Sands, T. (2015), op. cit., pp 26, 53.

<sup>34</sup> People with Disability Australia (2009), op. cit., p 44.

<sup>35</sup> *Disability Rights Now* (2012), op. cit., p 69.

<sup>36</sup> People with Disability Australia (2009), op. cit., p 45.

<sup>37</sup> Family and Community Services (2014), op. cit., p 14.

<sup>38</sup> *Ibid*, p 5.

28. While the NSW Department of Family and Community Services, in collaboration with the NSW Trustee and Guardian and the Public Guardian, have performed a pilot of supported decision-making, future pilots must actively consider the particular circumstances and needs of older people with disability. These supports and circumstances may differ from those experienced by children, young people or other adults who are participating in supported decision-making.
29. Another practical step would be to ensure that staff in disability and aged care institutions receive specific training on the concept of legal capacity as provided by the CRPD, and how to confidently and appropriately implement decision making supports. These facilities must ensure that all policies and procedures reflect the inherent legal capacity of people with disability, and that everyday techniques and practices respect and support the autonomy, will and preferences of their clients.
30. PWDA has set out its position on legal capacity and the implementation of Article 12 in our response to the Australian Law Reform Commission (ALRC) Inquiry (2014).<sup>39</sup> Please refer to this for further elaboration.<sup>40</sup> PWDA is also aware that the *Guardianship Act 1987* (NSW) is currently under review as a response to this Inquiry.

**PWDA recommends:**

- That staff in mainstream and disability specific institutions receive training about the inherent legal capacity of people with disability.
- That all NSW Trustee and Guardian staff receive mandatory training on supported decision-making.
- That NSW reforms guardianship and other related state legislation to fully recognise and promote the legal capacity of all people with disability.
- That NSW establishes a supported decision-making framework that promotes and supports people to effectively assert and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms.

## Domestic Violence

Tobias is an older man with psychiatric disability living in a boarding house. Tobias reported that he was being physically assaulted, threatened and intimidated by three co-residents. One co-resident in particular was much more violent than the others, and Tobias was especially fearful of him.

A staff member from the boarding house informed PWDA that as a result of inadequate staffing, the assault against Tobias was not able to be responded to. As such, PWDA's individual advocate suggested that an apprehended violence order be taken out to ensure Tobias's safety. He initially agreed to go to the local police station to discuss the process but then decided against this.

Tobias was afraid that taking out an apprehended violence order would inflame the situation, which could have dangerous consequences as he was still living in the boarding house. Despite the violent circumstances Tobias is still waiting for alternative accommodation to move him away from this violent situation.

<sup>39</sup> See <http://www.alrc.gov.au/inquiries/legal-barriers-people-disability> for more information.

<sup>40</sup> PWDA, ACDL and AHRCentre (2014), op. cit. Available at: <http://www.pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>

31. The CRPD and UN Principles both reaffirm that people with disability should be able to live free from violence and exploitation.<sup>41</sup> However, for older people with disability this is often not the reality.
32. Recent statistics from the NSW Bureau of Crime Statistics and Research give an idea of how many criminal incidents have been recorded by the NSW Police Force in certain types of institutions where older people with disability may live. From July 2014 to June 2015, there were a total of 190 reported assaults in aged home care facilities, 131 reported assaults in nursing homes and 203 reported assaults in boarding houses.<sup>42</sup> In the same time period, there were 5 reported sexual assaults in aged home care facilities, 6 reported sexual assaults in nursing homes and 11 reported sexual assaults in boarding houses.<sup>43</sup> These numbers do not include cases of indecent assaults, acts of indecency or other sexual offences.
33. There is a lack of NSW based data on the prevalence or incidence of violence against people with disability. This can be attributed to the barriers to reporting experienced by people with disability, including the 'closed' nature of institutional settings. As such, the NSW Government should contribute to funding for the Australian Bureau of Statistics to expand the sampling of the Personal Safety Survey. This would ensure that an accurate depiction of violence experienced by people with disability in residential and institutional settings in NSW is provided.
34. Data from the NSW Ombudsman's Disability Reportable Incidents Scheme illustrates that there have been 437 reports involving people with disability living in supported group accommodation made in a nine month period.<sup>44</sup> 49 of the reports involved unexplained serious injuries or breaches of apprehended violence orders. A total of 240 reportable incidents were perpetrated by employees against clients, and the remaining 148 were client against client.<sup>45</sup> The reportable incidents perpetrated by employees against clients were primarily physical assaults (38%), followed by neglect (20%), sexual assault (12%) and ill-treatment (11%).<sup>46</sup> Client to client perpetrations were determined to follow a pattern of abuse in 34% of cases, to be assault causing serious injury in 24% of cases, and involved sexual offences in 20%.<sup>47</sup> Often, violence occurs as a consequence of people with disability being forced to live with people they don't necessarily want to live with, let alone like or even know.
35. The residential nature of these acts invokes domestic violence legislation, as the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) includes in its scope violence perpetrated by co-residents of residential facilities, and relationships involving the provision of paid or unpaid care. This means that violence experienced by older people with disability in residential settings can be defined as domestic violence.

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<sup>41</sup> United Nations Principles for Older Persons (1991), op. cit.

<sup>42</sup> NSW Bureau of Crime Statistics and Research (2015)

<sup>43</sup> Ibid.

<sup>44</sup> NSW Ombudsman Disability Reportable Incidents Scheme presentation (2015)

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.



36. However, older people face 'social, geographical, economic and physical barriers in accessing information, services and responding to domestic violence.'<sup>48</sup> Similar barriers exist for people with disability attempting to leave situations of violence, abuse and neglect, with compounded barriers arising for older people with disability.
37. The NSW Interagency Policy outlines that older people should have access to support services and groups to ensure they are empowered to respond to violent situations.<sup>49</sup> While there are a plethora of domestic violence services and supports available, these are routinely inaccessible for people with disability and hence older people with disability. Domestic and family violence services need to be made much more accessible and responsive to the needs of older people with disability if they are to have any impact on this group.
38. Work needs to be done to ensure older people with disability are supported to leave violence in their own homes, which include institutional and residential settings. The Domestic Violence Safety Assessment Tool (DVSAT),<sup>50</sup> developed to identify the level of threat facing individuals experiencing domestic and family violence, is currently inadequate, and is not always used appropriately or consistently. This means that the full risk of violence experienced by older people with disability is often not recognised. For instance, without questioning whether the victim relies on the perpetrator for care or support, the implementation of an apprehended violence order might leave a victim without life-sustaining care or support. The risk of the withdrawal of support as part of the pattern of violence is also incredibly high.
39. Furthermore, other elements of the It Stops Here Safer Pathway model, implemented as part of the NSW Government's recent domestic and family violence reforms, require modifications. Local Coordination Points (LCP), for instance, are only mandated to make four phone calls to follow up on a referral from police. Cases have emerged in which a LCP was unable to contact a victim of violence who lived in an aged care facility, as this woman was not easily contactable via telephone.<sup>51</sup> This was likely because the perpetrator was acting as a gatekeeper, preventing the victim from being contacted by domestic violence support workers through the aged care telephone and reception system.
40. In many cases, people with disability, particularly people with intellectual disability, have been socialised to accept a degree of violence and abuse throughout service delivery. Indeed, 'they may become desensitised or resigned to such conduct.'<sup>52</sup> People with disability who live in institutional settings are often unaware of their rights, and may also be denied access to information about how to recognise and deal with violence.<sup>53</sup>
41. People with disability are often unaware that the violence they are experiencing is a crime, and are therefore unlikely to disclose or report. As per CRPD Article 16(2), information and education needs to be provided to all people with disability on how to recognise and report violence, abuse, neglect and exploitation. Furthermore, in

<sup>48</sup> Attorney General and Justice (2015) *NSW Domestic Violence Death Review Team Annual Report, 2012-2013*, p 32. Available at: [http://www.coroners.justice.nsw.gov.au/Documents/dvdr\\_t\\_2013\\_annual\\_reportx.pdf](http://www.coroners.justice.nsw.gov.au/Documents/dvdr_t_2013_annual_reportx.pdf)

<sup>49</sup> Family and Community Services (2014), op. cit., p 5.

<sup>50</sup> Available at: <http://www.domesticviolence.nsw.gov.au/data/assets/file/0020/301178/DVSAT.pdf>

<sup>51</sup> Personal communication to PWDA staff (2015)

<sup>52</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 29.

<sup>53</sup> See *Disability Rights Now* (2012), op. cit., p 93; Frohmader, C., & Sands, T. (2015), op. cit. for more information.



institutions in which restrictive practices are used, residents may fear that they will be subject to even more severe forms of ill-treatment and restraint as a result of reporting.<sup>54</sup>

42. Often, perpetrators of violence, abuse, neglect and exploitation will 'deliberately target people with disability in institutional and residential settings, particularly those who are least able to resist or make a formal complaint'.<sup>55</sup> As older people with disability are disproportionately located in these settings, these individuals are much more vulnerable to violence.

Jonathan, a man in his mid-fifties, was severely assaulted at the boarding house in which he lived for 7 years. He was assaulted by a co-resident, who stabbed him with a knife. It was a very bad cut, but he was not taken to the hospital immediately. Eventually, he was hospitalised and had an operation.

Conflicting stories were presented of the incident. The doctor from the boarding house stated that there were no knives in the vicinity of where the incident happened but that Jonathan had fallen on a sharp door knob. This incident was not properly investigated, and Jonathan's family was not notified.

43. Instances of violence and ill-treatment against older people with disability need to be not only detected, but also investigated and prosecuted. However, in cases relating to older people residing in residential or institutional settings, NSW agencies and organisations are not bound by the NSW Interagency Policy. Instead, they must abide by amendments to the *Aged Care Act 1997* which requires approved providers to report allegations of abuse to the police and the Department of Health.<sup>56</sup> The NSW Interagency Policy should recognise this.
44. A uniform mandatory reporting scheme across disability and aged care should be implemented for all services in which older people reside, including both disability specific and mainstream residential and institutional settings. An independent authority is required to monitor the provision of programmes and services to all people with disability. This would assist the work of the NSW Ombudsman who is currently unable to undertake own-motion complaints, instead having to receive a complaint from a service before investigating. Furthermore, the Ombudsman is only mandated to perform an administrative review that isn't enforceable in practice.
45. NSW police need to be adequately trained to ensure there is a consistent understanding of what domestic violence includes, the range of perpetrators who may enact violence, and the variety of settings in which domestic violence may take place. A thorough understanding will allow police to more accurately recognise domestic violence experienced by older people with disability. This is important, as if violence is accurately recognised as domestic violence, certain service provision, supports and referral pathways are automatically put in place. If the experiences of an individual are not seen to fall under this definition of domestic violence, these supports are not provided. For instance, the failure to recognise physical violence against a co-resident of an aged care facility, or violence perpetrated by home care support workers within private homes as

<sup>54</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 29.

<sup>55</sup> Frohmader, C., & Sands, T. (2015), op. cit., p 35.

<sup>56</sup> Ageing and Aged Care. (2016) *Compulsory Reporting for Approved Providers*. Available at: <https://www.dss.gov.au/ageing-and-aged-care/ensuring-quality/aged-care-quality-and-compliance/compulsory-reporting-for-approved-providers>

domestic violence further isolates older people with disability, denying them access to vital support services.

**PWDA recommends:**

- That an overarching NSW policy and procedures guide be developed to ensure that all services implement best practice when reporting allegations of violence against people with disability, including a mandatory training and professional development curriculum which incorporates information about the prevention, detection and reporting of violence against people with disability.
- That the NSW Interagency Policy be extended to include all residential aged care services, providing a coordinated response to violence in these settings.
- That the NSW Government fund PWDA and Domestic Violence NSW to implement *Women with Disability and Domestic and Family Violence: A Guide for Policy and Practice* to increase the accessibility of domestic and family violence services across NSW.
- That people with disability are actively considered within domestic violence initiatives, such as the Domestic Violence Disclosure Scheme. For instance, disability service providers, aged care facilities, nursing homes and other such services should be required to check support workers for a history of all forms of violence.
- That the Safer Pathways referral pathway, Safety Action Meetings, and Safety Action Plans are made inclusive of people with disability. For example, modifying the Domestic Violence Safety Assessment Tool (DVSAT) to include specific risk factors experienced by people with disability.
- That the NSW police receive additional training about domestic violence involving older people with disability, to ensure they can identify and respond effectively to forms of domestic violence experienced by people with disability, not just interpersonal violence.
- That all people with disability are able to choose the gender of their co-residents, and of the people who are providing intimate care to them.
- That NSW provide additional funding for the provision of attendant care for people with disability who are escaping domestic violence. The current Victorian *Disability and Family Violence Crisis Response Initiative*,<sup>57</sup> which provides short term funds of up to \$9,000 for disability related supports, should inform the creation of a NSW equivalent.
- That the NSW Ombudsman be given stronger power in relation to cases of violence, abuse, neglect and exploitation, and that the Disability Reportable Incidents Scheme be extended to include all types of institutions in which people with disability and older people reside.
- That NSW contributes funds to the Australian Bureau of Statistics to increase the scope of the Personal Safety Survey and of the Disability, Ageing and Carers survey, to include institutional and residential settings in which older people with disability are overrepresented.

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<sup>57</sup> See <http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/family-violence2/disability-and-family-violence-crisis-response> for more information.

## Torture or cruel, inhuman or degrading treatment or punishment

Milton is an older man who attempted to leave the boarding house in which he lived on a number of occasions. One time, Milton left the boarding house with another resident. They went to the police station together, hoping to get assistance. They wanted to find alternative accommodation, and they informed the police that this was because they didn't like where they were living, or how they were being treated.

However, police records showed that the proprietor of the boarding house had lodged 'Missing Person' reports for Milton and the other resident. They then proceeded to return them both to the boarding house, ignoring the allegations of abuse, bullying and neglect that they had made.

Following this escape attempt, the proprietor heavily medicated Milton with injections. This rendered Milton incapable of any further action or attempts to leave for months thereafter. Milton said that the proprietor sedated a number of other boarding house residents. Milton does not know who prescribed these medications, and does not remember another staff member being present when these injections were administered.

46. The use of restrictive practices and involuntary treatments violates the right of people with disability to be free from torture or cruel, inhuman or degrading treatment or punishment. Restrictive practices are often used in aged care and disability services, such as home care, residential institutions, group homes, boarding houses, nursing homes, mental health facilities and hospitals. These practices can constitute severe ill-treatment, and their use violates numerous human rights such as the right to be free from violence, free from torture and ill-treatment, the right to bodily integrity and freedom of movement.<sup>58</sup>
47. The restrictive practices to which people with disability, including older people, are often subjected can include physical, mechanical or chemical restraint, as well as seclusion and solitary isolation.<sup>59</sup> Indeed, it is estimated that between 44 and 80% of people with disability who demonstrate 'challenging behaviours', or other concerning behaviours, are administered chemical restraint.<sup>60</sup> Overmedication is a practice frequently used in disability service accommodation and aged care facilities to make residents more compliant with staff and easier to manage.
48. Data on the prevalence, use and effect of restrictive practices is scarce in Australia,<sup>61</sup> with state and territories having differing systems of authorisation. In NSW, the use of restrictive practices is regulated through the guardianship framework, meaning that people with disability themselves often have no say over what is happening to them, and the treatments to which they are exposed.<sup>62</sup> This evidently does not reflect the rights, will

<sup>58</sup> CRPD Articles 15 to 18.

<sup>59</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., pp 80, 95. See also *Disability Rights Now* (2012), op. cit., p 91.

<sup>60</sup> Webber, L; Donley, M and Tzanakis, H. (2008) 'Chemical Restraint: What Every Disability Support Worker Needs to Know' (Article, Office of the Senior Practitioner); *Disability Rights Now* (2012), op. cit., p 92.

<sup>61</sup> National Mental Health Consumer and Carer Forum (2009) 'Ending Seclusion and Restraint in Australian Mental Health Services' (Position Statement, 2009), [www.nmhccf.org.au/documents/Seclusion%20&%20Restraint.pdf](http://www.nmhccf.org.au/documents/Seclusion%20&%20Restraint.pdf). See also Ramcharan, P., Nankervis, K., Strong, M. and Robertson, A. (2009) *Experiences of Restrictive Practices: A view from people with disabilities and family carers: A final research report to the Office of the Senior Practitioner*, Office of the Senior Practitioner, Victoria.

<sup>62</sup> *Disability Rights Now* (2012), op. cit., p 92.

and preferences, nor the consent of people with disability, and instead further isolates and disempowers people with disability under guardianship arrangements.<sup>63</sup>

49. Although in 2014, disability Ministers from across the nation endorsed the Draft National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector,<sup>64</sup> this only covers the disability services sector, does not address the use of restrictive practices as a whole, and still provides for their use in numerous circumstances.<sup>65</sup> In NSW, the role of Official Community Visitors and the NSW Ombudsman should be strengthened by providing them with greater power and responsibilities to specifically investigate cases involving the unregulated use of restrictive practices.
50. The excessive use of restrictive practices and especially involuntary medication in disability and aged care services is often attributed to the regular turnover of staff as well as a general lack of staff;<sup>66</sup> the logic being that if services are understaffed they may be more likely to try to control and subdue residents.<sup>67</sup> Additionally, there is generally little oversight of the provision of care provided by these staff members. Mandatory training and peer supervision programs for all staff of institutions in which people with disability or older people reside would go some way to addressing the culture of convenience over care.
51. Many behaviours that are targeted by restrictive practices can be seen as legitimate responses to unsafe environments.<sup>68</sup> When restrictive practices are in effect, or the threat of their use persists, people with disability cannot feel safe or trust the staff who are supposed to be helping them.<sup>69</sup>

Prue, a 76 year old woman with vision impairment, was verbally abused and intimidated by the manager of the retirement village in which she lives. Prue began to cry during the verbal assault as she was fearful of what was happening, yet the manager continued to abuse her while she cried. PWDA's individual advocate advised Nora of the complaints options available to her, but she stated that she was too frightened to lodge a complaint.

Laura, a woman with various chronic respiratory conditions and physical impairments resided in a residential facility for 12 months while waiting for public housing. During this time, a member of staff was verbally abusive towards her, and had been undermining her self-esteem.

A disability advocacy organisation suggested that she contact the National Disability Abuse and Neglect Hotline, but Laura was too fearful that the staff member would somehow find out about this complaint.

<sup>63</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 96; Human Rights Law Centre. (2014) *Torture and cruel treatment in Australia. Joint NGO report to the United Nations Committee Against Torture*. Available at: [http://hrlc.org.au/wp-content/uploads/2014/10/CAT\\_NGO\\_Report\\_Australia\\_2014.pdf](http://hrlc.org.au/wp-content/uploads/2014/10/CAT_NGO_Report_Australia_2014.pdf)

<sup>64</sup> Disability and Carers (2014) *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>

<sup>65</sup> Human Rights Law Centre (2014), op. cit. See also Frohmader, C., & Sands, T. (2015), op. cit., p 46.

<sup>66</sup> Bevan, N. (2014), op. cit., p 28; *Disability Rights Now* (2012), op. cit., p 108.

<sup>67</sup> Bevan, N. (2014), op. cit., p 28.

<sup>68</sup> Ramcharan, P. et al. (2009), pp 1-3.

<sup>69</sup> Ibid. See also Frohmader, C., & Sands, T. (2015), op. cit., p 46.

52. The use of restrictive practices can also foster dangerous internal cultures within institutional settings. The workplace culture of institutions can contribute to staff downplaying and ‘detoxifying’ violence, ill-treatment and assault occurring in their services as ‘abuse’, ‘service incidents’ and ‘workplace issues.’<sup>70</sup> This often results in the failure to report or genuinely address these cases.<sup>71</sup> This indicates to residents that their experiences are not taken seriously, and that they do not have rights in these settings. Behaviours that would commonly be considered inappropriate or unacceptable in the community can become normalised and commonplace within institutions or disability services.<sup>72</sup> The normalisation of practices such as withdrawal of food or denial of personal care as punishment for minor infringements of house rules, being put to bed in the afternoon, being confined to specific areas of the accommodation or its grounds, shouting at residents, causing humiliation, or rough handling can establish an abusive or apathetic institutional culture, in which staff become desensitised to the other violations that residents or clients are consistently experiencing.<sup>73</sup> Indeed, the use of restrictive practices often coincides with the use of other forms of violence, especially in residential and institutional settings.<sup>74</sup>
53. In order to combat problematic institutional cultures, recruitment processes of institutions need to be vastly improved. For instance, required checks are not always thoroughly performed, and it is currently ‘relatively easy for perpetrators to move from one place of employment to another when they are discovered or dismissed.’<sup>75</sup>
54. The normalisation and internalisation of ill-treatment means that staff are often reluctant to report these violent and inappropriate practices to the police. They may fear the repercussions of speaking out against the collective perception that this type of treatment is acceptable.

A complaint to the authorities was made by Suzie, a staff member of an aged care group home. Suzie had observed two other staff members stuffing tissues into the mouth of a resident to stop him from calling out. She felt uncomfortable bringing this issue up with her direct managers, as she was afraid of losing her job.

55. Whistle-blower protections should be offered to all staff members reporting violence or ill-treatment in all settings. Whistle-blowers often fear the repercussions of their reporting, such as being harassed, intimidated, bullied or denied shifts.<sup>76</sup> Current legislation and protections only apply to certain employees who work in specific settings. The protections are unclear and complex, and workers are often left unsure of the impact that speaking out will have on their livelihood. It is thus important that the protections offered to whistle-blowers are inclusive and easy to understand, as people need to feel very comfortable in coming forward with allegations.

#### **PWDA recommends:**

- That NSW develops legislation prohibiting the use of restrictive practices in all settings and establishes a monitoring mechanism to ensure their elimination.

<sup>70</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., see also Frohmader, C., & Sands, T. (2015), op. cit., p 19.

<sup>71</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 27.

<sup>72</sup> *Disability Rights Now* (2012), op. cit., p 105; French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 27.

<sup>73</sup> *Disability Rights Now* (2012), op. cit., p 95.

<sup>74</sup> Frohmader, C., & Sands, T. (2015), op. cit., p 46.

<sup>75</sup> *Ibid.*

<sup>76</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 19.

<sup>77</sup> *Ibid.*, p 52.

- That NSW prohibits the use of seclusion and isolation as a means of behaviour management for people with disability.
- That NSW establishes a zero-tolerance approach to restrictive practices, and comprehensively rejects their use in all settings.
- That NSW whistle-blower protections be extended to include staff of non-government disability and mental health services.
- That complaint bodies work alongside the Official Community Visitors to perform outreach to target population groups.
- That the role and responsibilities of Official Community Visitors in NSW be expanded to include stronger reporting and investigative powers alongside the NSW Ombudsman.
- That appropriate independent organisations are funded to provide training to older people with disability on how to recognise and respond to violence, including restrictive practices, and make complaints.

## Barriers to accessing justice<sup>77</sup>

Sergio is a 51 year old man with intellectual disability and autism who resides in a not-for-profit group home. His co-resident, Isaac, started displaying 'challenging behaviours' as a result of working with one particular staff member. To manage Isaac's 'challenging behaviours,' management instructed the staff member to cease working with Isaac and instead, begin working with Sergio.

Isaac eventually disclosed that he had been physically assaulted by the staff member. He reported this to the police, telling them that the support worker had kicked him, and that he had also broken a camera over Sergio's head.

The police failed to investigate the assault as they did not perceive either Sergio or Isaac to be credible witnesses. The disability service then stated that as the police would not investigate, they could not dismiss or discipline the staff member who was accused of assault.

Sergio's sister supported him to leave the group home, organised counselling and found a respite place until he could get more permanent accommodation. Sergio's sister wanted to ensure the issue was investigated and responded to appropriately for the sake of the other residents who still resided in the group home and who were at risk of being assaulted by the staff member. Sergio's sister reported the matter to the National Disability Abuse and Neglect Hotline.

The case was not thoroughly investigated because Sergio was under guardianship and the guardianship body couldn't proceed as he was no longer living in the house in which the assault occurred.

56. Despite the UN Principles outlining that 'older persons should have access to social and legal services to enhance their autonomy, protection and care,'<sup>78</sup> and CRPD Article 13 stating that people with disability should have equal access to justice and legal

<sup>77</sup> For more information regarding access to justice, see Australian Human Rights Commission, 2014. *Equal Before the Law: Towards Disability Justice Strategies*. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf)

<sup>78</sup> United Nations Principles for Older Persons (1991), op. cit.



processes, older people with disability are still denied equal rights when it comes to the justice system.

57. Some older people with disability may have never reported their past experiences of violence. Others may have attempted to report their experiences to the authorities, but may not have been believed or supported to pursue prosecution. These past experiences may mean that their experiences have become normalised, or that they do not think they will be believed or supported to report their current experiences of violence.
58. A key barrier to justice is that criminal justice and policing services are often inaccessible for people with disability, with barriers to justice numerous and significant. Older people with disability living in residential or institutional settings may have more difficulty contacting the police, for instance, as they may have limited access to phone services, or may be physically unable to attend the police station to report.<sup>79</sup>
59. Older people with disability may experience difficulties navigating the internet, particularly if they have degenerative conditions such as macular degeneration or dementia. This renders a wealth of online information regarding violence, the right to be free from violence, and responses to violence inaccessible for older people with disability.
60. Many complaints bodies are inaccessible for people with disability. Automated telephone systems, centralised intake systems and form-based complaint systems may pose challenges to people with disability; even more so for older people with disability who may have acquired hearing or vision loss.<sup>80</sup> Providing Easy English, Pictorial or audio formats of information would increase the accessibility of these processes, in addition to performing outreach to particular groups.<sup>81</sup>
61. If an older person with disability does manage to report violence to the police, their experiences may not always be recognised as the result of a criminal offence. Crimes against older people with disability are often instead seen as ‘incidents’ that do not require police involvement. Often, it is claimed that the violent ‘incident’ is a disability service provider’s responsibility, and therefore an internal investigation must be completed, with responses to the violence being left for the service to decide.<sup>82</sup> Through choosing not to investigate violence perpetrated against people with disability, police treat these cases differently to crimes perpetrated against people without disability.
62. Alternatively, the police may not be equipped to take statements from people with disability. This is especially the case for people who use alternative or augmentative communication.<sup>83</sup> This may result in police officers deciding not to even take statements.
63. Another barrier to justice is that police responses are often based on narrow notions of what constitutes a ‘reliable’ or ‘credible’ witness with disability.<sup>84</sup> People with disability

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<sup>79</sup> Cadwallader, J. (2015). *Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 8: Experiences of Police and Prosecution Responses*, People with Disability Australia. p 7. Available at: [http://pwd.org.au/documents/Submissions/Final\\_Sub\\_PWDA\\_Police\\_Prosecutor\\_Responses\\_Royal\\_Commission\\_150615.doc](http://pwd.org.au/documents/Submissions/Final_Sub_PWDA_Police_Prosecutor_Responses_Royal_Commission_150615.doc) See also

Frohman, C., & Sands, T. (2015), op. cit., p 46.

<sup>80</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 52.

<sup>81</sup> Ibid, p 118.

<sup>82</sup> *Disability Rights Now* (2012), op. cit., p 105; Frohman, C., & Sands, T. (2015), op. cit., p 19.

<sup>83</sup> See Australian Human Rights Commission (2014), op. cit. for more information.

<sup>84</sup> *Disability Rights Now* (2012), op. cit., p 78; also French, P. ‘Disabled Justice: The Barriers to Justice for Persons with Disability in Queensland’ (Report, Queensland Advocacy Incorporated, 22 May 2007); Victorian Equal Opportunity and Human Rights Commission (2014) *Beyond Doubt: the experiences of people with disabilities reporting crime*, Chapter 7. Available at:

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may have their reports dismissed by the police due to perceptions regarding their disability and capacity. Older people also experience such disbelief, often due to their age and their acquired disability. This evidently restricts the reporting, prosecution and conviction of violence, abuse, neglect and exploitation of all people with disability. This is particularly problematic, as the police should be the first point of call for people making allegations of violence. It also reflects deeper discriminatory elements in the perception of older people with disability as providers of credible testimony. Prejudicial attitudes exist throughout the legal system from police, through lawyers and the courts to juries. All of these participants in the administration of justice need to develop a greater appreciation of the legal capacity of people with disability and the provision of support so that they are able to participate in proceedings without discrimination.

64. If the police do not investigate based on their subjective judgments about the credibility of testimony provided by people with disability, this may completely shut down all future disclosures by that individual.<sup>85</sup> This also increases the vulnerability of the person to further harm,<sup>86</sup> and enables perpetrators to avoid consequences for their actions.<sup>87</sup>

In a house for people with intellectual disability, Christina made a complaint against a male co-resident on behalf of herself and two other women. These women, aged between 50 and 54, shared the use of a bathroom with this man, and stated that he had been touching them inappropriately and making sexual comments towards them.

When the police visited the house to investigate the incidents, a disability advocacy organisation supported Christina and the other two women in the police interviews. While they were polite and provided the women with referrals for counselling, the police indicated that it would come down to their word against his, and that the disability of the perpetrator would reduce the likelihood of him being found culpable for the offences.

The house removed the perpetrator and moved him to a 'more suitable' facility. The police did not pursue their investigation as it was deemed there was no likelihood of successful conviction.

65. In NSW, the *Evidence Act 1995* (NSW) and the *Criminal Procedure Act 1986* (NSW) outline that vulnerable people – including people with intellectual disability – have the right to various supports while giving evidence. For instance, in criminal proceedings, the support person may act as an interpreter, assisting if the person has any difficulty giving evidence. Additionally, evidence can be provided via closed circuit television, or evidence can be recorded and used in court. The use of these accommodations must be normalised and firmly embedded into the criminal justice system, becoming the norm, rather than the exception.<sup>88</sup>
66. These legislative documents outline that evidence can be given in various ways, yet don't explicitly provide guidance, which means that court officers may be unaware of what can

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<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime>

<sup>85</sup> Anti-Discrimination Commissioner (Tasmania), Submission 71 to the Australian Law Reform Commission's Inquiry into Equality, Capacity and Disability Issues Paper. For more information, see Cadwallader, J. (2015), op. cit.

<sup>86</sup> Ibid.

<sup>87</sup> *Disability Rights Now* (2012), op. cit., p 13.

<sup>88</sup> Discussions with PWDA's individual advocates illustrates, however, that the use of these accommodations and supports is still infrequent and fraught with issues.



or cannot be included.<sup>89</sup> This often means that these supports are not easily accessible for people with disability.<sup>90</sup> Personnel including police, prison officers, lawyers, judicial officers, court staff and judges, must receive appropriate training regarding what supports are available for people with disability throughout their engagement with the justice system.<sup>91</sup> This should include disability awareness training, and specific training on how to access these accommodations and supports when working with older people with disability.

#### **PWDA recommends:**

- That mandatory training packages are developed for and delivered to justice system personnel working with people with disability, including police, prison officers, lawyers, judicial officers, court staff and judges.
- That all justice system personnel are aware of the special provisions available for vulnerable witnesses – including people with intellectual disability – under the *Evidence Act 1995 (NSW)* and *Criminal Procedure Act 1986 (NSW)*, and that the availability of these provisions are communicated to people with disability, and their implementation adequately supported.
- That complaint bodies develop forms and documentation in Easy English and Pictorial formats, to ensure their services are accessible to all people with disability.

#### Violation of the right to live independently and be included in the community

Maggie is a 56 woman with Down's syndrome. She lives alone in a flat and receives some in-home support. Maggie's brother, John, got in contact with PWDA after Maggie was left money in their father's will. Two of Maggie and John's brothers, Matthew and Sam, were appointed to manage this money for Maggie, but John is concerned that Sam is using that money for his own purposes. John also claimed that Matthew and Sam are not allowing Maggie to use the money for reasonable purposes.

John and Maggie have both raised these concerns with their brothers. However, Sam recently told Maggie that if she didn't stop causing trouble, she would be put into a nursing home. John wanted PWDA's assistance to perform mediation, so that all siblings could have an input into how Maggie's money would be spent.

67. Forced institutionalization and forced co-habitation, often experienced by older people with disability, violates numerous human rights.<sup>92</sup> The CRPD and UN Principles both outline that older people should be able to live in safe environments that are responsive to their preferences and capacities as they age.<sup>93</sup> People with disability have a right to live in the community, and should be able to access any supports necessary to assist them to do so.<sup>94</sup> However, this is often not the case.
68. In Australia, 45% of people with disability live in or near poverty.<sup>95</sup> The risk of homelessness is thus significant for older people with disability. In 2014-15, 23% of

<sup>89</sup> Victorian Equal Opportunity and Human Rights Commission (2014), op. cit., pp 82-83.

<sup>90</sup> Cadwallader, J. (2015), op. cit., p 12.

<sup>91</sup> *Disability Rights Now* (2012), op. cit., p 78.

<sup>92</sup> *Ibid*, p 130.

<sup>93</sup> UN Principles for Older Persons: Independence (5) and CRPD Article 19(c).

<sup>94</sup> CRPD Article 19.

<sup>95</sup> Finch, K. (2014a) *Standing Committee on Community Affairs References Committee Inquiry into the extent of income inequality in Australia*, People with Disability Australia. pp 3-4. Available at: <http://pwd.org.au/documents/pubs/SB-140812->

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PWDA's individual advocacy clients contacted us regarding accommodation issues, making housing problems the number one issue for which people seek our assistance. 32% of our clients are also over the age of 55.<sup>96</sup> Homelessness Australia stated that in 2013, 13,755 people over the age of 55 received assistance from specialist homelessness services. With the projected increase in older Australians, the number of homeless older people with disability is likely to increase.<sup>97</sup> This is in part due to the fact that public and social housing is inaccessible and inappropriate for older people with disability.<sup>98</sup>

69. A significant proportion of houses in Australia are inaccessible and inappropriate for people with disability, which severely limits where people with disability can live in the community.<sup>99</sup> This highlights the importance of universal design, and the promotion of ageing in place through home modifications.<sup>100</sup> Universal design requirements need to be strengthened, as it is much cheaper to build houses according to universal design as opposed to retrofitting them later.<sup>101</sup> All new housing in NSW should be built to at least the Silver Standard as provided by Liveable Housing Australia, with a significant proportion of these meeting the Gold or Platinum standards.<sup>102</sup> This would ensure accessibility for people with disability who visit as well as live in these properties. Landlords in the private rental market should be encouraged to make amendments to their properties to increase accessibility and provide people with disability with more housing options.<sup>103</sup>
70. The NSW Interagency Policy highlights that older people who are isolated from their families, friends and communities are at higher risk of violence.<sup>104</sup> As such, older people should be supported to live in their own homes, and stay in their communities, for as long as possible. All houses, community centers and other shared, public spaces should also be designed according to universal design principles. This should be a priority of the NSW government to ensure that as the population continues to age, older people, and older people with disability in particular, are able to continue residing in the community and visit their friends and family, thus maintaining their natural supports and protections.
71. Additionally, efforts should be made to analyse how many close friendships and connections older people with disability have, as these relationships can provide a degree of protection from violence. Caring and trusting relationships can provide important opportunities for disclosure of violence and support, for example. Pre-existing social groups, such as Probus Clubs, need to be more inclusive of older people with disability. Indeed, 'nearly 30% of people with disability do not leave home as often as they would like, with the majority citing their disability or the cost of going out as the

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[InquiryIncomeInequalityInAustralia.doc](#); PriceWaterhouseCoopers, "Disability expectations: Investing in a better life, a stronger Australia," November 2011, p 3; *Disability Rights Now* (2012), op. cit., p 191.

<sup>96</sup> PWDA Annual Report 2015

<sup>97</sup> Homelessness Australia (2013) *Homelessness and older people*. Available at:

[http://www.homelessnessaustralia.org.au/images/publications/Fact\\_Sheets/Homelessness\\_and\\_Older\\_People.pdf](http://www.homelessnessaustralia.org.au/images/publications/Fact_Sheets/Homelessness_and_Older_People.pdf)

<sup>98</sup> Submission by attendees at the CRPD Shadow Report consultations in Canberra, ACT (20 November 2009), Darwin, NT (7 December 2009) and Adelaide, SA (25 November 2009); Cadwallader, J. (2014a) *Senate Economic References Committee Inquiry into Affordable Housing*, People with Disability Australia. p 10. Available at: <http://pwd.org.au/documents/pubs/SB140408 - Inquiry-into-Affordable-Housing.doc>

<sup>99</sup> Finch, K. (2014b) *Consultation on the Interim Report of the Reference Group on Welfare Reform 'A New System for Better Employment and Social Outcomes*, People with Disability Australia. p 14. Available at: <http://pwd.org.au/documents/pubs/SB-140808-InterimWelfareReviewReport.doc>; *Disability Rights Now* (2012), op. cit., pp 127-134.

<sup>100</sup> Cadwallader, J. (2014a), op. cit., p 28.

<sup>101</sup> Finch, K. (2015) *NSW Family and Community Services (FACS) Social Housing in NSW: Discussion Paper*, People with Disability Australia. p 10. Available at: [http://pwd.org.au/documents/pubs/SB\\_200215\\_Social\\_Housing\\_in\\_NSW\\_Discussion\\_Paper.doc](http://pwd.org.au/documents/pubs/SB_200215_Social_Housing_in_NSW_Discussion_Paper.doc)

<sup>102</sup> Finch, K. (2014b), op. cit., p 15.

<sup>103</sup> Finch, K. (2015), op. cit., p 6.

<sup>104</sup> Family and Community Services, (2014), op. cit., p 15.

primary reasons.<sup>105</sup> Accessible housing significantly increases the participation rates of people with disability in their community.<sup>106</sup>

72. In 2012, ABS data indicated that only 23.7% of people with disability over the age of 65 participated in community groups over the last 12 months. Fewer people with disability over 65 participated in governance or civic groups in the same time period, with only 10.6% participating in these activities.<sup>107</sup> People without disability over the age of 65, in comparison, participated in these activities at slightly higher rates, at 26.9% and 11.9% respectively.
73. The reality is, however, that people with disability, and aging and older people who are acquiring disability, are often forced to live in segregated settings in order to receive support services.<sup>108</sup> When housing is directly linked to the provision of disability support services, the autonomy and choices of people with disability are constrained even further. This is especially the case for people with disability with complex needs, who may not be able to access or afford alternative providers of care.<sup>109</sup> This segregation and limited community involvement eliminates public scrutiny, giving people with disability less opportunities to disclose and report violence to supporters.<sup>110</sup>
74. A key element of Article 19 of the CRPD is that people with disability should be able to ‘choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.’<sup>111</sup> Currently, however, a large proportion of guardianship arrangements in NSW are established to assist with housing issues.<sup>112</sup> This process contributes to the ongoing violation of the autonomy and legal capacity of people with disability,<sup>113</sup> as family members, guardians and supporters often decide that people with disability should live in segregated institutions, with the person with disability themselves getting little to no say in the matter.<sup>114</sup> This is a clear violation of the legal capacity of people with disability,<sup>115</sup> and means that older people with disability may be forced into inappropriate and unwanted living arrangements. Indeed,

“The claim that older and elderly persons ‘prefer’ to live in institutional accommodation services is seriously misstated. In fact, in many cases, older and elderly persons are obliged or compelled to live in these environments in the same way that persons with disability have been historically... If the necessary supports were provided that would enable older and elderly persons to age in their own homes safely and with dignity, the vast majority would do so.”<sup>116</sup>

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<sup>105</sup> *Disability Rights Now* (2012), op. cit., p 205.

<sup>106</sup> Cadwallader, J. (2014a), op. cit., p 22

<sup>107</sup> ABS, 2012. *Disability, Ageing and Carers*, Australia

<sup>108</sup> French, P. (2009) *Accommodating human rights: a human rights perspective on housing, and housing and support, for persons with disability*. People with Disability Australia. p 52. Available at: <http://pwd.org.au/documents/pubs/AccommodatingHumanRights2003.rtf>; Cadwallader, J. (2014a), op. cit., p26; Cadwallader, J. (2014b) *Legislative Council Select Committee Inquiry into Social, Public and Affordable Housing*, People with Disability Australia. p 12. Available at: <http://pwd.org.au/documents/pubs/SB140307 - Inquiry-into-Social-Public-and-Affordable-Housing.doc>; Finch, K. (2014b), op. cit., p 15.

<sup>109</sup> Finch, K. (2014b), op. cit., p 15.

<sup>110</sup> *Disability Rights Now* (2012), op. cit., p 107; Frohmader, C., & Sands, T. (2015), op. cit., p 52.

<sup>111</sup> CRPD Article 19.

<sup>112</sup> NSW Trustee and Guardian, Attorney General & Justice (2013) *Annual Report 2012-2013: Incorporating the Public Guardian reporting requirements*. Available at: [http://www.tag.nsw.gov.au/verve/resources/NSW\\_Trustee\\_Guardian\\_Annual\\_Report\\_2012-13\[1\].pdf](http://www.tag.nsw.gov.au/verve/resources/NSW_Trustee_Guardian_Annual_Report_2012-13[1].pdf)

<sup>113</sup> See Cadwallader, J. (2014a), op. cit., p 21 for more information.

<sup>114</sup> French, P. (2009), op. cit., pp 52-53.

<sup>115</sup> Outlined in Article 12 of the CRPD

<sup>116</sup> French, P. (2009), op. cit., p 55.

75. Living in the community is linked to positive outcomes such as an increased quality of life, and better social and economic participation.<sup>117</sup> Older people should continue to be integrated in society by being included in the community, and being consulted about the development of policies regarding issues that directly influence their lives.

Four women with disability have grown up and lived together since childhood. They are currently in their 60s and 70s. They are residing in a government run group home and all get along very well and consider themselves to be family. They have lived together peacefully and harmoniously for many years.

18 months ago a fifth female resident, Lydia, was introduced to their group home. This transition changed their living environment dramatically. The new resident physically and emotionally abused her co-residents and staff members.

Lydia's presence brought a great deal of stress and tension to the house, which was detrimental to the health of the other residents. For instance, one of the residents, Addison, has intellectual disability, osteoporosis, anxiety and depression and was not coping well with the presence of Lydia, as she was incredibly fearful of her. She also began to present with dissociative personality disorder symptoms, which previously only presented at times of great stress. The group home was no longer a peaceful, safe place for her to live. Her depression worsened, and she began spending about 90% of her day in bed in the foetal position.

Other residents had been hospitalised after being assaulted by Lydia. In one instance, a resident required stitches to her head. At other times, Lydia has given her co-residents black eyes and painful bruises.

Some of the physical assaults were reported to the police. They suggested that the four women should take out apprehended violence orders against Lydia. However, the women did not understand what this process entailed, or what taking out an apprehended violence order would mean. Consequently, they did not proceed.

Staff reported being very stressed, and being under a lot of pressure. They are distressed by the violence being perpetrated by Lydia and the impact it is having on the other residents. Staff had taken photos of the physical bruises and injuries that Lydia had caused, and reported it to managers of the group home.

A representative of the official community visitor program visited the group home and reported the violent and abusive environment in which these women were now living. The representative and the regional managers of the home had multiple meetings with Lydia's family, but there was no resolution. Lydia and her family were offered the option of moving her to a more suitable group home which had trained staff experienced in managing 'challenging behaviour'. The family rejected this offer and has refused to negotiate any other changes to accommodation.

<sup>117</sup> Cadwallader, J. (2014b), op. cit., p 6.

76. People living in institutional and residential settings are at a much higher risk of experiencing various forms of violence.<sup>118</sup> The recent NSW Ombudsman report into Reviewable Deaths<sup>119</sup> of people with disability living in residential care found that the average age of death for people with disability residing in residential care facilities was 55. This is approximately 25 years younger than the average age of death for Australia's general population.<sup>120</sup>
77. In 2015, PWDA's individual advocacy team was inundated with requests for assistance to obtain home care services. It appears that with the transfer of home care from the Department of Aging Disability and Home Care to Australian Unity, a number of people with disability no longer have access to home care supports, and are subsequently being forced into nursing homes as they are not provided with any alternative options. This means that older people with disability are not being provided the supports required to age in place, nor to remain integrated in wider society.
78. Older people with disability living in institutional environments are also subject to other violations of rights that enable violence and abuse to occur. For example, in many instances, older people with disability have their privacy and their personal boundaries invaded by other residents, staff or support workers in disability service or aged care institutions.<sup>121</sup> This can lead these individuals to believe that they have no right to privacy, especially when breaches are persistent, and may prevent them from reporting their experiences of violence, abuse, neglect and exploitation. For instance, staff have access to the bodies and personal space of clients under their care. They 'have the potential to control every aspect of their lives,'<sup>122</sup> such as deciding when someone showers, eats, sleeps, and is dressed, including who assists them with these tasks and how.

Dominik, a 53 year old man with psychiatric disability, contacted PWDA as he wanted his privacy to be respected. Dominik reported that various staff members of the group home in which he lived were watching him shower.

Julie, a staff member in an aged care facility, reported to management that a co-worker had taken sexually explicit photos of a number of aged care residents. These photos were of the genital region of residents, and they were being shown to students who were on placement at the aged care facility. Management of the aged care facility did not view the matter as serious, and responded by moving the co-worker to another aged care facility. A number of the students took the matter to the relevant complaints body, and Julie reported the matter to the police, who are investigating the matter within their criminal investigation branch.

79. Article 22 of the CRPD states that 'no person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy.'<sup>123</sup> The UN Principles also highlight the importance of privacy,

<sup>118</sup> *Disability Rights Now* (2012), op. cit., p 107.

<sup>119</sup> NSW Ombudsman (2015) *Report of Reviewable Deaths in 2012 and 2013. Volume 2: Deaths of people with disability in residential care*. Available at: [https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0013/25015/Report-of-reviewable-deaths-in-2012-and-2013-Volume-2-Deaths-of-people-with-disability-in-residential-care-2.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0013/25015/Report-of-reviewable-deaths-in-2012-and-2013-Volume-2-Deaths-of-people-with-disability-in-residential-care-2.pdf)

<sup>120</sup> *Ibid*, p 1.

<sup>121</sup> *Disability Rights Now* (2012), op. cit., p 149.

<sup>122</sup> French, P., Dardel, J., and Price-Kelly, S. (2010), op. cit., p 18.

<sup>123</sup> CRPD Article 22(1)

regardless of where the person is residing,<sup>124</sup> and the implementation of these standards must be enforced in order to prevent the development of cultures that lead to the perpetration of other forms of violence.

**PWDA recommends:**

- That the NSW government provide funding for existing social networks, such as Probus Clubs, to become more inclusive for older people with disability, as a way to protect older people against violence.
- That the NSW Government amend construction legislation and regulation to ensure that at least the Silver Standard of universal design principles is achieved in all new housing.
- That the NSW Government provides funding for landlords in the private rental market to make changes to their properties to increase accessibility.

In conclusion, it is clear that older people with disability experience a range of violations to their human rights which result in violence, abuse, neglect and exploitation. This is particularly the case for older people with disability residing in institutional environments where there is a lack of independent oversight and response mechanisms to deal appropriately with violence and criminal conduct. There must be increased synergy between disability policy and policy designed to address the needs of older people. It is imperative that the views of older people with disability are taken into account through NSW consultation processes.

**PWDA thanks the Committee for the opportunity to contribute to this Inquiry, and we would welcome further consultation on any of the matters raised in this submission.**

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<sup>124</sup> United Nations Principles for Older Persons (1991), op. cit.  
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