

Women With Disabilities Australia



Submission to the UN Analytical Study on Violence
against Women and Girls with Disabilities

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Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities (A/HRC/RES/17/11)

By Carolyn Frohmader for Women With Disabilities Australia (WWDA)

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Contact Details:

Women With Disabilities Australia (WWDA)
PO Box 605, Rosny Park 7018 TASMANIA, AUSTRALIA
Ph: +61 3 62448288 Fax: +61 3 62448255
Email: wwda@wwda.org.au
Web: www.wwda.org.au

WWDA on Facebook:

<http://www.facebook.com/pages/Women-With-Disabilities-Australia-WWDA/202081393153894>

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000



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introduction

1. Women With Disabilities Australia (WWDA)¹ is the peak non-government organisation (NGO) for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities, and represents more than 2 million disabled women in Australia. WWDA's work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. Promoting the rights of women with disabilities to freedom from violence, exploitation and abuse and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA.²
2. Australia is a country that prides itself on ideals which include a fair go for everyone, freedom and dignity of the individual, equality of men and women, equality of opportunity, freedom from discrimination, and the right of its citizens to participate fully in the economic, political and social life of the nation.³ However, these entitlements remain a distant goal for women with disabilities. In Australia today, women with disabilities are not given a 'fair go', they are denied the most fundamental rights and freedoms, they are not treated with dignity and respect, they remain profoundly more disadvantaged than their male counterparts; are systematically denied opportunity in every aspect of society; experience multiple forms of discrimination, and widespread, serious violation of their human rights. They remain largely ignored in national policies and laws, and their issues and needs are often overlooked within broader government programs and services. Negative stereotypes from both a gender and disability perspective further compound the exclusion of women with disabilities from support services, social and economic opportunities and participation in civic and community life. The deep-rooted exclusion experienced by women with disabilities in Australia continues unabated due in part to the dearth of information available on its extent or impact, and the apathy of successive Governments in acknowledging the need for such information.⁴
3. Violence against women with disabilities remains a key factor that undermines the ability of disabled women to participate as full and equal citizens in Australian society. Violence against women with disabilities is an intersectional category dealing with both gender-based and disability-based violence. The confluence of

¹ For more detailed information on Women With Disabilities Australia (WWDA), go to: <http://www.wwda.org.au>

² See WWDA's *Strategic Plan 2010 – 2015* at: <http://wwda.org.au/stratplan.htm>

³ See: Commonwealth of Australia (2009) *A Stronger, Fairer Australia: National Statement on Social Inclusion*. Department of the Prime Minister and Cabinet, Canberra; See also: McClelland, R. in Commonwealth of Australia (2010) *Australia's Human Rights Framework*, Attorney-General's Department, Canberra; See also: Australian Government *Australian Values Statement*, Department of Immigration & Citizenship, available online at: <http://www.immi.gov.au/living-in-australia/values/statement/long/>

⁴ Women With Disabilities Australia (WWDA)(2011) '*Assessing the situation of women with disabilities in Australia: A human rights approach*'. Available online at: <http://wwda.org.au/subs2011.htm>

these two factors results in an extremely high risk of violence against women with disabilities.^{5 6} In Australia, women with disabilities experience high levels of domestic/family violence and sexual assault, and have high levels of unmet needs in terms of access to domestic violence, sexual assault and related community support services. It is now widely acknowledged that compared to non-disabled women, women with disabilities are at greater risk of severe forms of intimate partner violence; they experience violence at significantly higher rates, more frequently, for longer, in more ways, and by more perpetrators; they have considerably fewer pathways to safety, and are less likely to report experiences of violence - yet programs and services for this group either do not exist or are extremely limited. In Australia, responses to violence against women with disabilities have traditionally been characterised by limited recognition by governments and the service sector of the nature and extent of the problem; inadequate research; incomplete or partial response structures, and scarce resources to support advocacy in the area.^{7 8 9}

4. The duty of Governments to respect, protect, fulfil and promote human rights with regard to violence against women includes the responsibility to prevent, investigate and prosecute all forms of, and protect all women from such violence and to hold perpetrators accountable.¹⁰ The responsibility of the Australian Government to address violence against women and girls with disabilities is explicitly delineated in a number of the human rights treaties it has ratified, particularly the *Convention on the Rights of Persons with Disabilities* (CRPD).¹¹ Article 16 of the CRPD (Freedom from exploitation, violence and abuse) requires states to ensure that people with disabilities are not subject to any form of exploitation, violence or abuse; requires states to protect women, children and older people with disabilities from gender and age aggravated exploitation, violence and abuse; requires states to institute measures to ensure the detection, investigation and prosecution of exploitation, abuse and neglect of people with disabilities and to promote the physical and psychological recovery and social reintegration of victims.
5. The obligation to respect, protect and fulfil women with disabilities' right to freedom from violence, exploitation and abuse and to freedom from torture and other cruel, inhuman or degrading treatment or punishment, clearly requires Australian Governments to do much more than merely abstain from taking measures which might have a negative impact on women with disabilities. The obligation in the case of women and girls with disabilities is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to women with disabilities in order to ensure that they enjoy all human

⁵ In addition to the forms of violence experienced by women in general, the following also constitute violence against women with disabilities: forced/coerced abortion and sterilisation; forced/coerced psychiatric interventions, involuntary commitment to institutions, forced isolation, physical and chemical restraint; strip searches; deprivation of legal capacity; denial of necessities and purposeful neglect; withholding mobility aids, communication equipment, or medication that the woman uses voluntarily; threats to neglect or kill support or assistive animals; being left in physical discomfort or in embarrassing situations for long periods of time; threats of abandonment by caregivers; violations of privacy; rape and sexual abuse by personal carers, staff and other inmates/residents of institutions.

⁶ International Network of Women with Disabilities (2011) *Violence Against Women with Disabilities*. Barbara Faye Waxman Fiduccia Papers on Women and Girls with Disabilities, Center for Women Policy Studies.

⁷ Frohmader, C. & Meekosha, H. [forthcoming] Recognition, respect and rights: Women with disabilities in a globalised world. In *Disability and Social Theory*, Edited by Dan Goodley, Bill Hughes and Lennard Davis, London: Palgrave Macmillan.

⁸ Women With Disabilities Australia (WWDA) (2007b) '*Forgotten Sisters - A global review of violence against women with disabilities*'. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia.

⁹ Healey, L., Howe, K., Humphreys, C., Jennings, C. & Julian, F. (2008) *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria*. Published by the Victorian Women with Disabilities Network Advocacy Information Service, Melbourne.

¹⁰ United Nations General Assembly (2006) *In-depth study on all forms of violence against women*. Report of the Secretary-General. A/61/122/Add.1.New York.

¹¹ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106.

rights. This invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.¹²

6. This Submission from Women With Disabilities Australia (WWDA) to the preparation phase of the *UN Analytical Study on Violence Against Women and Girls with Disabilities*, aims to provide an overview of the legislation, regulatory frameworks, policy, administrative procedures, services and support available within Australia to prevent and address violence against women and girls with disabilities. WWDA acknowledges that, due to time and resource constraints, this Paper does not provide a complete and detailed analysis of all mechanisms and programs across Australia's eight States and Territories. However, the information provided in this Paper does clearly demonstrate that there have been, and remain, significant systemic failures in legislation, regulatory frameworks, policy, administrative procedures, availability and accessibility of services and support, to prevent and address the epidemic that is violence against women and girls with disabilities. Underlying these systemic failures is an entrenched culture throughout all levels of Australian society that devalues, stereotypes and discriminates against women and girls with disabilities, and invariably perpetuates and legitimises not only the multiple forms of violence perpetrated against them, but also the failure of governments to recognise and take action on the issue.

¹² Women With Disabilities Australia (WWDA) (2010) *Women With Disabilities & The Human Right to Health: A Policy Paper*. Available online at: <http://www.wwda.org.au/health2006.htm>



data and statistics

Have studies/research been conducted on the prevalence, nature, causes and impact of violence against women and girls with disabilities in different settings (family/home, work-place, medical institutions, schools, etc.?). What forms of disability and violence do they cover?

7. To date, there have been no national studies or research conducted to establish the prevalence, extent, nature, causes and impact of on violence against women and girls with disabilities in different settings. There is no data collection in Australia on violence against women with disabilities.
8. For more than a decade, WWDA has called on successive Australian Governments to commission and resource nationwide research to ascertain the prevalence, extent, nature, causes and impact of violence against women with disabilities.^{13 14 15} The need for such research has been widely documented across a range of sectors for a number of years.^{16 17 18 19} The critical need for Governments to accelerate their efforts in research and data collection in relation to violence against women with disabilities has also recently been re-iterated by the United Nations Human Rights Council.²⁰
9. The Australian Government concedes that violence against women with disabilities in Australia is 'widespread'.²¹ As recently as 24 October 2011, the Federal Minister for the Status of Women, Kate Ellis acknowledged that women with disabilities, particularly intellectual disabilities, are extraordinarily vulnerable to violence and abuse. She stated:

*"We don't know the full extent, but we do know (women with disabilities) are massively over-represented in the statistics of women in Australia who are subjected to violence. We know that women with disabilities, particularly intellectual disabilities, can be extraordinarily vulnerable and we also know there are issues around reporting and around knowing where to turn for assistance and how to avoid those sorts of relationships."*²²

¹³ In 2010, for example, WWDA undertook a national postcard campaign, urging all politicians to support WWDA's call for the Australian Government to commission and fund a national study on the incidence and prevalence of violence against women with disabilities. Although WWDA received in principle support from many politicians, no action has been taken to date.

¹⁴ Women With Disabilities Australia (WWDA) (2007b) OpCit.

¹⁵ Women With Disabilities Australia (WWDA) (2010) *Women With Disabilities & The Human Right to Health: A Policy Paper*. Available online at: <http://www.wwda.org.au/health2006.htm>

¹⁶ Healey, L. et al (2008) OpCit.

¹⁷ Bartels, L. (2010) *Emerging issues in domestic/family violence research*. Research in Practice Report No. 10, Australian Institute of Criminology, Canberra.

¹⁸ Tually, S., Faulkner, D., Cutler, C. & Slatter, M. (2008) *Women, Domestic and Family Violence and Homelessness: A Synthesis Report*. Prepared for the Office for Women (Australian Government).

¹⁹ Murray, S. & Powell, A. (2008) *Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response*. Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, Melbourne.

²⁰ United Nations Human Rights Council, Resolution 14/12: *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*. 23 June 2010, A/HRC/RES/14/12.

²¹ 'Disabled women vulnerable to abuse: govt.' 9News; Monday Oct 24 2011. Accessed online October 2011 at:

<http://news.ninemsn.com.au/national/8364611/disabled-women-vulnerable-to-abuse-govt>

²² Ibid.

10. The most immediate and apparent finding in researching and analysing violence against women with disabilities in Australia, is the limited information available on any aspect of the issue. The neglect in research of women with disabilities generally has been highlighted by the United Nations *Committee on the Elimination of All forms of Discrimination Against Women (CEDAW)*, in both its 2006 and 2010 assessments of the Australian Government's implementation of the Convention.^{23 24} In its 2010 Concluding Comments, the CEDAW Committee made very strong recommendations regarding the need for **urgent action** by Australian governments in relation to women with disabilities, including the need to:

- Undertake a comprehensive assessment of the situation of women with disabilities in Australia;
- Address the abuse and violence experienced by women with disabilities living in institutions or supported accommodation;
- Adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions;
- Enact national legislation prohibiting forced sterilisation of women and girls with disabilities.

11. The main indicators available to date about violence against women in Australia, come from the 1996 Australian Bureau of Statistics (ABS) *Women's Safety Survey*²⁵ which gathered information about women's experiences of violence, and the 2005 ABS *Personal Safety Survey (PSS)*,²⁶ which collected information about both women's and men's experiences of violence. Both the ABS Surveys (1996, 2005) have been criticised for their limitations in providing a sufficiently comprehensive picture of violence against women.^{27 28 29}

12. In 2004, WWDA, along with several other national disability organisations, wrote to the [then] Australian Government strongly advocating the need for the 2005 PSS to include data collection on violence against women with disabilities,^{30 31} and calling for further qualitative studies to expand on the Survey results, including information about women with disabilities. In response, the Government declined to act on this recommendation, suggesting that a sample size of 12,000 women *'may still be too small to gain accurate prevalence estimates of women with a disability who have also experienced violence'*.³² A further reason given related to survey methodology: *'as women are most at risk of experiencing violence from someone known to them, we are aware of the sensitivities involved in surveying women with disabilities about their*

²³ In its 2006 Concluding Comments on Australia's combined Fourth and Fifth Reports on Implementing CEDAW, the CEDAW Committee expressed its regret at the *'absence of sufficient information and data on women with disabilities'*, and specifically recommended that *'the State Party to include adequate statistical data and analysis, disaggregated by sex, ethnicity and disability, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention.'* See: UN Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, 3 February 2006, CEDAW/C/AUL/CO/5.

²⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, 30 July 2010, CEDAW/C/AUS/CO/7.

²⁵ See: <http://www.abs.gov.au/ausstats/abs@.nsf/lookupMF/B62DEB3AC52A2574CA2568A900139340>

²⁶ See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

²⁷ Mulroney, J. (2003) *Australian Statistics on Domestic Violence*. Australian Domestic and Family Violence Clearinghouse Topic Paper. Sydney NSW.

²⁸ Flood, M. (2006) *Violence Against Women and Men in Australia: What the Personal Safety Survey can and can't tell us*. DVIRC Quarterly, Edition 4, Summer 2006. Domestic Violence and Incest Resource Centre (DVIRC), Victoria.

²⁹ Phillips, J. & Park, M. (2004, 2006) *Measuring domestic violence and sexual assault against women: a review of the literature and statistics*. Parliament of Australia Library. Retrieved from <http://www.aph.gov.au/library/INTGUIDE/SP/ViolenceAgainstWomen.htm>

³⁰ Women With Disabilities Australia (WWDA) (2004) *Correspondence to Kerry Flanagan*, Australian Government Office of the Status of Women. May 18, 2004.

³¹ People With Disability Australia (PWDA) (2004) *Correspondence to Kerry Flanagan*, Australian Government Office of the Status of Women. May 31, 2004.

³² Flanagan, K. (2004) *Correspondence to Women With Disabilities Australia (WWDA) from the Department of the Prime Minister and Cabinet Office of the Status of Women*; 3 June 2004.

experience(s) of violence in the presence of a carer, who in some circumstances may be the perpetrator of violence' (Flanagan 2004).³³

13. The next national *Personal Safety Survey* is due to be conducted in 2012, although this is yet to be confirmed. The potential 2012 PSS would build the evidence base on the nature, extent and characteristics of women's and men's experiences of violence in Australia. Although the next PSS will contain a disability module, the Australian Bureau of Statistics (ABS) has acknowledged that *'it is likely that estimates for people with disabilities will be under-estimated'*.³⁴ Limitations of the 2012 PSS in relation to capturing data on violence against women with disabilities include:

- the PSS is conducted via personal interview in the respondent's home, with a small number of interviews occurring by telephone. Eliciting good data about experiences of violence depends on the respondent clearly understanding the questions being asked, their ability to respond and the interview being able to occur in private. People with disabilities who do not meet these criteria will be 'un-selected' from the PSS.
- the PSS will not include residents of special dwellings (eg: boarding houses, institutions).

14. A potential source of some statistical data on violence against women with disabilities may be available through the *National Disability Abuse and Neglect Hotline*³⁵ (the 'Hotline'). The Hotline is an Australia-wide telephone hotline for reporting abuse and neglect of people with disabilities, is fully funded by the Australian Government,³⁶ and operated on behalf of the Government by a national peak disability organisation. Its primary target group are people with disabilities who use Commonwealth, State or Territory provided or funded disability services. Notifications of abuse and neglect are referred to relevant complaint bodies for their resolution. Statistical and other data from the Hotline is provided to the Government, however, none of this data or information is available to the public. WWDA understands that the data is disaggregated by gender, however it is unclear how the Australian Government uses the data it collects. There is no legislative base for the Hotline and it therefore has no statutory functions, powers and immunities.³⁷ It has no investigative powers, no power to compel any other agency to investigate a complaint, and no power to formally review complaint investigation processes and outcomes. The Hotline does not have any systemic investigation, inquiry or review powers, and is unable to initiate action at its own motion.³⁸ There is a clear lack of transparency relating to outcomes of notifications; there are a number of service types which are excluded from its mandate (such as licenced boarding houses), and definitions which set the scope of its work

³³ Ibid.

³⁴ Australian Bureau of Statistics (2010) Personal Safety Survey Advisory Group Meeting (16 July 2010) *Agenda Item 6: Survey content for a 2012 Personal Safety Survey (PSS)*.

³⁵ The National Disability Abuse and Neglect Hotline is an Australia-wide telephone hotline for reporting abuse and neglect of people with disability. Cases of abuse and neglect can include physical, sexual, psychological, legal and civil abuse, restraint and restrictive practices, or financial abuse. It can also include the withholding of care and support which exposes an individual to harm. See: <http://www.disabilityhotline.org/>

³⁶ The Hotline is fully funded by the Australian Government through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), and operated by People with Disability Incorporated (PWD), a national peak disability rights and advocacy organisation (see: <http://www.pwd.org.au>).

³⁷ French, P., Dardel, J. & Price-Kelly, S. (2010) *Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment*. People With Disability Australia (PWD), Sydney, NSW.

³⁸ Ibid.

fail to incorporate a domestic context.³⁹ Although the Hotline offers potential as a mechanism in detecting, reporting and responding to violence against women with disabilities, in its current form it is severely limited.

Government Research Initiatives

15. There have been minimal research studies initiated by Australian Governments on violence against women with disabilities.
16. In 1990, the Australian Government established a *National Committee on Violence Against Women* (NCVAW) to 'initiate research, coordinate community education and act as a forum for national consideration of legal, policy and program issues'.⁴⁰ The NCVAW commissioned a small project to examine the effectiveness of service delivery to women with disabilities who experience violence, representing an acknowledgment by the Australian Government that violence against women with disabilities was an issue. The study looked at access to police, legal and support services and used a qualitative framework to interview women with disabilities, service providers, relevant government agencies and non-government organisations. The NCVAW was wound up in 1993, with none of the study's recommendations being implemented.
17. In 1996, the New South Wales (NSW) Government funded a small research project to investigate access for women with disabilities to existing sexual assault services. Interviews with women with disabilities, carers and organisations identified key issues such as lack of understanding by service providers of the intersections between gender, disability and abuse; the discriminatory culture within services; lack of information for women with disabilities about abuse; and lack of access to services. Recommendations centred on empowerment, access to quality services and advocacy.⁴¹ There is no information available on whether or how these recommendations were implemented.
18. In May 2008, the Australian Government established the *National Council to Reduce Violence against Women and their Children* (the Council). The Council's main role was to develop a national plan to reduce the incidence and the impact of violence against women and their children. In March 2009, the Council released *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021*,⁴² which contained the Council's recommendations for a *National Plan to Reduce Violence against Women* to be developed and agreed by the Council of Australian Governments (COAG) and to be released in 2010.

³⁹ See for example: Attard, M., & Price-Kelly, S. (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, People with Disability Australia, NSW. Accessed online October 2011 at: <http://www.pwd.org.au/documents/pubs/Accommodating%20Violence%20Report.pdf>

⁴⁰ Putt, J. & Higgins, K. (1997) *Violence Against Women in Australia: Key Research and Data Issues*. Australian Institute of Criminology, Canberra.

⁴¹ New South Wales Department for Women (1996) *Reclaiming Our Rights - Access to Existing Police, Legal & Support Services for Women with Disabilities or who are Deaf or Hearing Impaired who are Subject to Violence*. Prepared by Liz Mulder for the New South Wales Department for Women, Sydney, Australia.

⁴² Commonwealth of Australia (2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

19. *Time for Action* identified six key outcome areas⁴³, proposed strategies and actions in each area and identified 20 high-priority actions that required an urgent response. One of these 'high-priority actions' included developing a national response to 'audit crisis accommodation services for their accessibility for all women'.⁴⁴ However, to date, there is no evidence that this has occurred, and it appears that it is no longer considered a priority by the Government. This is despite many years of WWDA and other stakeholders urging the Australian Government to commission a national audit of crisis accommodation services (including women's refugees) to determine their levels of accessibility and safety for women with disabilities.

20. The urgent need for improvement in data collection was also identified in *Time for Action*. A key strategy included 'build[ing] the evidence base', noting that:

*data relating to violence against women and their children in Australia is poor. Data on services sought by, and provided to, victims is not readily available, and the way in which information is reported is generally inconsistent and does not allow for a comprehensive understanding of violence against women.*⁴⁵

21. *Time for Action* also found that where data exists, there are many limitations, including for example:

- *Under-reporting, particularly given sample populations of large surveys often do not reach the most vulnerable groups of women;*
- *There is an over-reliance on data not supported by in-depth, detailed research that would provide a better understanding of the relevance of different social, physical, cultural, geographical and economic contexts.*⁴⁶

22. In November 2009, the Australian Government released the findings of the *National Community Attitudes towards Violence against Women Survey 2009*.⁴⁷ For the first time in this survey series, a limited number of questions on violence against women with disabilities were included. Some key findings from the survey about women with disabilities included:

- community awareness of violence against women with disabilities was very poor;
- few respondents recognised the greater vulnerability of women with disabilities to violence;
- only 9% of respondents agreed that 'women with intellectual disabilities are more likely to experience violence than other women'. 69% of respondents disagreed with the statement;
- 16% agreed that 'women with physical disabilities are more likely to experience domestic violence than other women', but 58% disagreed;
- 76% of respondents agreed that 'few people know how often women with disabilities experience rape or sexual assault';

⁴³ The six outcome areas were: 1) communities are safe and free from violence; 2) relationships are respectful; 3) services meet the needs of women and their children; 4) responses are just; 5) perpetrators stop their violence; and 6) systems work together effectively (NCRVWC 2009).

⁴⁴ Commonwealth of Australia (2009) *The National Plan to Reduce Violence against Women: Immediate Government Actions*; April 2009, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

⁴⁵ Bartels, L. (2010), OpCit.

⁴⁶ Commonwealth of Australia (2009) *Background Paper to The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

⁴⁷ The National Community Attitudes towards Violence against Women Survey (2009) was conducted with a broad cross-section of the Australian community, with approximately 10,000 people participating. The survey included 16 and 17-year-olds with parental consent, telephone interviews with 2,500 members of the Italian, Greek, Chinese, Vietnamese and Indian communities and face-to-face interviews with 400 Indigenous Australians. The results are compared with an equivalent national survey conducted in 1995 to examine changes in attitudes over time. The Survey Report is available online at: http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/NCAS_CommunityAttitudes_report_2010.ashx

- 42% of female respondents and 35% of male respondents agreed that ‘*women with disabilities who report rape or sexual assault are less likely to be believed than other women*’.

23. In February 2011, the Australian Government released the *National Plan to Reduce Violence against Women and their Children 2010-2022*,⁴⁸ which consists of four three-year Action Plans. The First Action Plan (2010–2013) includes two key ‘*immediate national initiatives*’ specifically focused on women with disabilities. They are to:

- Investigate and promote ways to improve access and responses to services for women with disabilities.
- Support better service delivery for children, Indigenous women and women with disabilities through the development of new evidence based approaches where existing policy and service responses have proved to be inadequate.⁴⁹

Australian Research

24. The limited and fragmented work undertaken by Governments to date, is supplemented by a small number of research studies into violence against women with disabilities in Australia.

25. Examples of the work undertaken include an examination of the experiences of women while inpatients in a psychiatric hospital. This 1997 NSW study uncovered the occurrence of sexual abuse and made evident the failure of the system to respond to that abuse.^{50 51} In another NSW study, identification of the barriers facing women with an intellectual disability when making a statement about sexual assault to police was undertaken by interviewing sexual assault workers and police officers. While the study found that women with intellectual disabilities face significant barriers in successfully making statements to police following a sexual assault, the omission of the views of the women themselves was a significant limitation of the study.⁵²

26. The *Sexual Offences Project for Women with Disabilities*, conducted in Victoria in 2003, aimed to examine the issues and problems victim/survivors with cognitive impairment experience when reporting sexual assault and proceeding with prosecution in Victoria. Unfortunately, ‘*due to ethical concerns and resource constraints, as well as the varying abilities of victim/survivors to share their experiences*’, it was decided that victim/survivors would not be directly interviewed. The Project instead invited those people who work with victim/survivors to ‘*give case studies that illustrate important issues and experiences when reporting and/or seeking access to justice*’.⁵³

⁴⁸ The National Plan is a 12-year strategy endorsed by the Commonwealth and states and territory governments. The National Plan will be driven by a series of four three-year Action Plans. The four Action Plans have been designed as a series to be implemented over 12 years, each building on the other.

⁴⁹ The *National Plan to Reduce Violence against Women and their Children 2010-2022* is available online at:

<http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx>

⁵⁰ Davidson, J. & McNamara, L. (1999) Systems that Silence: lifting the lid on psychiatric institutional sexual abuse. In Breckenridge, J. & Laing, L. (Eds) *Challenging Silence Innovative Responses to Sexual and Domestic Violence*. Allen and Unwin, St Leonards, pp. 86-102.

⁵¹ Davidson, J. (1997) *Every Boundary Broken Sexual Abuse of Women Patients in Psychiatric Institutions*. Women and Mental Health Inc: Rozelle, NSW, Australia.

⁵² Keilty, J., & Connelly, G. (2001) *Making a statement: An exploratory study of barriers facing women with an intellectual disability when making a statement about sexual assault to police*. *Disability & Society*, Vol. 16, No.2, pp. 273-291.

⁵³ Goodfellow, J. & Camilleri, M. (2003) *Beyond Belief, Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice*. Final report of Stage One of the Sexual Offences Project. Available online at: <http://www.wvda.org.au/viol2001.htm>

27. Similarly localised, Cockram's work documenting the nature and extent of family and domestic violence against women with disabilities in Western Australia in 2003, sought to ascertain whether the needs of women with disabilities were being adequately addressed by relevant services. The accounts of women with disabilities who have histories of family and domestic violence coupled with information from service agencies, highlighted discrimination against such women by service providers across a range of sectors.⁵⁴
28. A Victorian study undertaken in 2006 analysed 850 rapes reported to Victoria Police over three years, from 2000 to 2003.⁵⁵ In 92.5% of cases, the victims were female. More than a quarter of victims (26.5%) were identified as having a disability and, of this group, 15.6% had a psychiatric disability and 5.9% had an intellectual disability. The cases in the study involving victims with a disability were among those least likely to result in charges being laid against the offender and twice as likely to be determined as false.
29. A recent Project undertaken by the Victorian Office of the Public Advocate (OPA)⁵⁶ examined violence against OPA clients with cognitive impairments.⁵⁷ Women comprised 76% of the study. The study found that women of all ages with a range of cognitive impairments are subjected to physical, sexual, psychological, emotional and impairment-related violence, financial abuse and neglect. The study also found that, when acts of violence are not responded to appropriately, further violence is likely to be perpetrated against the person and it is less likely that the person will report it.
30. Figures from the Victorian OPA also show that in the past five years, police have examined more than 1000 cases of alleged abuse involving people with severe disabilities living in state residential care or private homes - including 282 allegations of assault, 320 of rape, and six alleged abductions or kidnapping.⁵⁸
31. A recent study in NSW examined the experience of domestic violence and women with disabilities living in licensed boarding houses.⁵⁹ The study found that domestic violence is a daily lived experience of the women, and this situation exists largely due to '*failures in legislative frameworks, policy guidelines, administrative procedures, accessibility of services and support.*' The study found that women with disabilities have limited knowledge of rights and options to be free from this form of abuse, and that they experience '*significant barriers*' in accessing domestic violence support services.

⁵⁴ Cockram, J. (2003) *Silent Voices: Women With Disabilities and Family and Domestic Violence*. A joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University, Perth, Australia.

⁵⁵ Heenan, M., & Murray, S. (2006). *Study of reported rapes in Victoria 2000–2003. Summary research report*. Melbourne: Statewide Steering Committee to Reduce Sexual Assault. Published by the Office of Women's Policy, Department for Victorian Communities.

⁵⁶ OPA is an independent statutory body established by the Victorian State Government. OPA works to protect and promote the interests, rights and dignity of people with a disability. See: <http://www.publicadvocate.vic.gov.au>

⁵⁷ Office of the Public Advocate (2010) *Violence against people with cognitive impairments: Report from the Advocacy/Guardianship program at the Office of the Public Advocate, Victoria*. Prepared by Janine Dillon. Available online at:

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

⁵⁸ 'Law failing to protect disabled in state care'; *The Age Newspaper*, April 24, 2011. Accessed online October 2011 at:

<http://www.theage.com.au/victoria/law-failing-to-protect-disabled-in-state-care-20110423-1dse1.html>

⁵⁹ Attard, M., & Price-Kelly, S., (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, People with Disability Australia, NSW. Accessed online October 2011 at:

<http://www.pwd.org.au/documents/pubs/Accommodating%20Violence%20Report.pdf>

32. The lack of research on the issue of violence against women with disabilities has been identified by several writers as a major concern for some time.⁶⁰ The small number of Australian research studies on violence against women with disabilities that have occurred over the past twenty years, have tended to be one-off, short term, small scale, and localised to a particular State/Territory or region. Generally speaking, the majority of projects have focused on women with intellectual disabilities. The lack of independent evaluation appears to be a common theme, as does the lack of translation of findings into practice. Appendix 1 to this document provides a brief description of all known Australian projects on the issue of violence against women with disabilities for the period 1990 – 2010.

Positive Initiatives

33. In recent times it does appear that the issue of violence against women with disabilities is slowly gaining more attention, particularly at the national policy level. In many respects, this is directly attributable to the sustained advocacy work of WWDA and its allies.

34. In early 2011, as part of the *National Plan to Reduce Violence against Women and their Children 2010-2022*, the Australian Government announced funding of up to three million dollars over three years for Community Action Grants to ‘support community action to reduce violence against women through projects which prevent domestic and family violence and encourage respectful relationships.’⁶¹ The Government announced that ‘priority will be given to projects that provide support to specific communities of older women, women with disabilities, culturally and linguistically diverse communities and gay and lesbian communities.’ At the time of writing, several of the seventeen successful projects are still to be publicly announced, although two of those which have been announced, will focus on violence against women with disabilities.⁶²

35. WWDA also understands that, as part of the Australian Government’s immediate response to the National Plan, the Government will commission a national reform project on ‘*Improving Service Delivery to Women with Disability*’. This national reform project is intended to provide an evidence base for future reform of the service system to better respond to the needs of women with disabilities. At the time of writing, this national reform project is in the preliminary planning stage and no firm details are yet available.

36. Other positive developments at the national level include, for example:

- Representation of women with disabilities on the Australian Government’s national advisory structure to develop the National Plan to Reduce Violence against Women and their Children 2010-2022;
- Prioritising women with disabilities in the first Action Plan (2010–2013), including through two ‘*immediate national initiatives*’;

⁶⁰ Cited in Women With Disabilities Australia (WWDA)(2007b) OpCit.

⁶¹ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)(2011) Program Guideline Suite: *Part C: Application Information; Community Action Grants, Stream 1 – Community Projects*. FaHCSIA, Canberra.

⁶² People with Disability Australia (PWD) will receive \$147,720 over three years to roll out a domestic abuse and neglect training package for its staff and service providers. Montagu Community Living (Tasmania) will receive \$250,000 to deliver its ‘Find A Friend, Keep A Friend’ project supporting women with disabilities.

- Representation of women with disabilities on the Australian Bureau of Statistics *Personal Safety Survey 2012 Advisory Group*;
- Representation of women with disabilities on the Advisory Board of the 24 hour national counselling service 1800 RESPECT.⁶³

Please provide the available data on the number of women and girls with disabilities who have accessed services and programmes to prevent and address violence in the past year? Is this information disaggregated by disability, as well as by sex, age, socio-economic and ethnic backgrounds?

37. Most services in Australia do not routinely collect disaggregated data on disability and violence, including our national data collection, hospitals, courts, and police. Little is known about the help-seeking experiences of women with disabilities experiencing (or at risk of experiencing) violence.^{64 65 66} The lack of inclusive services and programs for women with disabilities experiencing or at risk of experiencing violence is well documented.⁶⁷
38. In Australia, Governments attempt to respond to violence against women through the legal and judicial systems on the one hand and through service systems, which provide protection, support, treatment and education, on the other hand.⁶⁸ Women with disabilities are not only marginalised and ignored in many of these responses, but paradoxically, experience violence within and by the very systems and settings which should be affording them, care, sanctuary and protection.^{69 70}
39. The *Supported Accommodation Assistance Program (SAAP)* (replaced in January 2009 by the *National Affordable Housing Agreement*) was the Australian Government's main homeless program and, as such, funded services including women's refuges, shelters, and crisis services. The systematic exclusion of disabled women from such services has been documented for more than two decades.⁷¹ In 2004, the New South Wales Ombudsman undertook an inquiry⁷² into New South Wales SAAP agencies to determine the extent of, and reasons for, exclusion from SAAP. Overall, the inquiry found that *'the level and nature of exclusions in SAAP are extensive. In some cases, exclusions appear to be unreasonable and possibly in contravention of SAAP and anti-discrimination legislation, and SAAP standards and guidelines'*. Disabled people, including

⁶³ See: <http://www.1800respect.org.au/>

⁶⁴ Healey, L. et al (2008) OpCit.

⁶⁵ Women With Disabilities Australia (WWDA)(2007b) OpCit.

⁶⁶ Murray, S. & Powell, A. (2008) OpCit.

⁶⁷ Women With Disabilities Australia (WWDA)(2007b) OpCit.

⁶⁸ Roeher Institute (1994) *Violence and People with Disabilities: A Review of the Literature*. Prepared by Miriam Ticoll of the Roeher Institute for the National Clearinghouse on Family Violence, Health Canada, Ontario.

⁶⁹ Women With Disabilities Australia (WWDA)(2007b) OpCit.

⁷⁰ Office of the Public Advocate [Victoria] (2010) *Violence against people with cognitive impairments: Report from the Advocacy/Guardianship program at the Office of the Public Advocate, Victoria*. Prepared by Janine Dillon, OPA, Melbourne.

⁷¹ See, for example: Disabled People's International (Australia) Women's Network, 'Summary of Response to Housing Issues for Women with Disabilities' in *Women's Network Newsletter for Women with Disabilities*, 1992, Issue 1; Ludo McFerran, 'Consumer driven services: do-it-yourself research that puts the consumer back in the picture' (1996) 11(3) *National Housing Action* 5–12; Diana Currie, 'Housing Issues for Women With Disabilities', *National Housing Action*, 1996, Vol 11, No 3, pp 20–6.

⁷² NSW Ombudsman (2004) *Assisting homeless people: the need to improve their access to accommodation and support services: final report arising from an inquiry into access to, and exiting from, the Supported Accommodation Assistance Program*, NSW Ombudsman, Sydney.

people with physical impairments, intellectual impairments, acquired brain injuries, along with people with mental illnesses, were one of the most significant groups affected by exclusion from SAAP. The inquiry found that a significant proportion of exclusions were based on 'global' policies of turning away all individuals belonging to a particular population group or sharing similar characteristics with a group. Reasons given by service providers for exclusions included limited staffing levels, incompatibility with other clients/residents, industrial legislative issues for staff, lack of physical access to buildings and lack of staff expertise and skills.⁷³

40. It is well documented that domestic and family violence is one of the major factors in homelessness.^{74 75} And it is clear that women with disabilities are over-represented in the factors that contribute to homelessness.⁷⁶ Despite this, women with disabilities remain excluded from all levels of the National Affordable Housing Agreement – the primary policy and program response designed to address homelessness in Australia.

41. On 1st July 2011, the Australian Government operationalised the new *National Minimum Data Set for Specialist Homelessness Services* (SHSNMDS). The SHSNMDS aims to provide quality information about people who are either homeless or at risk of homelessness and who are seeking services from specialist homelessness agencies⁷⁷ (including women's refuges, shelters, and crisis services). Many specialist homelessness services also deliver prevention and early intervention programs.⁷⁸ However, the new SHS NMDS does not include an indicator for disability. Clearly, the importance of the SHS NMDS in capturing data on women with disabilities ought to be a critical mechanism in promoting their access to specialist homelessness services, including women's refuges. It is unlikely that access and responses to such services will improve whilst disabled women remain invisible and ignored in such significant national policy initiatives as the SHS NMDS.

Please provide available data on the number of households in which persons with disabilities reside. How many of these are women-headed households?

42. There are two million women with disabilities living in Australia, making up 20.1% of the population of Australian women, but apart from that, gender and disability data is scarce. For more than a decade now, WWDA has found that one of the greatest difficulties in determining and substantiating the needs and human rights violations of women with disabilities in Australia is the acute lack of available gender and disability specific data, research and information - at all levels of Government and for any issue.

⁷³ Dowse, L., Frohmader, C. and Meekosha, H. (2010) Chapter 14: 'Intersectionality: Disabled Women'. In Eastael, P. (ed) *Women and the Law in Australia*, Reed International Books Australia.

⁷⁴ Chung, D., Kennedy, R., O'Brien, B., & Wendt, S. (2001) The Impact of Domestic and Family Violence on Women and Homelessness: Findings from a national research project. In *Out of the Fire: Domestic Violence and Homelessness*. A joint publication of the NSW Women's Refuge Resource Centre, the Domestic Violence and Incest Resource Centre and the Council to Homeless Persons. pp. 21-24.

⁷⁵ Commonwealth of Australia (2008) *Which Way Home? A new approach to homelessness*. A Green Paper on Homelessness prepared by the Commonwealth as a consultation paper. ISBN 9781 921380 976

⁷⁶ Women With Disabilities Australia (WWDA) (2009) *Submission to the National Human Rights Consultation*. WWDA, Rosny Park, Tasmania. Available online at: www.wwda.org.au/subs2006.htm

⁷⁷ Australian Institute of Health and Welfare; *Specialist Homelessness Services NMDS 2011*; accessed online October 2011 at: <http://meteor.aihw.gov.au/content/index.phtml/itemId/398238>

⁷⁸ Commonwealth of Australia (2008) *The Road Home: Homelessness White Paper*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Accessed online October 2011 at: <http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Documents/default.htm>

43. The Australian Bureau of Statistics (ABS) conducts a number of surveys that provide data on disability at the population level. The most comprehensive is the (national) *Survey of Disability, Ageing and Carers (SDAC)*,⁷⁹ which collects information about a wide range of impairments, activity limitations and participation restrictions, and their effects on the everyday lives of people with disability, older people and their carers. Less detailed but conceptually similar disability data are available in other data sources, including the *Census of Population and Housing*⁸⁰ and the *General Social Survey (GSS)*.⁸¹
44. However, although some data is available (through the SDAC) on the number of households in which some people with disabilities reside, this data is not disaggregated by gender. Special tabulations of data from the SDAC are available on request, however this is as a charged service. This means that any specific tabulations seeking disaggregated data by gender, would need to be purchased at a financial cost to those seeking the data.

Please provide any statistics, information or studies on disability/ies resulting from violence against women and girls?

45. There is very little information in Australia on women with disabilities who have acquired their disability as a result of violence, despite the fact that violence can cause acute and chronic injuries that may lead directly to disability as well as leading indirectly to disabilities through distress and adverse lifestyle or coping strategies.⁸²

“When I was 16 years old, my boyfriend bashed me almost to death. He beat me so badly I suffered a severe brain injury and was in a coma for four months. That evening when he bashed me he repeatedly stomped on and kicked my head. While lying in my hospital bed my family and nursing staff could see the imprint of his shoe in my very swollen face.”⁸³

46. Cockram’s 2003 study in Western Australia found that 38% of abused women with disabilities serviced by that State’s violence and/or disability services in a two year period, had acquired their disability as a direct result of the abuse.⁸⁴ This is corroborated by US studies which suggest that of the population of women with disabilities, in approximately 40% of instances their disabilities are a result of violence perpetrated against them by either their partners or caregivers.⁸⁵

47. An Australian Senate Inquiry in 2003 into ‘*Children In Institutional Care*’ highlighted the many hundreds of children in institutional care who acquired their disabilities as a result of the violence perpetrated against

⁷⁹ See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

⁸⁰ See: <http://www.abs.gov.au/census>

⁸¹ See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0>

⁸² Women With Disabilities Australia (WWDA)(2007b) OpCit.

⁸³ Cited in: Commonwealth of Australia (2009) *Background Paper to Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children*. Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

⁸⁴ Cockram, J. (2003) OpCit.

⁸⁵ Hickman, S. cited in Erwin, P. (2000) *Intimate and caregiver violence against women with disabilities*. Minneapolis: Battered Women’s Justice Project-Criminal Justice Office, Minneapolis.

them while in 'care'. The Inquiry received evidence of '*general physical, psychological and dental health problems through to severe mental health issues of depression and post-traumatic stress disorder*',⁸⁶ along with reports from many care leavers that they acquired their disabilities as a result of being assaulted in the institutions. According to the Inquiry's Report, '*the outcome of serious abuse, assaults and deprivation suffered by many care leavers has had a complex, serious and negative impact on their lives*'.⁸⁷

48. A 2009 report by the Family Law Council⁸⁸ highlights data that victims of family violence receive more psychiatric treatment and have an increased incidence of attempted suicide and alcohol abuse than the general population.⁸⁹
49. Similarly, a 2004 study in Victoria,⁹⁰ which measured the burden of disease caused by intimate partner violence found that intimate partner violence:
- has wide-ranging and persistent effects on women's physical and mental health;
 - contributes nine per cent (9%) to the total disease burden in Victorian women aged 15–44 and 3 per cent in all Victorian women;
 - is the leading contributor to death, disability and illness in Victorian women aged 15–44, being responsible for more of the disease burden than many well-known risk factors such as high blood pressure, smoking and obesity.

In relation to women with disabilities, the study found that:

*women with disabilities are under-represented in existing prevalence studies. These women may be particularly vulnerable to violence or its health impacts, primarily because they are less likely to have the social supports and economic resources required to protect themselves from or to leave a violent relationship. Low participation in existing studies by these women also worked against comparing the burden experienced by them in this particular study.*⁹¹

50. It is widely acknowledged that Indigenous Australians have rates of ill-health and disability substantially higher than other Australians.⁹² Australian Bureau of Statistics data shows that nationally, 50% of Indigenous Australians aged 15 years and over have a disability or long-term health condition. Over half are female (51%).⁹³ Indigenous women are 35 times more likely to suffer family violence⁹⁴ and sustain serious injury

⁸⁶ Commonwealth of Australia (2004) *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*. Report from the Australian Senate Community Affairs References Committee Inquiry. Parliament House, Canberra.

⁸⁷ Commonwealth of Australia (2004) *Ibid*.

⁸⁸ The Family Law Council is a statutory authority established under section 115 of the Family Law Act 1975 (Family Law Act). Members of the Council are appointed by the Attorney-General in consultation with the Prime Minister and Cabinet.

⁸⁹ Family Law Council (2009) *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*. Family Violence Committee, Family Law Council, Canberra.

⁹⁰ Victorian Health Promotion Foundation (2004) *The health costs of violence: Measuring the burden of disease caused by intimate partner violence - A summary of findings*. Department of Human Services, Melbourne.

⁹¹ *Ibid*.

⁹² Australian Institute of Health and Welfare (2011) *Aboriginal and Torres Strait Islander people with disability: wellbeing, participation and support*; IHW 45. Canberra: AIHW.

⁹³ Australian Bureau of Statistics (ABS) (2010) *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander People: Prevalence of Disability*. 4704.0. Accessed online October 2011 at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter510Oct+2010#CWNIP>

⁹⁴ The nature of violence from an Indigenous perspective is impacted by numerous systemic factors including dispossession from land and traditional culture, breakdown of community kinship systems, racism and vilification, entrenched poverty, overcrowding and inadequate housing, child removal policies and the loss of traditional Aboriginal female roles, male roles and status. See: Family Law Council (2009) *OpCit*.

requiring hospitalisation, and 10 times more likely to die due to family violence, than non-Indigenous women.⁹⁵

51. Research undertaken as part of the *National Plan to Reduce Violence against Women and their Children 2010-2022* looked at the economic cost of domestic violence in Australia.⁹⁶ It found that in 2009-10, it was estimated that violence against women and their children cost the Australian economy an estimated \$13.6 billion, and that, without appropriate action to address violence against women and their children, an estimated three-quarters of a million Australian women will experience and report violence in the period of 2021-22, costing the Australian economy an estimated \$15.6 billion. In relation to women with disabilities, it found that:

*without appropriate action the estimated cost to the Australian economy of violence perpetrated against women with disabilities in 2021-22 will be \$3.9 billion, representing 25% of the total cost of the total cost of violence in 2021-22.*⁹⁷

52. There have been a number of media reports over the years of women who have sustained horrific injuries and permanent disabilities as a result of violence perpetrated against them. For example, in 2003, a 31 year old man raped and assaulted a colleague after a work function in Victoria. After raping his victim in the stairwell of a building, the man walked out of the building, looked up and down the street, and then returned to repeatedly stomp on her head. The 30 year old woman was admitted to hospital with facial fractures, a partly amputated right ear, brain damage and serious vaginal and anal injuries. The offender was subsequently sentenced to serve a minimum of 12 years in prison.^{98 99}

⁹⁵ Family Law Council (2009) OpCit.

⁹⁶ Commonwealth of Australia (2009) *The Cost of Violence against Women and their Children*. The National Council to Reduce Violence against Women and their Children; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

⁹⁷ Ibid.

⁹⁸ Munro, I. (2003) 'Monster' who raped and beat colleague jailed for 16 years. *The Age*, November 7, 2003. Accessed online at:

<http://www.theage.com.au/articles/2003/11/06/1068013329595.html?from=storyrhs>

⁹⁹ Supreme Court of Victoria (2003) *R v Empey* [2003] VSC 422 (6 November 2003). Available online at:

<http://www.austlii.edu.au/au/cases/vic/VSC/2003/422.html>



legislation and policies

Is there a legal framework addressing violence against women and girls with disability in different contexts (within the family, at the community and in the workplace, and in State and non-State institutions such as medical, education and other service providing institutions)?

53. In Australia, there is no uniform definition or understanding of what constitutes violence against women.¹⁰⁰ Legislation designed to protect individuals from family and domestic violence is the responsibility of the States and Territories. Generally, violence against women is understood in the context of ‘domestic’, ‘spousal’ or ‘family’ violence. The legal definition of domestic violence for example, varies across jurisdictions because of differences in legislation.¹⁰¹ Appendix Two provides definitions of ‘family/domestic violence’ in relevant Commonwealth/State/Territory legislation.¹⁰²
54. Most of the Australian legislation designed to protect individuals from family and domestic violence defines what constitutes a ‘*domestic relationship*’ and some of these definitions are more inclusive than others, including for example, gay, lesbian and transgender relationships, siblings, children, non-partner family members, and so on. Some also include ‘informal care relationships’ which apply to domestic support and personal care relationships provided without fee or reward, and which are not under an employment relationship between the persons; and/or not on behalf of another person or an organisation.¹⁰³
55. Despite the many and varied definitions within the various Australian laws of what constitutes domestic violence, family violence, domestic relationships, significant persons, relevant persons and so on, most of the current laws do not contain definitions which specifically encompass the range of domestic/family settings in which women with disabilities may live (such as group homes, institutions), nor do they contain definitions which capture and encompass the various forms of violence as experienced by women with disabilities. Because these experiences may not fit either traditional, or contemporary definitions, violence against women with disabilities often goes unidentified.¹⁰⁴ It is nominally possible for women with disabilities who experience violence to take measures such as apprehended or personal violence orders. In practice however,

¹⁰⁰ Australian Bureau of Statistics (2006) 2006 Personal Safety, Australia (Re-issue) Cat. No. 4906.0.

¹⁰¹ Commonwealth of Australia (2009) *Domestic Violence laws in Australia*. The National Council to Reduce Violence against Women and their Children; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Canberra.

¹⁰² Excerpts taken from: Family Law Council (2009) *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*. Family Violence Committee, Family Law Council, Canberra.

¹⁰³ Tasmanian Government (2003) *Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania*. Options Paper. Office of the Secretary of the Department of Justice and Industrial Relations (DJIR). Hobart, Tasmania.

¹⁰⁴ Women With Disabilities Australia (WWDA) (2004) *Submission to the South Australian Government's Discussion Paper: "Valuing South Australia's Women: Towards A Women's Safety Strategy For South Australia"*. WWDA, Tasmania, Australia.

for women with intellectual disabilities who live in group homes for example, recognition of the specific support needs of such women is limited and their access to effective protection, rather than promoted by legislation, is dependent on mediation and intervention by others such as staff or carers, who may also be perpetrators.

56. The *Disability Discrimination Act 1992* (Cth) (DDA) represents a rights-based approach to establishing the legal right for disabled people to be free from discrimination and to participate in the community in the same way as non-disabled people.¹⁰⁵ Compliance with the DDA is driven mainly by a system of individual complaints, through which people with disabilities enforce their rights. Many women with disabilities face significant barriers or disincentives to using the complaints process, including for example: lack of awareness of the DDA; the complexity and potential formality of the process; the fear of victimisation; the onus on the complainant to prove their complaint; the unequal financial and legal resources of complainants and respondents; the financial and non-financial costs involved; and, the lack of support and assistance in preparing for, and going through the process.^{106 107 108} The DDA has not been used in relation to violence against women with disabilities, as it is essentially designed to prohibit discrimination against people with disabilities in the areas of employment, education, the provision of goods, services and facilities, and access to premises.

57. Australian Guardianship law is the key regulatory mechanism for protecting the health and human rights of young persons, adults with disabilities and the elderly, and yet it remains understudied and misunderstood as a body of knowledge.¹⁰⁹ Australia has eight different guardianship regimes, which vary widely in their forms of regulation. Guardianship legislation is enacted through State and Territory based Guardianship Tribunals/Boards.¹¹⁰ The roles of Guardianship Tribunals/Boards vary but can include for example:

- facilitating decision making for people with disabilities who lack the capacity to make certain decisions themselves;
- appointing guardians and financial managers, and consents to medical and dental treatment;
- investigating claims of exploitation, abuse or neglect;
- consenting to a "special medical procedure", such as 'a procedure intended or likely to cause infertility'.

¹⁰⁵ The DDA prohibits discrimination in a range of areas including employment, education, the provision of goods, services and facilities, and access to premises. This Act also makes harassment on the basis of disability illegal and protects friends, relatives and other associates from discrimination because of their connection to someone with a disability.

¹⁰⁶ Productivity Commission (2004) *Review of the Disability Discrimination Act 1992*, Report no. 30, Melbourne.

¹⁰⁷ A Review of the DDA undertaken by the Productivity Commission in 2004, found that the DDA had been more effective for people with physical disabilities and sight or hearing impairments than it had been for people with other disabilities (such as intellectual disability and mental illness). The DDA had been of limited effect for people with multiple disabilities, people living in institutions, as well as for indigenous Australians, people from Non-English speaking backgrounds, and those living in rural areas. The Review also found that in relation to reducing discrimination, the DDA had been essentially ineffective in the area of employment and of only limited effectiveness in improving access to premises. Access to public transport and education were the areas where the DDA was found to have been 'reasonably effective' in its eleven years of operation at the time of the Review.

¹⁰⁸ Women With Disabilities Australia (WWDA) (2009) *Submission to the National Human Rights Consultation*. WWDA, Rosny Park, Tasmania. Available online at: www.wwda.org.au/subs2006.htm

¹⁰⁹ *Discovering Australian Guardianship Law*. See: <http://www.austguardianshiplaw.org/>

¹¹⁰ New South Wales (NSW) Guardianship Tribunal (*NSW Guardianship Act 1987*); Australian Capital Territory (ACT) Civil and Administrative Tribunal (*Guardianship and Management of Property Act 1991*); Northern Territory Office of Adult Guardianship (*Adult Guardianship Act*); Queensland Civil and Administrative tribunal (*Guardianship and Administration Act 2000*); Guardianship Board of South Australia (*Guardianship and Administration Act 2003*); Tasmanian Guardianship and Administration Board (*Guardianship and Administration Act 1995*); Victorian Civil and Administrative Tribunal (VCAT) (*Guardianship and Administration Act 1986*); Western Australian State Administrative Tribunal (SAT) (*Guardianship and Administration Act 1990*).

58. Most States and Territories of Australia also have an independent body (such as the Victorian OPA), which acts on behalf of, and advocates for, people with a decision-making disability. The roles and responsibilities differ from State to State, however, they include promoting the rights of people with disabilities and protecting them from exploitation and abuse. This can include investigating the circumstances of a person who is believed to have decision-making incapacity and is at risk in some way.¹¹¹ However, Public Advocates have recently spoken out about their lack of investigative powers and also the failure of current laws in protecting people with disabilities from violence and abuse.^{112 113} For example, under current Guardianship Laws in Victoria, the Public Advocate has only the power to examine alleged mistreatment involving people who are formally placed under her guardianship or who are being considered for guardianship. This is done through an order by the Victorian Civil and Administrative Tribunal (VCAT).¹¹⁴ But many people being abused may not be subject to a guardianship order, meaning that large numbers of the state's most vulnerable people are at risk.¹¹⁵ According to Colleen Pearce, the Public Advocate in Victoria:

"There's a widespread expectation that the Public Advocate is going to be able to investigate situations of abuse involving a person with a disability, and that is not necessarily the case. We think there are large numbers of people [at risk], but it's really hard to quantify and that's partly because abuse against people with a disability is really hidden. It occurs in a government-run institution or in people's private homes."¹¹⁶

Are practices such as 1) forced psychiatric intervention, 2) forced institutionalization, 3) solitary confinement and restraint in institutions, 4) forced drug and electroshock treatment, 5) forced abortion 6) forced sterilization and 7) harmful practices, prohibited by law?

Forced Sterilisation

59. In Australia, the legal position on sterilisation varies from jurisdiction to jurisdiction.¹¹⁷ From 2003 to 2007, in an attempt to 'minimise the risk of unauthorised sterilisations occurring',¹¹⁸ the Australian Government began to address non-therapeutic sterilisation of children [girls] by drafting national, uniform legislation (ref). However, the goal of this legislation was not to *prohibit* forced sterilisation of girls with disabilities, but instead to *regulate* who could authorise non-therapeutic sterilisations of minors with 'decision-making disabilities'. The draft legislation was strongly opposed by disability and human rights organisations on the grounds that it did not clearly prohibit sterilisation in all non-therapeutic circumstances, it only applied to children with intellectual disabilities, and it applied a broad test for the judicial authorisation of sterilisation.

¹¹¹ See for example: *About the South Australian Office of the Public Advocate*. Accessed October 2011 at: http://www.opa.sa.gov.au/cgi-bin/wf.pl?pid=&mode=show&folder=../html/documents//01_About&file=19-What is the Office of the Public Advocate.html

¹¹² Haxton, N. (2011) *More protection needed to prevent abuse of the disabled*. ABC PM, July 5, 2011. Accessed online October 2011 at: <http://www.abc.net.au/pm/content/2011/s3261847.htm>

¹¹³ Tomazin, F. (2011) *Law failing to protect disabled in state care*. The Age, April 24, 2011; Accessed online October 2011 at: <http://www.theage.com.au/victoria/law-failing-to-protect-disabled-in-state-care-20110423-1dse1.html>

¹¹⁴ VCAT was created on 1 July 1998 and amalgamated 15 boards and tribunals to offer a one stop shop dealing with a range of disputes, providing Victorians with access to a civil justice system which is modern, accessible, efficient and cost effective. VCAT deals with disputes about: purchase and supply of goods; discrimination; domestic building works; guardianship and administration; disability services, health and privacy, mental health; legal profession services; owners corporations; residential tenancies; retail tenancies. For more information see: <http://www.vcat.vic.gov.au>

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ In Western Australia, Victoria, the Australian Capital Territory and the Northern Territory, the Family Court of Australia and the Federal Magistrates Court have exclusive jurisdiction to decide on sterilisation matters. New South Wales, South Australia, Queensland and Tasmania have conferred concurrent jurisdiction in relation to sterilisation decisions on their respective guardianship tribunals and boards.

¹¹⁸ Standing Committee of Attorneys-General (SCAG) (2004) *Issues Paper on the Non-Therapeutic Sterilisation of Minors with a Decision-Making Disability*. Available online at: www.wvda.org.au/scagpap1.htm

Critically, the primary emphasis of the draft legislation was not on the prohibition of this human rights abuse but on the elaboration of the circumstances and principles under which it could occur – which were essentially permissive rather than protective.

60. The Australian Government discontinued this work in 2007 because it believed that sterilisation of girls with disabilities had declined and that existing guardianship and court mechanisms for authorising sterilisation procedures worked adequately.¹¹⁹ This was incorrect, and, to date, existing State and Territory legislation and federal court mechanisms have been ineffective in eliminating non-therapeutic, forced sterilisations of young girls with disabilities. Anecdotal reports and health insurance statistics provide evidence that non-therapeutic sterilisation of girls with disabilities has occurred in greater numbers than officially reported; that it occurs without authorisation by courts and tribunals; and that these procedures are actively sought (by parents and carers) in other jurisdictions both within Australia and in other countries. Current domestic law does not prevent children with disabilities from being taken out of Australia to another country to have the sterilisation procedure performed.¹²⁰
61. In late June 2011, WWDA submitted a formal communication to the United Nations regarding the ongoing practice of forced sterilisation in Australia¹²¹. WWDA's Submission was sent simultaneously to four of the United Nations Special Rapporteurs,¹²² requesting intervention to urge the Australian Government to comply with the recommendations of the *Committee on the Elimination of Discrimination against Women* (July 2010),¹²³ the *Committee on the Rights of the Child* (October 2005),¹²⁴ and the *Human Rights Council* (January 2011)¹²⁵ to act immediately to develop national legislation prohibiting the non-therapeutic sterilisation of girls and adult women with disabilities in the absence of their fully informed and free consent. WWDA's Submission further requested assistance from the Special Rapporteurs to ensure that the Australian government implement a range of strategies to enable women with disabilities to realise their right to health, their right to freedom from violence, their rights to reproductive freedom and to found a family, and their right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
62. In late 2011, WWDA collaborated on the development of an international Briefing Paper on *Sterilization of Women and Girls with Disabilities*.¹²⁶ This briefing paper has been jointly prepared by WWDA, Human Rights

¹¹⁹ In: Women With Disabilities Australia (WWDA)(2011) '*Submission to the United Nations Special Rapporteurs regarding forced sterilisation in Australia*'. Available online at: http://www.wwda.org.au/WWDA_Submission_SR2011.doc (Word version) or http://www.wwda.org.au/WWDA_Submission_SR2011.pdf (PDF version).

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² WWDA's Submission was sent to Mr. Shuaib Chalklen (Special Rapporteur on Disability); Mr. Anand Grover (Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health); Ms. Rashida Manjoo (Special Rapporteur on Violence against Women); and Mr. Juan E Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

¹²³ Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7. See: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

¹²⁴ In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: '*prohibit the sterilisation of children, with or without disabilities*'. United Nations Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Australia, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).

¹²⁵ UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10.

¹²⁶ Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper* (November). Available online at:

Watch (HRW), the Open Society Foundations, and the International Disability Alliance (IDA) as part of the *Global Campaign to Stop Torture in Health Care*.¹²⁷ The paper gives a background to the issue of forced sterilisation, outlines various international human rights standards that prohibit forced sterilisation, and offers several recommendations for improving laws, policies, and professional guidelines governing sterilisation practices.

63. Anecdotal evidence indicates that applications for non-therapeutic sterilisations of women and girls with disabilities in Australia may be on the increase rather than in decline. For example, recent reports to WWDA suggest that gynaecologists are applying to Guardianship Boards for authorisation to perform hysterectomies on disabled girls as soon as they reach the age of 18 years. It appears that the applications are being sought solely for the purpose of 'prevention of future pregnancy'.¹²⁸

Forced Contraception/Menstrual Suppression

64. The management of menstruation in women with disabilities should be no different to that provided for any other woman. However, in the case of women and girls with intellectual disabilities, there appears to be an assumption that menstruation is a problem that should be overcome by menstrual suppression or elimination of the cycle.¹²⁹ Forced contraception through the use of menstrual suppressant drugs (such as Depo-Provera) is a widespread, current practice in Australia, particularly in group homes and other forms of institutional care. It has been justified as a way of reducing the 'burden' on carers who have to 'deal with' managing menstruation of disabled women and girls. It is however, a means of denying basic reproductive rights and is a form of sexual violence.¹³⁰
65. In 1992, the Victorian Intellectual Disability Review Panel submitted a report to the Minister for Community Services on the use of menstrual suppressants in Victorian institutions. A major finding of the Panel was that there had been blanket administration of drugs causing menstrual suppression to women in institutions who did not require this medication for contraceptive purposes and for whom the medication was prescribed without their consent. The purpose of administering the medication was for the ease of management of the menstrual cycle of the women, that is, for the convenience of the staff caring for them. The Panel found that the drugs Depo-Provera and Norethisterone were being used in Victoria without routine gynaecological screening (Law Reform Commission of Western Australia 1994).
66. A 1994 Australian study by Carlson & Wilson,¹³¹ examined menstrual management issues for women with intellectual disabilities. The study found that frequent access to medical advice and an apparent lack of access to advice about educational and environmental management approaches and to practical support,

http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.doc (Word version) or

http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf (PDF version).

¹²⁷ For more information about the Global Campaign to Stop Torture in Health Care, go to: <http://www.stoptortureinhealthcare.org/>

¹²⁸ Personal communication to WWDA, November 25, 2011.

¹²⁹ Dowse, L. and Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*. Published by Women With Disabilities Australia (WWDA), Tasmania, Australia.

¹³⁰ Women With Disabilities Australia (WWDA) (2009) *Submission to the National Human Rights Consultation*. WWDA, Rosny Park, Tasmania. Available online at: www.wwda.org.au/subs2006.htm

¹³¹ Carlson, G., & Wilson, J. (1996). Menstrual management and Women who have Intellectual Disabilities: Service Providers and Decision-Making. *Journal Intellectual Developmental Disability* (21), pp. 39-57.

may be reinforcing a perception that managing menstruation is a medical matter. Dowse & Frohmader (2001) reported that in Australia, there have been no long-term studies into the health effects of long-term hormonal suppression of menstruation on young women although risk factors such as dysfunction of the ovaries and the cardiovascular system have been identified.¹³²

Deprivation of liberty and restrictive practices

67. Women and girls with disabilities in Australia continue to be subjected to multiple forms and varying degrees of 'deprivation of liberty' and are subjected to unregulated or under-regulated restrictive interventions.^{133 134} This is particularly the case for women and girls with intellectual and/or cognitive disabilities, developmental disabilities and those with psychosocial disabilities. A restrictive intervention has been defined as '*any intervention that is used to restrict the rights or freedom of movement of a person with a disability*',¹³⁵ and can include practices such as chemical restraint,¹³⁶ mechanical restraint,¹³⁷ physical restraint,¹³⁸ social restraint,¹³⁹ seclusion¹⁴⁰. Such practices are often imposed as a means of coercion, discipline, convenience, or retaliation by staff, family members or others providing support.¹⁴¹ These practices are not limited to institutions such as group homes, but also occur in educational settings (such as schools), hospitals, residential aged care facilities and other types of institutions (such as hostels, boarding houses, psychiatric/mental health community care facilities, prisons, supported residential facilities).
68. Australian studies of restrictive practices and people with disabilities are limited and publicly available data from government agencies is not easily sourced.¹⁴² However, in Victoria the public record reports that during 2005/06, on average, 28% of residents with intellectual disabilities in accommodation services were subject to restraint and/or seclusion and 23% of clients with intellectual disabilities in respite services were subject to restraint and/or seclusion.¹⁴³ The Australian Psychological Society¹⁴⁴ asserts that at least a quarter of all

¹³² Dowse, L. and Frohmader, C. (2001) OpCit.

¹³³ Office of the Public Advocate (2010) *Submission to the Victorian Law Reform Commission in Response to the Guardianship Information Paper*. Accessed online October 2011 at: <http://www.publicadvocate.vic.gov.au/file/file/Research/Submissions/2010/OPA-Submission-to-VLRC-May-2010.pdf>

¹³⁴ French, P., Dardel, J. & Price-Kelly, S. (2010) *Rights Denied: Towards a National Policy Agenda About Abuse, Neglect & Exploitation of Persons with Cognitive Impairment*. People With Disability Australia (PWD), Sydney, NSW.

¹³⁵ Office of the Public Advocate (2010) *Supervised Treatment Orders in Practice: How are the Human Rights of People Detained under the Disability Act 2006 Protected?* Accessed online October 2011 at: <http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/STOs%20in%20Practice,%20How%20are%20the%20HRs%20of%20People%20Detained%20under%20the%20Disability%20Act%202006%20Protected.pdf>

¹³⁶ Chemical restraint occurs when medication that is sedative in effect is prescribed and dispensed to control the person's behaviour rather than provide treatment. See in: National Mental Health Consumer & Carer Forum (2009) *Ending Seclusion and Restraint in Australian Mental Health Services*. www.nmhccf.org.au

¹³⁷ Mechanical restraint is understood as the use of any device to prevent, restrict or subdue movement of a person's body for the primary purpose of behavioural control. See for eg: McVilly, K. (2008). *Physical restraint in disability services: current practices; contemporary concerns and future directions*. A report commissioned by the Office of the Senior Practitioner, Department of Human Services, Victoria, Australia.

¹³⁸ Physical restraint is defined as the sustained or prolonged use of any part of a person's body to prevent, restrict, or subdue movement of the body or part of a body of another person. See for eg: McVilly, K. (2008) OpCit.

¹³⁹ Social restraint is recognized to include the use of verbal interactions and/or threats of social or other tangible sanctions, which rely on eliciting fear to moderate a person's behavior. See for eg: McVilly, K. (2008) OpCit.

¹⁴⁰ In Australia the definition of seclusion is both legislated and policy driven. Seclusion can be understood as 'the confinement of a person alone at any hour of the day or night in a room, the door(s) and window(s) of which cannot be opened by the person from the inside; or the confinement of a person alone at any hour of the day or night in a room in which the door(s) or window(s) are locked from the outside or their opening is prevented by any other means, such as a person holding the door shut; or where exit from a place is prevented by the presence of another person.

¹⁴¹ Cited in McVilly, K. (2008). OpCit.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ The Australian Psychological Society (APS) is the largest professional association for psychologists in Australia, representing over 20,000 members. See: <http://www.psychology.org.au>

people with an intellectual disability will be subject at some time to some form of restraint, and has called on the Australian Governments to take urgent action to end restrictive practices in the disability sector:

“Vulnerable children and adults with disabilities, some of whom have difficulty even communicating what has happened to them, continue to be exposed to the risks inherent in using restrictive practices, which have in some cases led to death and which are certainly in contravention of their human rights.”¹⁴⁵

69. The Victorian Government has estimated that between 44-80% of people with disabilities who ‘show behaviours of concern’ are prescribed chemical restraint.¹⁴⁶ No controlled studies exist that evaluate the value of seclusion or restraint in those with ‘serious mental illness’,¹⁴⁷ although the use of involuntary seclusion and restraint in all forms is an everyday occurrence, particularly in Australia’s public acute inpatient facilities.¹⁴⁸ The widespread, systemic problem of restrictive practices and children with disabilities in Australian schools remains ignored and unaddressed by Governments.^{149 150 151}

70. There continues to be a myriad of media reports regarding people with disabilities being deprived of their liberty and subjected to restrictive and violent practices. For example, in 2003 mentally and physically disabled children and adults in residential care in Queensland were locked in cages and physically and sexually abused.¹⁵² In 2009, staff of a Queensland Independent Living facility were found guilty of assaulting and depriving disabled children of their liberty. Common practices at the facility included tying children to the toilet; rubbing chilli in their mouths, beating them with fly swatters when they ‘misbehaved’, taking away prosthetic limbs, substituting bread and butter for meals, washing out resident’s mouths with soap; slapping, hitting, humiliating and pulling the hair of residents.¹⁵³ When sentencing one of the staff to 150 hours of community service, the judge said it was clear from the evidence that such practices were not only tolerated, but encouraged at the care facility, and that the culture of abuse ‘permeated from the top down’.¹⁵⁴ More than eight former staff were charged with more than 130 counts of abuse involving more than 18 former residents. But the number of abuse victims is unknown, with police unable to gather sufficient evidence from some of the more severely disabled former residents to support further charges.¹⁵⁵

¹⁴⁵ Australian Psychological Society (May 2011) *Psychologists call for prompt end to restrictive practices in disability sector*. Media Release; May 2011.

¹⁴⁶ Department of Human Services (2008) *Positive Solutions in Practice: Chemical Restraint: What every Disability Support Worker needs to know*. Office of the Senior Practitioner, Melbourne.

¹⁴⁷ Sailas EES, Fenton M. (2000) *Seclusion and restraint for people with serious mental illnesses*. Cochrane Database of Systematic Reviews 2000, Issue 1. Art. No.: CD001163. DOI: 10.1002/14651858.CD001163.

¹⁴⁸ National Mental Health Consumer & Carer Forum (2009) OpCit.

¹⁴⁹ See for eg: Australian Broadcasting Corporation (ABC TV) (17/05/2011) ‘Hidden shame’; 7.30 Report. Accessed online October 2011 at: <http://www.abc.net.au/7.30/content/2011/s3219518.htm>

¹⁵⁰ Martin, L. (March 11, 2010) ‘Outrage over Seven Hills West Public School putting autistic children in cage’; Accessed online October 2011 at: <http://www.news.com.au/national/outrage-over-seven-hills-west-public-school-putting-autistic-kids-in-cage/story-e6frkvr-1225839691640>

¹⁵¹ Brown, D. (2010) ‘Autistic kids ‘caged’ at school.’ *The Mercury Newspaper*, September 13, 2010. Accessed: http://www.themercury.com.au/article/2010/09/13/172495_tasmania-news.html

¹⁵² Bottom, B. (2003) The man who wasn’t there. *The Bulletin*, December 3, 2003.

¹⁵³ Dibben, K. (2011) ‘Blue card denied to abusive carer.’ *The Sunday Mail* (Qld) March 27, 2011. Accessed online October 2011 at: <http://www.couriermail.com.au/news/blue-card-denied-to-abusive-carer/story-e6freomx-1226028747166>

¹⁵⁴ Flatley, C. (2009) ‘Carer guilty of assaulting disabled kids.’ *The Age Newspaper*, September 4, 2009. Accessed online at: <http://news.theage.com.au/breaking-news-national/carer-guilty-of-assaulting-disabled-kids-20090904-fawd.html>

¹⁵⁵ Wenham, M. (2006) ‘Abused can access \$1m fund.’ *The Courier Mail*. November 8, 2006. <http://www.couriermail.com.au/news/queensland/abused-can-access-1m-fund/story-e6freoof-111112491139>

Forced Electroshock

71. All Australian states and territories have provisions for the 'treatment' of people with mental illnesses without consent.¹⁵⁶ This occurs when the persons illness is believed to impair his or her capacity to understand the need for treatment, or where the person is likely to put themselves or others at risk in some substantial way.¹⁵⁷ Legislation typically allows for involuntary admission to hospital and, in most jurisdictions, pharmacological or other treatments without consent.
72. In most States and Territories of Australia, involuntary electroconvulsive therapy (ECT) requires the approval of the relevant Mental Health Review Tribunal, except in Tasmania (where approvals are made by the Guardianship and Administration Board) and in Victoria, where current legislation allows treating psychiatrists to administer ECT without consent or external review.¹⁵⁸
73. In 2009-10 the Queensland Mental Health Tribunal scheduled 462 ECT applications in relation to 355 patients. This was 15.5% higher than the previous year. Of these, 98 (21.2%) were applications for patients undergoing emergency ECT.¹⁵⁹ In 2009-10 in NSW, 716 applications were made to the NSW Mental Health Review Tribunal to administer ECT to involuntary patients (455 or 63.5% of the applications involved female patients). Only 20% of the 716 applications included legal representation for the patient. The NSW Mental Health Act 2007 allows for determinations of more than 12 ECT treatments '*if the Tribunal is satisfied that more are justified, having regard to the special circumstances of the case.*' In 2009-10, 5.4% of cases were for more than 12 treatments approved.¹⁶⁰
74. In Victoria in 2009-10, more than 1100 people received electroconvulsive therapy (ECT), in the public mental health system. Of these, 377 (or about one third) were deemed involuntary patients who did not consent to the ECT. Involuntary mental health patients received more than half of the 12,968 ECT sessions administered in the Victorian public psychiatric system in 2009-10.¹⁶¹ The use of ECT in Victoria's public and private psychiatric services has increased sharply in recent years. In public mental health services, its use has increased by 12% since 2003-04, and private ECT sessions in Victoria have increased by 71% during the same period.¹⁶² An 2011 investigation into Victoria's mental health system reported that:

'Practices from a previous age appear routine in some hospitals: threatening patients with electroconvulsive therapy (ECT) if they refuse to take medication; locking bathrooms to prevent patients drinking water, which would negate the effect of the ECT; and imposing a form of solitary confinement as punishment for improper behaviour. Such attempts to subdue and control patients

¹⁵⁶ For a detailed analysis of forced psychiatric interventions and practices, see the *Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP)* at: <http://www.chrusp.org>

¹⁵⁷ Fitzgerald, P. (2011) 'It's time to move on from ECT's shocking past.' *The Conversation*; 29 September 2011; Accessed online October 2011 at: <http://theconversation.edu.au/its-time-to-move-on-from-ects-shocking-past-3312>

¹⁵⁸ Baker, R. & McKenzie, N. (2011) Mental health care inquiry. *The Age*, Accessed online October 2011 at: <http://www.theage.com.au/victoria/mental-health-care-inquiry-20110905-1juiv.html>

¹⁵⁹ Queensland Government (2010) *Mental Health Review Tribunal Annual Report 2009-10*. Accessed October 2011 at: <http://www.mhrt.qld.gov.au/wp-content/uploads/2010/12/mhrt-annual-Report-2009-10.pdf>

¹⁶⁰ NSW Mental Health Review Tribunal (2010) *Annual Report of the Mental Health Review Tribunal*. Accessed online October 2011 at: <http://www.mhrt.nsw.gov.au/mhrt/pdf/Annualreport200910.pdf>

¹⁶¹ Baker, R. & McKenzie, N. (2011) OpCit.

¹⁶² Ibid.

*are disturbing enough in fiction such as One Flew Over the Cuckoo's Nest; they have no place in hospitals in 21st century Australia.*¹⁶³

Female Genital Mutilation

75. Female genital mutilation (FGM) (also known as female circumcision, female cutting) has been illegal in Australia since the 1990s. Parliaments in every Australian jurisdiction have perceived FGM as warranting legislative regulation. The legislation prohibits a person from performing any type of FGM, defined as including clitoridectomy, excision of any other part of the genitalia, infibulation, and any other mutilation of the genitalia, on a child or an adult.¹⁶⁴ Consequently, even though those aged over 18 years (or 16 years in South Australia) may consent to medical treatment, any medical practitioner administering FGM would commit an offence even if the child or adult consents.¹⁶⁵
76. There have however, been media reports in recent times of the practice occurring in Australia. In 2010, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG) reported that there was *'some evidence to suggest that it [FGM] does happen in certain parts of Australia'*¹⁶⁶ but that the actual numbers are hard to gauge because it is prohibited by legislation and is something that is performed in an underground way. According to Dr Ted Weaver from RANZCOG, *"there have been reports of children being taken to hospital after having the procedure done with complications from that procedure."* It has also been reported that the Royal Women's Hospital in Melbourne sees between 600 and 700 women each year who have experienced FGM in some form.¹⁶⁷

What specific policies/programmes are in place to prevent and address violence against women and girls with disabilities and/or to address harmful practices that can result into disabilities? How do general policies and plans/programmes on violence against women ensure the inclusion of and accessibility by women and girls with disabilities?

Government Policies

77. There is a general lack of specific, targeted policies and programs available in Australia to prevent and address the multiple and complex forms of violence against women and girls with disabilities. The recently released *National Plan to Reduce Violence against Women and their Children 2010-2022* (discussed earlier in this paper) does include specific initiatives focused on violence against women with disabilities, and this is a long-overdue and positive step forward. Most States and Territories are currently in the process of developing their own Implementation Plans to give effect to and operationalise the National Plan. These

¹⁶³ The Age Newspaper; *Silence hides shameful neglect of mentally ill*; September 5, 2011; Accessed online October 2011 at: <http://www.theage.com.au/opinion/editorial/silence-hides-shameful-neglect-of-mentally-ill-20110904-1js7t.html>

¹⁶⁴ Cited in: Mathews, B. (2011) Female genital mutilation: Australian law, policy and practical challenges for doctors. *Medical Journal of Australia*, 194(3), pp. 139-141.

¹⁶⁵ Ibid.

¹⁶⁶ Bourke, E. (2010) Female circumcision happening in Australia. *ABC News*, February 06, 2010. Accessed online October 2011 at: <http://www.abc.net.au/news/2010-02-06/female-circumcision-happening-in-australia/2594496>

¹⁶⁷ Ibid.

State and Territory Implementation Plans could provide further scope for more targeted initiatives to address violence against women and girls with disabilities at the state, territory, regional and local levels.

78. As part of the *National Plan to Reduce Violence against Women and their Children 2010-2022*, the Australian Government is establishing a National Plan Implementation Panel (NPIP)¹⁶⁸ to provide advice on the implementation of the National Plan. The NPIP will include a number of non-government representatives as part of the overall approach to engaging the community on the National Plan. WWDA has written to the Federal Minister for the Status of Women (Hon Kate Ellis) and to State and Territory Premiers, re-iterating the critical importance of inclusion of women with disabilities in the membership of the NPIP.
79. The *National Disability Strategy (NDS)* was formally endorsed by the Council of Australian Governments (COAG) in February 2011.¹⁶⁹ A key policy priority of the NDS is the right of people with disability to be safe from violence, exploitation and neglect.¹⁷⁰ The NDS acknowledges that women and men with disabilities often face different challenges by reason of their sex, or experience the same issues in different ways, and therefore need different supports.¹⁷¹ The success of the NDS will rely heavily on its implementation at the State and Territory levels. Work is currently underway to develop NDS Implementation Plans at the State/Territory levels and this could provide opportunities for WWDA to advocate for targeted, gendered initiatives around violence prevention.
80. In June 2010, Australia's Sex Discrimination Commissioner,¹⁷² Elizabeth Broderick, released her *Gender Equality Blueprint 2010*.¹⁷³ In efforts to address violence against women, the Sex Discrimination Commissioner's Blueprint recommends, amongst other things, that *'the Australian Government should invite the UN Special Rapporteur on Violence Against Women to visit Australia to contribute to independent monitoring of the nation's 'zero tolerance' approach to gender-based violence.'*¹⁷⁴ WWDA understands the Sex Discrimination Commissioner is currently in the process of putting together a proposal for the Special Rapporteur to visit Australia to undertake a study tour. The Australian Human Rights Commission (AHRC) Disability Rights Unit has prioritised *'violence against women with disabilities'* in its 2011-12 Workplan. WWDA continues to receive strong support from the AHRC, including both the Sex Discrimination Commissioner and the Disability Discrimination Commissioner in efforts to progress the rights of women with disabilities to freedom from violence, exploitation and abuse.

¹⁶⁸ See: *UN Secretary General's Database on Violence Against Women*; accessed online October 2011 at:

<http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=50830&baseHREF=country&baseHREFid=157>

¹⁶⁹ The National Disability Strategy (NDS) outlines a 10-year national policy framework to guide government activity across six key outcome areas and to drive future reforms in mainstream and specialist disability service systems to improve outcomes for people with disability, their families and carers. See: Council of Australian Governments (2010) *2010–2020 National Disability Strategy*. Available online at:

<http://www.facs.gov.au/sa/disability/progserv/govtint/Pages/nds.aspx>

¹⁷⁰ See the National Disability Strategy (NDS) under Outcome Area 2: 'Rights protection, justice and legislation'.

¹⁷¹ National Disability Strategy (NDS) at p.14.

¹⁷² The Sex Discrimination Commissioner leads the work of the Australian Human Rights Commission to address gender-based discrimination, sexual harassment and other barriers to gender equality in Australia. See: www.hreoc.gov.au/sex_discrimination/index.html

¹⁷³ The Blueprint sets out key reforms and recommendations in five priority areas which significantly affect both the public and private lives of women and men in Australia. See: Broderick, E. (2010) *Gender Equality Blueprint 2010*. Australian Human Rights Commission, Sydney.

¹⁷⁴ Ibid.

81. Australia's *Disability Services Act (1986)*¹⁷⁵ provides for a set of national guiding standards (known as the Disability Services Standards). The Standards are a set of eight principles intended to represent the core elements of a quality disability service in Australia.¹⁷⁶ The Standards have remained essentially unchanged since 1993,¹⁷⁷ and do not contain a Standard on the right to freedom from violence, exploitation, abuse and neglect.¹⁷⁸ However, in recent years, eight jurisdictions have added a standard on '*Protection of human rights and freedom from abuse*' to their own state/territory-based or jurisdictional standards. In reporting against this Standard, funded agencies 'may provide evidence' that staff have the knowledge to 'report criminal activities, abuse and neglect', and can provide 'practical examples of how they act to prevent abuse and neglect'.¹⁷⁹ As a mechanism to prevent and address violence against women and girls with disabilities, the Disability Services Standards are grossly ineffective. They are un-gendered, they focus only on 'abuse and neglect', they rely on service providers possessing the knowledge of what constitutes violence against women and girls with disabilities, they are essentially adult focused, and are concerned primarily with the collection of quantitative data. For example, a Review of Disability Services in Tasmania in 2008, found that service performance measurement and monitoring was inadequate and that '*current measures are primarily output and process focused and as such do not provide the opportunity to consider the effectiveness of the service system in achieving meaningful outcomes for clients*'.¹⁸⁰

Programs

82. In late 2010, the Australian Government launched 1800 RESPECT - the *National Sexual Assault, Domestic Family Violence Counselling Service* for people living in Australia. It provides a 24 hour telephone and online, crisis and trauma counselling service to anyone whose life has been impacted by sexual assault, domestic or family violence. It includes an information and referral service.¹⁸¹ The 1800 RESPECT Service does not collect data on the numbers of women with disabilities accessing the service unless the woman chooses to disclose that she has a disability. Between the period November 2010-June 2011, there were 7097 individuals who contacted the 1800 RESPECT Service. Of these, sixty-five individuals identified as having a 'physical disability'; seven identified as having an 'intellectual disability' and five individuals identified as having both a physical and intellectual disability. For the period concerned, 4% of overall callers therefore disclosed that they had a disability.¹⁸² Coordinators of the 1800 RESPECT Service acknowledge that these numbers do not provide an accurate reflection of women with disabilities who may be accessing the service, and also under-estimate the

¹⁷⁵ The Disability Services Act (1986) provides a legislative and funding framework for a range of disability services. See: http://www.austlii.edu.au/au/legis/cth/consol_act/dsa1986213/

¹⁷⁶ Meltzer, A., Muir, K. & Dinning, B. (2010) *Report on the consultation data for the revision of the National Standards for Disability Services*. Victorian Department of Human Services, Disability Services Division.

¹⁷⁷ The Disability Services Standards are currently being reviewed as part of the development of a National Quality Framework for Disability Services in Australia. This work however, is not yet complete. More information on the National quality framework for disability services in Australia, is available from the Victorian Department of Human Services website at: <http://www.dhs.vic.gov.au/for-service-providers/disability/service-quality-and-improvement/national-quality-framework-for-disability-services-in-australia>

¹⁷⁸ A national consultation undertaken in 2010 as part of the review of the National Disability Standards, found that over 80% of people with a disabilities, families/carers and service providers identified the concepts of 'freedom from abuse' and 'rights and human rights' as missing from the National Standards, and wanted it included in any new national Standards developed. See: Meltzer, A., Muir, K. & Dinning, B. (2010) OpCit.

¹⁷⁹ Department of Families, Housing, Community Services & Indigenous Affairs (FaHCSIA) (2011) *Disability Services Standards Self-Assessment Guide*; National Disability Advocacy Program. FaHCSIA, Canberra.

¹⁸⁰ KPMG (2008) '*Review of Tasmanian Disability Services: Summary Report*'; Department of Health and Human Services Tasmania. Accessed on line October 2011 at: http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0006/60927/Review_of_Disability_Services-Summary_Report.pdf

¹⁸¹ 1800RESPECT (1800737732) is the Australian Government's National Sexual Assault, Domestic Family Violence Counselling Service for people living in Australia. See: <http://www.1800respect.org.au>

¹⁸² Personal communication between WWDA and 1800 RESPECT co-ordinator, November 27 2011.

numbers of women and girls with disabilities who experience violence.¹⁸³ It must also be acknowledged, that it is inherently difficult (and in many cases impossible) for some women with disabilities experiencing, or at risk of violence, to access the 1800 RESPECT Service, due to: their dependence on others (including perpetrator/s); fear of disclosure, fear of consequences (including retribution), social isolation, place of residence, communication barriers and impairments, lack of support, nature of disability, lack of assertiveness, unquestioning compliance, lack of awareness of rights, lack of access to information about services and support options, and so on.

83. There is evidence of a very small number of localised programs in some States/Territories that are attempting to address the prevention of violence against women with disabilities. For example, the WWILD Sexual Violence Prevention Service¹⁸⁴ is funded by the Queensland Government to work specifically with women with intellectual and/or learning disabilities in Queensland who have experienced or are at risk of sexual assault, violence or exploitation. The Domestic Violence Resource Centre (DVRC)¹⁸⁵ in Victoria, runs education and training programs for family violence service providers. DVRC is currently working on a program to recruit and train women with disabilities to plan and implement '*Disability and Family Violence*' training programs for service providers. People With Disabilities Australia (PWD)¹⁸⁶ runs training courses for service providers on *Responding to Sexual Assault of People with Disabilities*,¹⁸⁷ and over the next three years will implement a *Violence Prevention Training Project* for women with intellectual disabilities, and staff that support them.¹⁸⁸ PWD has also been funded to provide *Sexuality and Human Rights Training* in a number of boarding houses in NSW as one measure to address the unacceptably high levels of violence in this form of accommodation.¹⁸⁹ The Women's Centre for Health Matters in the ACT is currently developing a disability awareness training package for domestic violence/crisis service workers to understand and meet the needs of women with disabilities escaping domestic violence.¹⁹⁰

84. In relation to the prevention of harmful practices such as FGM, the Melbourne Royal Women's Hospital hosts the *Family and Reproductive Rights Education Program (FARREP)* - a Victorian state-wide program which aims to raise awareness among affected communities and health professionals about FGM and build their capacity to effect positive change.¹⁹¹

¹⁸³ Ibid.

¹⁸⁴ WWILD works with women with intellectual and learning disabilities who have experienced or at risk of experiencing sexual violence or have become a victim of crime. WWILD runs two main programs: *The Sexual Violence Prevention Program* provides support to women with intellectual and learning disabilities aged over 15 who have experienced or are at risk of experiencing sexual violence. The *Victims of Crime Disability Training Program* provides support to people with learning and intellectual disabilities who are a victim of crime and the professionals seeking to support them. See: <http://www.wwild.org>

¹⁸⁵ DVRCV is a Registered Training Organisation and a major provider of accredited training and professional development programs for family violence workers and other professionals in Victoria. See: <http://www.dvrcv.org.au>

¹⁸⁶ People with Disability Australia Incorporated (PWD) is a national peak disability rights and advocacy organisation. See: <http://www.pwd.org.au>

¹⁸⁷ People with Disability Australia Incorporated (PWD) Training Services; See: <http://www.pwd.org.au/training.html>

¹⁸⁸ Bleasdale, M. (2011) cited in '*Community organisations to reduce violence against women with disabilities*'; Joint Media Release Hon Kate Ellis & Hon Tanya Plibersek; 24 October 2011. Accessed online November 2011 at: http://www.kateellis.fahcsia.gov.au/mediareleases/2011/pages/ellis_m_reduced_violence_24october2011.aspx

¹⁸⁹ This training covers a number of issues relating to sexuality and relationships, violence, abuse and neglect and the rights of people with disability. The training is delivered separately to men and women living in boarding houses in recognition of the higher incidence of violence that many of the women participating will have experienced, as well as the sensitivity of some of the subject matter. The training is also delivered to staff who support people with disability living in boarding houses.

¹⁹⁰ Women's Centre for Health Matters (2011) *Disability Awareness Training for Domestic Violence/Crisis Services*. Accessed online November 2011 at: <http://www.wchm.org.au/Prevention-Of-Violence-Against-Women>

¹⁹¹ See: Royal Women's Hospital Melbourne: *Family and Reproductive Rights Education Program (FARREP)* at: <http://www.thewomens.org.au/FamilyandReproductiveRightsEducationProgramFARREP>

How has the participation of women with disabilities in the development of such laws, programmes/policies been ensured?

85. WWDA's work on the issue of violence against women with disabilities has found that meaningful engagement must be inherent in the key strategies to address violence against them so that their experiences and their views are integral to identifying potential solutions and building successful interventions. However, women with disabilities in Australia have traditionally been excluded from participating in the development of violence prevention laws, policies, programs and services.¹⁹² Although in recent times there have been improvements in consulting with, and including women with disabilities in the development of violence prevention initiatives (particularly at the national level), there remains much to be done in this area.
86. In its 2010 Concluding Comments regarding the Australian Government's implementation of CEDAW, the CEDAW Committee expressed concern at the under-representation of women with disabilities in decision-making positions and the subsequent persistent inequality of their access to education, employment opportunities and health care services. The Committee noted with concern that measures taken to enhance the participation of women with disabilities in public life remains inadequate, and recommended that the Australian Government adopt targeted measures, including temporary special measures with clear time frames, to ensure the equal participation and representation of women with disabilities in public and political life.¹⁹³
87. Research has demonstrated the importance and effectiveness of women's NGO's in addressing the issue of violence against women.^{194 195 196} It is also considered critical to involve women fully and to use their experiences of violence - including the complexities that arise from multiple discrimination - as the starting point for developing policies and programs to address violence. The empowerment of women is vital in any framework to tackle violence against women and girls, and this is even more potent for women with disabilities, who have made it clear that empowerment for them comes from speaking and/or acting in their own interests; the presence of a collectivity and a basis in self-determination; and a discourse of human rights.¹⁹⁷

¹⁹² Women With Disabilities Australia (WWDA)(2009) *Submission to Inform the Development of the Framework for the National Women's Health Policy*. Available online at: <http://www.wwda.org.au/subs2006.htm>

¹⁹³ UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, 30 July 2010, CEDAW/C/AUS/CO/7.

¹⁹⁴ Council of Europe (1997) *Final Report of Activities of the EG-S-VI including a Plan of Action for combating violence against women*. Group of Specialists for Combating Violence Against Women (EG-S-VI).

¹⁹⁵ United Nations General Assembly (2006) *In-depth study on all forms of violence against women*. Report of the Secretary-General. A/61/122/Add.1.

¹⁹⁶ Women With Disabilities Australia (WWDA)(2007b) OpCit.

¹⁹⁷ Women With Disabilities Australia (WWDA) (2008) *Policy Paper: 'The Role of Advocacy in Advancing the Human Rights of Women with Disabilities in Australia'*. Available online at: <http://www.wwda.org.au/subs2006.htm>

88. Organisations and groups of women with disabilities play an essential role in efforts to promote the rights of women and girls with disabilities to freedom from all forms of violence, exploitation and abuse. However, in Australia, the national organisation of and for women with disabilities (WWDA) is poorly funded, receiving a small amount of operational funding each year from the Australian Government. This funding is not sufficient to sustain the work of the organisation, nor allow for growth and expansion. WWDA's current government funding enables the organisation to operate a small one room office and employ one full time worker (Executive Director) and one part-time worker (Finance & Office Manager). The work undertaken by WWDA relies heavily on the goodwill of its members, all of whom are women with disabilities, and who undertake work for WWDA in an unpaid capacity. Of the 8 Australian State/Territory Governments, there is only one (Victoria) which provides operational funding for a disabled women's organisation.¹⁹⁸
89. The meaningful participation of women with disabilities in the development of violence prevention laws, policies, programs, and services requires Governments to recognise that organisations, groups and networks of women with disabilities must be adequately resourced and supported in order to:
- develop systems and processes whereby women with disabilities can be identified, trained and recruited to act as advocates to improve the human rights of women with disabilities;
 - develop the necessary systems and tools to support women with disabilities to undertake representative and advocacy roles;
 - undertake capacity building to promote women with disabilities' access to positions of leadership and decision-making;
 - research and identify representation, leadership and systemic advocacy opportunities for women with disabilities.
90. As outlined earlier, in more recent times, WWDA has been consulted by Governments on national family violence legislative and policy reforms. However, this inclusion is largely the result of WWDA's consistent and sustained systemic advocacy on the need for inclusion of women with disabilities in advisory and decision-making structures. This work has resulted in tangible outcomes, but continues to be hampered due to inadequate funding and burdensome, bureaucratic processes which create unnecessary work for WWDA and which impact on the capacity of the organisation to concentrate its efforts on its core business of improving the human rights of women with disabilities in Australia.

¹⁹⁸ See: Women With Disabilities Victoria (WDV) at: <http://www.wdv.org.au/>



prevention and protection

What measures/initiatives are in place to combat negative perceptions, stereotyping and prejudices of women and girls with disabilities in the public and private spheres?

91. Gender is one of the most important categories of social organisation,¹⁹⁹ yet people with disabilities are often treated as asexual, genderless human beings. This view is borne out in Australian disability policies, which have consistently failed to apply a gender lens. Most have proceeded (and continue to proceed) as though there are a common set of issues - and that men and women experience disability in the same way.²⁰⁰ Women with disabilities face multiple discriminations and are often more disadvantaged than men with disabilities in similar circumstances. Women with disabilities are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination.²⁰¹ Women with disabilities face *particular* disadvantages in the areas of education, work and employment, family and reproductive rights, health, violence and abuse.
92. Around the world, images of women and girls with disabilities in the mass media are universally negative or absent, and the situation is no different in Australia. If reported in a news or feature story, the disabled girl or woman is usually singled out as an object of pity or charity, or conversely, as a heroine for achieving the ordinary. If portrayed in a fictional or dramatic work, they are often utilised to represent a negative situation or character flaw (weakness, passivity, evil, sickness). Missing in the media are the everyday stories about girls and women with disabilities who are attending schools, participating in active family life, holding down jobs - part of the foreground and background of the rhythm and dynamics of communities all over the world.²⁰²
93. Although there are some national initiatives of the Australian Government which aim to combat negative attitudes towards people with disabilities,²⁰³ these initiatives are un-gendered. WWDA's experience confirms that biases and stereotypes related to gender can be as pervasive and limiting as for disability. When the two

¹⁹⁹ Arnade, S. & Haefner, S. (2006) *Gendering the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*. Legal background paper. Published by Disabled Peoples' International (DPI), Berlin.

²⁰⁰ Gray, G. (2010 draft) *By Women for Women, the Australian women's health movement and public policy*. (forthcoming).

²⁰¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: <http://www.unhcr.org/refworld/docid/43f3067ae.html> [accessed 27 June 2010]

²⁰² Duncan, B. & Berman-Bieler, R. (Eds.) (1998) *International Leadership Forum for Women With Disabilities Final Report*; Published by Rehabilitation International; New York, USA.

²⁰³ See for example: International Day of People With Disabilities (<http://www.idpwd.com.au>); Prime Ministers National Disability Awards (<http://www.idpwd.com.au/awards>); Ramp Up (<http://www.abc.net.au/rampup>)

are combined, the effects can be multiplied.²⁰⁴ Women with disabilities in Australia want options for diversity in relationships, marriage, mothering, control of fertility and reproduction, running a household, caring for children and older family relatives and to live safely, as well as opportunities for employment and further education.²⁰⁵ Yet they are often stereotyped as passive, asexual, dependent,²⁰⁶ compliant,²⁰⁷ sick, child-like, incompetent and helpless,²⁰⁸ powerless²⁰⁹ or insecure.²¹⁰ Alternatively, women with developmental disabilities in particular may be regarded as overly sexual, creating a fear of profligacy and the reproduction of disabled babies, often a justification for their sterilisation.²¹¹ These perceptions, although very different, often result in women with disabilities being denied the right to participate in decision-making processes that affect their lives, and contribute to the high incidence of violence perpetrated against them.

94. WWDA's concern remains that whilst Australian initiatives to address attitudes towards people with disabilities remain un-gendered, the negative perceptions, stereotyping and prejudices of women and girls with disabilities will prevail.

What initiatives exist to inform women and girls with disabilities about their rights, including sexual and reproductive health issues? To what extent do these initiatives address also women in institutions?

Sexual and reproductive health

95. Reproductive rights and freedoms rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so. It also includes the right to make decisions regarding reproduction free of discrimination, coercion and violence.²¹² For women with disabilities, reproductive rights and freedoms include the right to bodily integrity, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a normal way, the right to sex education, to informed consent regarding birth control, to terminate a pregnancy, to choose to be a parent, and to access reproductive information, resources, medical care, services, and support (WWDA 2009).²¹³

²⁰⁴ Women With Disabilities Australia (WWDA) and Women With Disabilities Victoria (WDV)(2011) *Joint Submission in Response to the Productivity Commission's Disability Care and Support Draft Report*. Available online at: <http://www.wwda.org.au/subs2011.htm>

²⁰⁵ Ibid.

²⁰⁶ See for eg: Curry, M. et al (2001) Abuse of women with disabilities: An ecological model and review. *Violence Against Women*, Vol. 7, No. 1.

²⁰⁷ See for eg: Carlson, B. (1997) Mental retardation and domestic violence: An ecological approach to intervention. *Social Work*, Vol.42, No.1.

²⁰⁸ See for eg: Crawford, D. & Ostrove, J. (2003) Representations of Disability and the Interpersonal Relationships of Women with Disabilities. *Women & Therapy*, Vol. 26, No.3/4.

²⁰⁹ See for eg: Chang, J. et al (2003) Helping Women with Disabilities and Domestic Violence: Strategies, Limitations and Challenges of Domestic Violence Programs and Services. *Journal of Women's Health*, Vol.12, No.7.

²¹⁰ See for eg: Calderbank, R. (2000) Abuse and Disabled People: vulnerability or social indifference? *Disability & Society*, Vol.15, No.3.

²¹¹ Women With Disabilities Australia (WWDA) (2007b) Op Cit.

²¹² UN General Assembly (2000) *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. Resolution adopted by the General Assembly: S-23/3.A/RES/S-23/3 [para.27].

²¹³ Women With Disabilities Australia (WWDA)(2009) OpCit.

96. Although the right to ‘found a family’ and to ‘reproductive freedom’ is clearly articulated in a number of international human rights instruments to which Australia is a party,²¹⁴ for many women with disabilities in Australia, such fundamental human rights are not realisable. Instead, women with disabilities have traditionally been discouraged or denied the opportunity, to bear and raise children.²¹⁵ They have been, and continue to be perceived as asexual, dependent, recipients of care rather than care-givers, and generally incapable of looking after children.²¹⁶ In Australia, the denial of the right to reproductive freedom and the right to found and maintain a family takes many forms for women with disabilities, including for example: systematic exclusion from comprehensive reproductive and sexual health education and care, limited voluntary contraceptive choices, a focus on menstrual suppression, poorly managed pregnancy and birth, involuntary abortion, forced sterilisation, and the denial of rights to parenting. These practices are framed within traditional social attitudes that characterise disability as a personal tragedy or a matter for medical management and rehabilitation^{217 218}
97. Whilst there are exceptions, there appear to be very few specific, targeted initiatives for women and girls with disabilities in Australia regarding a rights based approach to sexual and reproductive health. Where they exist, the majority of initiatives focusing on disability, sexuality and reproductive rights – are not gendered, focus largely on people with intellectual disabilities, tend to overlook the sexual and reproductive health needs of other women and girls with disabilities, and appear to be primarily targeted at service providers and/or parents and carers.
98. Each State & Territory in Australia has a sexual health and family planning organisation,²¹⁹ funded by its respective Government. These organisations can provide information, support and training around sexuality, relationships, reproductive and sexual health for people with disabilities, as well as those who care for and work with them. Some are more progressive than others in relation to developing specific, targeted initiatives for women and girls with disabilities regarding sexual and reproductive health. For example, some provide disability and gender specific resource materials, yet others do not. Regrettably, much of the online disability resource materials provided by the majority of the Family Planning organisations are only available for download in PDF formats, which remain inaccessible for some women and girls with disabilities. Some provide disability specific training courses for service providers who come into contact with people with disabilities, however Family Planning charges fees for most of these courses.²²⁰ Many of these organisations lack the funding to enable a comprehensive service for women and girls with disabilities.²²¹

²¹⁴ See for eg: International Covenant on Economic, Social and Cultural Rights (Article 10); International Covenant on Civil and Political Rights (Article 23); Convention on the Elimination of All Forms of Discrimination against Women (Article 16); Convention on the Rights of Persons with Disabilities (Article 23).

²¹⁵ Women With Disabilities Australia: 'Parenting Issues for Women with Disabilities in Australia' - A Policy Paper (May 2009). Available at: www.wwda.org.au/motherhd2006.htm

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra.

²¹⁹ For links to each State and Territory Family Planning & Sexual Health organisation, go to: <http://www.shfpa.org.au/>

²²⁰ See for example: Family Planning NSW Education & Training: http://fpnsw.org.au/topic_education.html?ID=49&TYPE=QUEUE&KEYWORD=&AUDIENCE=4469736162696C69747920576F726B657273&COURSES=&BYDSND=CONV.POSTED

²²¹ For example, Family Planning Tasmania has one part time worker in its southern region (servicing a population of more than 200,000 people) to undertake both individual ‘casework’ and all education and training of people with disabilities and as well as those who care for and work with them.

99. The *SoSAFE! Program* is an example of a sexual and reproductive health program developed in Australia for people with intellectual disabilities. The Program is currently being implemented in the Australian Capital Territory (ACT) and Tasmania, in school, residential and employment settings. The *SoSAFE! Tools* (together with the one day *SoSAFE! Certified Training*) provide teachers, trainers and counsellors with skills and simple visual tools to enhance the social, social-sexual and social safety training of people with 'moderate to severe' intellectual disabilities and Autism Spectrum Disorder.²²² There is no information readily available as to how or whether this Program is being implemented with women and girls with disabilities in institutional settings such as group homes.

100. There are some limited examples of sexual and reproductive health programs developed specifically for women and girls with disabilities. One such Program is the '*Pimples & Periods*' Program, run by Sexual Health & Family Planning (SHFPACT) in the ACT.²²³ This Program includes a two hour workshop where girls with a disability and their carers can learn about periods and some of the other changes girls go through physically and emotionally during puberty. Topics include a practical look at managing periods, peer pressure, body image, personal hygiene and the difference between public and private places. The workshops are free, and can be delivered in community settings. SHFPACT's *Schools Disability Program*²²⁴ provides one-to-one education and workshops to people with disabilities, to support positive sexual health choices and strengthen preventative approaches. The Program tailors all education sessions as required, so that students can be supported individually, in small groups or within their integrated class. The Program is free.

101. The Sexuality Education Counselling and Consultancy Agency (SECCA)²²⁵ in Western Australia, provides education and training workshops which are able to be customised. One example is the '*Menstrual Management, Personal Hygiene & Sexual Health*' Training Workshop which aims to '*provide participants with strategies to teach women with a disability, their carers and other health professionals a positive approach to menstruation*'. SECCA also provides a one-on-one specialist counselling and education service in the area of human relationships and sexuality to people who have a disability, their family and significant carers.

Human Rights Education

102. There are limited examples of targeted programs and other initiatives developed to educate women with disabilities about their human rights generally. In April 2010, the Attorney-General launched Australia's *Human Rights Framework*²²⁶ which outlines a range of key measures to further protect and promote human rights in Australia. Human rights education is the centrepiece of the Framework, and the Australian Government has allocated funding of \$2.068 million over four years to non-government organisations for the

²²² SoSAFE! uses a standardised framework of symbols, visual teaching tools and concepts to teach strategies for moving into intimate relationships in a safe and measured manner, and provides visual communication tools for reporting physical or sexual abuse. For more information go to:

http://www.shfpact.org.au/index.php?option=com_content&view=article&id=141&Itemid=128

²²³ Sexual Health & Family Planning ACT (SHFPACT) is a not-for-profit, non-government, membership-based organisation. Its purpose is improved sexual and reproductive health for the Canberra community, within a framework of feminist social values. See: <http://www.shfpact.org.au>

²²⁴ Sexual Health & Family Planning ACT (SHFPACT) *Schools Disability Program*, See:

http://www.shfpact.org.au/index.php?option=com_content&view=article&id=39&Itemid=80

²²⁵ SECCA is a non-profit organization designed to support people with disabilities, in their efforts to learn about human relationships, sexuality and sexual health across the lifespan; as well as helping them to develop skills that will empower them to make informed choices, while acknowledging their own individual capacity to enhance the quality of their lives. See: <http://secca.org.au/>

²²⁶ A copy of *Australia's Human Rights Framework* is available in PDF and Word formats at: <http://www.ag.gov.au/humanrightsframework>

development and delivery of human rights community education and engagement programs.²²⁷ Thirty of these NGO projects have been funded to date, and although there are a number that target 'people with disabilities', there are none which are gender and disability specific.²²⁸

103. A number of Australian disability NGO's are working hard to educate their members and constituents around human rights, however, many lack the funding, resources and capacity to undertake this work effectively. For example, Advocacy for Inclusion,²²⁹ based in the Australian Capital Territory (ACT), delivers self-advocacy courses for women with disabilities, to develop the skills needed to speak for themselves. Courses include training around human rights, respectful relationships, self-determination, and assertiveness. WWDA, with limited funding and only two paid staff, relies heavily on its website and use of other information and communication technologies to inform women with disabilities about human rights.

What programmes/initiatives have been developed to train women with disabilities to develop skills and abilities for economic autonomy and participation in society and to use technological and other aids that lead to greater independence?

104. Through organisations like WWDA, and its affiliates, some women with disabilities who do not necessarily see themselves as political actors are able to participate in mobilisation for change through the use of new communication technologies. Through using new media women with disabilities are able to network and engage in mutual learning and support. However, these new technologies are expensive and not always available in remote and rural areas. Many women with disabilities in Australia still do not have access to the Internet. There are issues of affordability, capacity and 'gatekeepers' to technology. It remains a challenge for small organisations such as WWDA to keep abreast of new developments and also to ensure that women with disabilities have access to new forms of interactivity.²³⁰

105. Women with disabilities are over-represented in low socio-economic groups compared to men with disabilities and women in general. This affects their ability to access Information and Communications Technology (ICT), and further disadvantages them in a range of activities that are now conducted over the Internet. Many E-commerce activities - for example bill paying and banking - offer discounts for business conducted over the Internet. Thus lack of Internet access further penalises people who are already under financial strain. Moreover, the lack of access to the Internet deprives women with disabilities the social interaction afforded by email contact with family, friends, disability support groups and other special interest groups.²³¹

²²⁷ Australian Government, Attorney-General's Department; Australia's Human Rights Framework, see: <http://www.ag.gov.au/humanrightsframework>

²²⁸ For a description of funded projects to date, go to: <http://www.ag.gov.au/hrgrants>

²²⁹ Advocacy for Inclusion provides advocacy services to people with disabilities living in the ACT and region, to enable each individual to overcome discrimination and empower them to control their lives and participate in the community. See: <http://www.advocacyforinclusion.org>

²³⁰ Meekosha, H. & Frohmader, C. (forthcoming) OpCit.

²³¹ Salthouse, S. (2002) 'Bridging the Digital Divide' - A Resource Manual of Initiatives Enabling People in Disadvantaged Groups to Gain Access to the Internet. Women With Disabilities Australia (WWDA), Tasmania.

106. A national survey undertaken by WWDA in 1999 found that 84% of women with disabilities are restricted in their access to telecommunications. Forty-nine per cent of responses from women with disabilities cited restrictions due to issues of affordability; 76% due to poor design of telecommunications equipment; 20% due to lack of training; 20% due to lack of information; and 18% due to discrimination.²³² A further study conducted by WWDA in 2000²³³ found that the costs of purchasing, operating/maintaining and getting internet connections for a computer were major factors preventing women with disabilities from accessing the Internet. Access to affordable and appropriate training was also a major barrier.

What measures exist to ensure access by women and girls with disabilities to social protection programmes and poverty reduction programmes?

107. Women with disabilities throughout Australia bear a disproportionate burden of poverty and are recognised as amongst the poorest of all groups in society.²³⁴

108. Although the Australian Government provides a range of income support benefits and payments for people with disabilities,²³⁵ such as the *Disability Support Pension (DSP)*, these payments remain inadequate to support women with disabilities. The setting of income support payment rates for women with disabilities has failed to take account of the non-optional, extra costs associated with disability. In 2004, the *Senate Inquiry into Poverty and Financial Hardship*²³⁶ found widespread poverty among people with disabilities. A report released in November 2011 by Price WaterhouseCoopers,²³⁷ found that people with disabilities are more likely to be living in poverty in Australia than any other developed country, they have the worst quality of life in the developed world, and the nation ranks in the bottom third of Organisation for Economic Co-operation and Development (OECD)²³⁸ nations in employing those with a disability (21st out of 29 OECD countries). The report showed there was an employment rate of 39.8 percent for people with disabilities compared with 79.4 per cent for those without a disability.

109. Women with disabilities are less likely to be in paid work (or looking for work) than other women, men with disabilities or the population as a whole. There are fewer employment openings for disabled women and those who are employed often experience unequal recruitment and promotion criteria, unequal access to training and retraining, unequal access to credit and other production resources, unequal remuneration for

²³² Women With Disabilities Australia (WWDA) (1999) *'Final Report of the WWDA Telecommunications Survey Project'*. Available online at: <http://www.wwda.org.au/wwdaprojects.htm>

²³³ Women With Disabilities Australia (WWDA) (2001) *'Telecommunications Use by Women with Disabilities in remote, rural and regional Australia'* - Final Report. Available online at: <http://www.wwda.org.au/wwdaprojects.htm>

²³⁴ See for example: Women With Disabilities Australia (WWDA) (2008) *Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce*. Available online at: <http://www.wwda.org.au/wwdapesub1.htm>

²³⁵ Australian Government (2011) *A Guide to Australian Government Payments*. Accessed online October 2011 at: [http://www.centrelink.gov.au/internet/internet.nsf/filestores/co029_1109/\\$file/co029_1109en.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/co029_1109/$file/co029_1109en.pdf)

²³⁶ Commonwealth of Australia (2004) *A hand up not a hand out: Renewing the fight against poverty*. Report from the Australian Senate Community Affairs References Committee on the Poverty and Financial Hardship Inquiry. Parliament House, Canberra.

²³⁷ Price Waterhouse Coopers (2011) *Disability Expectations - Investing In A Better Life, A Stronger Australia*. Accessed online November 2011 at: <http://www.pwc.com.au/industry/government/publications/disability-in-australia.htm>

²³⁸ The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. THE OECD currently has 34 member countries. See: <http://www.oecd.org>

equal work and segregation.²³⁹ In Australia, twenty-one per cent (21%) of men with disabilities are in full time employment compared to nine per cent (9%) of women with disabilities.²⁴⁰ Eleven per cent of women with disabilities have part time employment compared to 6% of men with disabilities.²⁴¹ In any type of employment women with disabilities are more likely to be in low paid, part time, short term casual jobs.²⁴² Over the last decade, the unemployment rate for disabled women in Australia has remained virtually unchanged (8.3%) despite significant decreases in the unemployment rates for disabled men, and non-disabled women and men.²⁴³

110. In August 2011, following a two year Productivity Commission²⁴⁴ *Inquiry into the Feasibility of a Long-term Care and Support Scheme for People with Disability* in Australia,²⁴⁵ the Council of Australian Governments (COAG) agreed on the need for major reform of disability services in Australia through a *National Disability Insurance Scheme* (NDIS) by mid-2013.²⁴⁶ The NDIS will provide insurance cover for all Australians in the event of 'significant disability'. The main function of the NDIS would be to fund long-term high quality care and support (but not income) for an estimated 410,000 people with 'significant disabilities'. COAG will develop high-level principles by the end of 2011 to guide consideration of the Productivity Commission's recommendations regarding an NDIS,²⁴⁷ including for foundation reforms, funding and governance.

111. WWDA made a number of Submissions to the Productivity Commission Inquiry into long-term care and support scheme for people with disability in Australia,^{248 249} focusing on the need for development of the NDIS to be consistent with Australia's international commitments to '*promote an active and visible policy of mainstreaming a gender perspective into all legislative and policy frameworks*'.²⁵⁰ WWDA's work specifically emphasises the critical need for the NDIS to be gendered, in order to promote equal opportunities for women and girls with disabilities, address gender-based discrimination, and encompass issues for women with disabilities which are critical in the development and implementation of such a scheme (including for

²³⁹ International Labour Organization (2007) *The right to decent work of persons with disabilities*. Prepared for the ILO by Arthur O'Reilly. International Labour Office, Geneva.

²⁴⁰ Australian Bureau of Statistics (ABS) (2004) *Disability, Ageing and Carers Australia: Summary of Findings*, Cat.No. 4430.0, disaggregated data purchased from ABS by WWDA. See also: S Salthouse (2008) *From Coursework to the Workforce: Education Challenges for educators & women with disabilities*, available online at: <http://www.wwda.org.au/salthouse08wave1.htm>

²⁴¹ Ibid.

²⁴² See Women With Disabilities Australia (WWDA) (2008) *Submission to the Parliamentary Inquiry into pay equity and associated issues related to increasing female participation in the workforce*. Rosny Park, Tasmania. Available online at: <http://www.wwda.org.au/subs2006.htm>

²⁴³ Human Rights and Equal Opportunity Commission (HREOC) (2005) *National Inquiry into Employment and Disability; Issues Paper 1: Employment and Disability - The Statistics*; HREOC, Sydney.

²⁴⁴ The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. See: <http://www.pc.gov.au>

²⁴⁵ Productivity Commission (2011) *Disability Care and Support: Final Report*. Canberra. Available online at: <http://www.pc.gov.au/projects/inquiry/disability-support/report>

²⁴⁶ Gillard, J. (2011) *COAG delivers key step for national disability insurance scheme*. Accessed online October 2011 at: <http://www.pm.gov.au/press-office/coag-delivers-key-step-national-disability-insurance-scheme>

²⁴⁷ The Productivity Commission recommended in part that: The scheme should involve a common set of eligibility criteria, entitlements to individually tailored supports based on the same assessment process, certainty of funding based on need, genuine choice over how their needs were met (including choice of provider) and portability of entitlements across borders. There would be local area coordinators and disability support organisations to provide grass roots support. The insurance scheme would take a long-term view and have a strong incentive to fund cost effective early interventions, and collect data to monitor outcomes and ensure efficiency. See: '*Disability Care and Support Inquiry: Key Points*' at: <http://www.pc.gov.au/projects/inquiry/disability-support/report/key-points>

²⁴⁸ Women With Disabilities Australia (WWDA) (2010) *Gendering the National Disability Care and Support Scheme*. WWDA Submission to Stage One of the Productivity Commission National Disability Care and Support Inquiry. Available online at: www.wwda.org.au/WWDASubPCInquiry2010.pdf or www.wwda.org.au/WWDASubPCInquiry2010.doc

²⁴⁹ Women With Disabilities Australia (WWDA) and Women With Disabilities Victoria (WDV)(2011) *Joint Submission in Response to the Productivity Commission's Disability Care and Support Draft Report*. Available online at: <http://www.wwda.org.au/subs2011.htm>

²⁵⁰ See for eg: United Nations General Assembly (2000) *Resolution adopted by the General Assembly: Further actions and initiatives to implement the Beijing Declaration and Platform for Action*. Twenty-third special session, A/RES/S-23/3. See also: Preamble [q] of UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106.

example: sexuality, parenting and reproductive rights; health and wellbeing; employment; and, safety and violence). Regrettably, the Final Report of the Productivity Commission Inquiry, released in August 2011, made no mention of gender, rendering women with disabilities invisible. According to Women With Disabilities Victoria:

*“The NDIS will not be effective unless it addresses the specific needs of women with disabilities. We know that all the evidence tells us women with disabilities are the most disadvantaged group in society but once again women with disabilities are invisible in the Productivity Commission’s report. As the report stands a mother with a disability will not receive help to bath or feed her children”. The next stage of the NDIS must place greater emphasis on recognizing and responding to abuse and violence of people with disabilities; improving services that support women with a disability in their role as parents, and; ensuring women’s reproductive and sexual health through appropriate services”.*²⁵¹

Please provide information on other measures (legislative, administrative, juridical or other) aimed at the development, advancement and empowerment of women with disabilities.

112. Political participation and representation are essential markers of gender equality. However, in Australia, women with disabilities are too often excluded from opportunities to participate in decision-making about issues that affect their lives and those of their families, community and nation. It is largely through the actions of women with disabilities themselves that this culture of exclusion is being challenged. Women with disabilities argue that one of the best ways to challenge oppressive practices, cultures and structures is to join with other women with disabilities - to share experiences, to gain strength from one another and to work together on issues that affect them. These collectivities enable women with disabilities to recognise their own needs for personal autonomy, and perhaps more importantly, develop a sense of personal worth. At the broader level, it enables the formation of a collective identity, where women with disabilities are able to speak out about their experiences together and take action to realise their rights and improve their lives as a group.²⁵²

113. In Australia, there is an urgent and critical need for governments to establish mechanisms and structures which enable women with disabilities to have their voices heard, and to act politically as agents in their own right. This includes the need to adequately resource, support and strengthen organisations, networks and groups run and controlled by women with disabilities in the pursuit of their collective interests, as defined by them.

114. As outlined earlier in this Paper, in its 46th session in 2010, the CEDAW Committee noted with concern that measures taken to enhance the participation of women with disabilities in public life remains inadequate, and recommended that the Australian Government adopt targeted measures, including temporary special

²⁵¹ Women With Disabilities Victoria (2011) ‘Productivity Commission ignores women with disabilities again’. Media Release, 11 August 2011; Accessed online October 2011 at: [http://www.wdv.org.au/documents/Media%20Release%20-%20Productivity%20Commission%20ignores%20women%20with%20disabilities%20again%20\(11%2008%2011\).pdf](http://www.wdv.org.au/documents/Media%20Release%20-%20Productivity%20Commission%20ignores%20women%20with%20disabilities%20again%20(11%2008%2011).pdf)

²⁵² Meekosha, H. & Frohmader, C. (forthcoming) OpCit.

measures with clear time frames, to ensure the equal participation and representation of women with disabilities in public and political life.²⁵³

115. In 2011, the Australian Government announced funding of \$2.9 million over four years for a new national program to help people with disabilities become leaders in business, the community and government through mentoring and leadership development. The *'Leaders for Tomorrow'* Program will provide up to 12 months training for around 200 people with disabilities and develop individual leadership development plans for all participants of the program. The Program is not specifically targeted at women with disabilities, although is *'committed to including a variety of participants reflecting the diversity of the Australian community.'*²⁵⁴

116. Whilst the *'Leaders for Tomorrow'* Program is a welcome initiative, women with disabilities in Australia could greatly benefit from a targeted Leadership Development Program for Women and Girls with Disabilities, along the lines of the Indigenous Women's Program, funded by the Australian Government. The Indigenous Women's Program (IWP) is a grants program which provides funding for activities that enhance Indigenous women's leadership, representation, safety, wellbeing and economic status.²⁵⁵ Amongst other things, the IWP specifically aims to: support more women to undertake leadership, representative and management roles; and, increase Indigenous women's awareness of, access to, and role in local priority setting and Government funding activities.

Are there provisions for regular home visits and inspections of medical institutions where women and girls with disabilities are living/receiving treatment? How do these work?

117. In Australia, deinstitutionalisation has been heralded as a breakthrough for women with disabilities to provide them with the opportunity to become part of the wider community, especially to those who are able, and who wish to, live by themselves or as autonomously as possible. However, the reality is that while large institutions have been closing, the essential support services for women attempting to integrate into the community have not kept pace with their needs. Consequently, many women with disabilities are forced to live in inappropriate accommodation, where they are vulnerable to violence and abuse. Alternatively, they live without adequate support in the community. They experience considerable difficulties in obtaining relevant information about leaving an institution and finding accommodation elsewhere. The lack of supports available in the community is a major disincentive to women with disabilities to leave institutions.²⁵⁶

²⁵³ UN Committee on the Elimination of Discrimination against Women (CEDAW) (2010) OpCit.

²⁵⁴ For more information on the 'Leaders for Tomorrow' Program, go to: <http://www.leadersfortomorrow.com.au/>

²⁵⁵ For more information on the Indigenous Women's Program (IWP), go to: http://www.fahcsia.gov.au/sa/indigenous/progserv/leadership/Pages/indigenous_womens_program.aspx

²⁵⁶ Women With Disabilities Australia (WWDA) (2009) OpCit.

118. There is no uniform, consistent approach in Australia to protect women and girls with disabilities in institutions from violence, abuse, neglect and exploitation. Women and girls with disabilities in Australia live in a range of settings, including a vast array of different types of 'institutions' such as group homes, residential aged care facilities, hostels, boarding houses, psychiatric/mental health community care facilities, hospitals, prisons, supported residential facilities. Their protection from violence, abuse neglect and exploitation essentially depends on where they live, how or whether the institution is regulated or licenced, and whether or not there are laws, policies, programs and services in existence. For example, some women with disabilities live in boarding houses which may or may not be licenced, some in aged care facilities which again, may or may not be licenced. However, it remains clear that 'regulations, accreditations, and licencing' do not prevent or even necessarily reduce, violence perpetrated against women with disabilities. This paper, for example, highlights a number of cases where women with disabilities living in government run institutions have experienced multiple forms of violence, which have been either not reported, not investigated, inadequately investigated, remain unsolved, or resulted in poor outcomes for the women concerned.

119. One of the major difficulties in trying to ascertain what protections are in place for women and girls with disabilities living in institutions, is the vast disparity in approaches between the 8 Australian States and Territories. For example, some States/Territories have schemes such as 'Community Visitor Schemes' although, their role and function varies. In Victoria, community visitors are created under three Acts of Parliament,²⁵⁷ whereby volunteers are empowered by law to visit Victorian accommodation facilities for people with a disability or mental illness at any time, unannounced. They monitor and report on the adequacy of services provided, in the interests of residents and patients.²⁵⁸

120. In NSW, Official Community Visitors are appointed by the Minister for Disability Services and the Minister for Community Services under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. They visit most government and non-government accommodation services for children, young people and people with a disability throughout NSW. They also visit people living in licensed boarding houses. However, only services that are operated, funded or licensed to provide accommodation and care by the NSW State Government are visited. The Official Community Visitors have the authority to enter and inspect a visitable service without notice.²⁵⁹ Queensland also has a legislated Community Visitors Program, where 'designated care facilities'²⁶⁰ can be visited without notice.

121. In South Australia, there is currently no independent community visitor scheme to support people receiving disability services (and monitor the agencies and companies that provide them). There is a Community Visitor Scheme (CVS) established under the SA Mental Health Act 2009, however its mandate relates to people with a mental illness who are admitted to treatment centres in South Australia. There have been concerns raised

²⁵⁷ The Mental Health Act 1986, the Health Services Act 1988, and the Disability Act 2006.

²⁵⁸ Office of the Public Advocate (Vic) 'Community Visitors'. Accessed online November 2011 at: <http://www.publicadvocate.vic.gov.au/services/107/>

²⁵⁹ Ombudsman NSW, *Official Community Visitor Scheme*. Accessed online November 2011 at: <http://www.ombo.nsw.gov.au/aboutus/coordnteeoffcommvstrprog.html>

²⁶⁰ 'Designated care facilities' are defined as being: an authorised mental health facility with in-patient services; a hostel registered as 'level three' supported accommodation; a residence with other people who also receive support from Disability Services Queensland or a paid service provider. See: <http://www.justice.qld.gov.au/justice-services/guardianship/community-visitor-program/>

about the scheme's transparency and effectiveness, as it operates under the auspices of Government, rather than an independent body (such as the Office of the Public Advocate).²⁶¹ There is no legislated Community Visitors Scheme for people with disabilities in Tasmania.

What measures have been adopted to provide information and education to women and girls with disability and their families, caregivers and health providers on how to avoid, recognize and report instances of exploitation, violence and abuse?

122. It is widely acknowledged that at some point in their lives, many women and girls with disabilities will experience, or be at risk of experiencing, violence, abuse, neglect and exploitation. Yet for many, identification and recognition that violence in their lives is a problem or a crime remains a significant issue. They may have difficulties in recognising, defining and describing the violence; have limited awareness of strategies to prevent and manage it; lack the confidence to seek help and support; and be unaware of the services and options available to assist them. The lack of appropriate, available, accessible and affordable services, programs and support has been widely documented in the literature – and borne out by WWDA's experience - as a factor that increases and contributes to violence against women and girls with disabilities.

123. As outlined in other sections of this Paper, to date in Australia, there have been minimal initiatives of any description specifically targeted at women and girls with disabilities in relation to violence, abuse, neglect and exploitation. There is a critical and urgent need for research, data collection, legislative and policy development, advocacy, development of inclusive and accessible services, programs and resources, information and awareness raising, education and training (of both women and girls with disabilities and of service providers across a wide range of sectors), as well as targeted initiatives which foster the social, economic and political empowerment of women with disabilities. The importance of information and awareness raising, along with education and training of women and girls with disabilities themselves, is particularly urgent.

124. In 1998, WWDA conducted the first ever national '*Workshop on Women With Disabilities and Violence*' where women with disabilities from around Australia gathered to develop an agenda for action into the future.²⁶² In 2007, WWDA received funding from the Australian Government to develop a '*Resource Manual on Violence Against Women With Disabilities*'.²⁶³ This Manual is made up of four booklets which include: narratives from women with disabilities who experience violence; a global review of the issue; information about domestic violence and women with disabilities; and a model process for women's refuges and other crisis services to re-orient their practices to be accessible and inclusive. WWDA's Resource Manual has been disseminated to more than two thousand individuals and organisations. In 2008, Women With Disabilities Victoria undertook

²⁶¹ Monfries, A. (2011) *Watchdog call: we need to keep an eye on our vulnerable*. Sunday Mail (SA) October 15, 2011. Accessed online October 2011 at: <http://www.adelaidenow.com.au/watchdog-call-we-need-to-keep-an-eye-on-our-vulnerable/story-e6frea6u-1226167473592>

²⁶² Women With Disabilities Australia (WWDA) (1999) *Women With Disabilities and Violence - A Report of the National WWDA Violence Workshop*. Published by WWDA. Canberra.

²⁶³ Audio, e-text & Large Print PDF versions of the Booklets are included on a CD-ROM which accompanies the '*Resource Manual on Violence Against Women With Disabilities*'. Braille and DAISY versions are also available on request. For more information, go to: <http://www.wwda.org.au/vrm2007.htm>

a state-wide Project on violence against women with disabilities in Victoria. The *Building the Evidence Project*²⁶⁴ analysed the extent to which current Victorian family violence policy and practice recognises and provides for women with disabilities who experience violence; and makes recommendations to improve responses to women with disabilities dealing with family violence.

125. In 2008, in response to the work of WWDA and Women with Disabilities Victoria, the Victorian Department of Human Services funded and implemented a 'Women with a Disability Family Violence Learning Program'. The aim of the Program was to assist workers in the disability and family violence sectors to provide a more collaborative response to women with a disability who are experiencing family violence. The Program was conducted once in 2008, and was intended to be rolled out across the State, however this has not occurred. The status of the Program is unclear and there is no information available on the effectiveness or outcomes of the one Program that was conducted in 2008.

What are the means to report violence against women and girls with disabilities in different settings, including medical centres and institutions? To what extent are these known and accessible?

126. As outlined in other sections of this Paper, violence is a significant presence in the lives of large numbers of women and girls with disabilities in Australia, and this situation exists largely due to systemic failures in legislation, policy guidelines, administrative procedures, availability and accessibility of services and support, along with an entrenched culture throughout all levels of society that devalues, stereotypes and discriminates against women and girls with disabilities.

127. As also outlined elsewhere in this Paper, there are a range of mechanisms in Australia to report violence against women and children, including those with disabilities, however, many of these mechanisms remain ineffective for protecting women and girls with disabilities from the multiple forms of violence they experience. For example, the police have a duty to investigate family violence; whether this duty be in legislation or police codes of practice. However, as discussed elsewhere in this paper, police responses to violence perpetrated against women and girls with disabilities remain grossly inadequate.

128. One way that police can be alerted to family violence is through reports from neighbours, health professionals, and others. The making of such reports can be mandated, and persons can be fined for not reporting violence when they should. Such a policy has been adopted in the Northern Territory (NT), where a duty to report some types of family violence is imposed on all adults. Police must take reasonable steps to ensure reports are investigated. Failure to make a report is a criminal offence, and can therefore result in a

²⁶⁴ Healey, L., Howe, K., Humphreys, C., Jennings, C. & Julian, F. (2008) 'Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria'. Prepared for the Victorian Women with Disabilities Network Advocacy Information Service, Melbourne. The *Building the Evidence Project Report* is available in a range of formats from the website of Women With Disabilities Victoria. Go to: <http://www.wdv.org.au/violence.htm>

wide range of persons - including professionals and family members who have not themselves committed family violence - entering into the criminal justice system. As at June 2010, there had been no prosecutions or formal investigations for this offence. Tasmanian family violence legislation also contains a mandatory reporting provision, but the relevant section has not commenced, and the Tasmanian provision, unlike the NT provision, only applies to 'prescribed persons'. Prescribed persons include registered medical practitioners, nurses, dentists, psychologists, and school teachers.²⁶⁵

To what extent are public institutions, such as police stations and hospitals, accessible to women and girls with disabilities?

129. Many public buildings in Australia, including hospitals and police stations, remain inaccessible to people with disabilities.

130. Section 23 of the Federal *Disability Discrimination Act (DDA)* makes it unlawful to discriminate on the grounds of disability in providing access to or use of premises that the public can enter or use. Building access issues also arise under other DDA provisions including in relation to employment, access to services, and accommodation. After more than 10 years of negotiations which the Australian Human Rights Commission (AHRC) initiated, the Australian Government has introduced new standards for access to buildings for people with disabilities. The standards (*Disability (Access to Premises-Buildings) Standards*), approved by the Australian Parliament in November 2010, clarify how to ensure buildings are accessible to people with disabilities and meet the requirements of discrimination law. The completion of this project will ensure that over time buildings in Australia become more accessible, and more useful to an ageing population. More accessible buildings will assist in achieving equal participation for people with disabilities in employment, education, access to services, and other areas of participation in economic, social and cultural life. From May 2011, any new building open to the public, or existing buildings undergoing 'significant renovation', is required to comply with the standards.^{266 267}

Are there shelters for women victims of violence? To what extent are they physically accessible to women with disabilities?

131. In June 2010, the United Nations Human Rights Council, urged member states to adopt and implement policies and programmes that enable women to avoid and escape situations of violence and prevent its recurrence, and that provide, financial support and affordable access to safe housing or shelters, childcare

²⁶⁵ Australian Law Reform Commission (2010) Chapter 8: Family Violence and the Criminal Law - An Introduction. Mandatory reporting. In *Family Violence - A National Legal Response* (ALRC Report 114). Available online at: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

²⁶⁶ Australian Human Rights Commission (AHRC) *Access to Premises*. Accessed online November 2011 at: http://www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html

²⁶⁷ For more information on the *Access to Premises Standards*, go to: http://www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html and/or <http://www.ag.gov.au/premisesstandards>

and other social supports, legal assistance, skills training and productive resources, *and to make these services accessible to women and girls with disabilities.*²⁶⁸

132. The lack of inclusive services and programs for women with disabilities experiencing or at risk of experiencing violence is well documented.^{269 270} There are limited support options for those who do escape violence. Recovering from the trauma of victimisation, and rebuilding their lives as independent, active, valued members of society is a difficult challenge. Where services do exist (such as refuges, shelters, crisis services, emergency housing, legal services, health and medical services, and other violence prevention services) a number of specific issues have been identified²⁷¹ which make access for women with disabilities particularly problematic:

- whilst violence is a significant presence in the lives of large numbers of women with disabilities, many do not recognise it as a crime, are unaware of the services and options available to them, and/or lack the confidence to seek help and support.
- experience in community support services suggests that accessible information and communication is very limited in terms of both content and format of information available.
- the physical means of fleeing a violent situation (such as accessible transportation) are often unavailable.
- the low likelihood of being referred to a refuge because it is assumed that such agencies do not or are unable to cater to their needs.

133. Policy makers, service providers and the broader community have limited understandings of accessibility, believing it requires only a ramp or an accessible toilet.²⁷² In fact accessibility includes being able to receive all policy, service and program information in an accessible format. Experience in Australian health and community support services suggests that this kind of access is extremely limited in terms of both content that reflects the experiences of disabled women and format of information available, such as Braille, audio, Easy English and the use of telephone access relay services and sign interpreters. Another dimension of access includes being able to understand and meaningfully participate in the services and programs available. Experience suggests that women with disabilities generally have limited input into the development of policies, services and programs, including information and education resources.²⁷³

134. As outlined earlier in this paper, for several years now, WWDA has been advocating for the Australian Government to commission a national audit of crisis accommodation services (including women's refuges) to determine their levels of accessibility and safety for women with disabilities. In April 2009, the Australian Government agreed that this audit was a priority and committed to consult with the States and Territories to develop a national response to this priority. However, to date, there is no evidence that this has occurred.

²⁶⁸ United Nations Human Rights Council, Resolution 14/12: *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*. 23 June 2010, A/HRC/RES/14/12.

²⁶⁹ Women With Disabilities Australia (WWDA) (2007b) OpCit.

²⁷⁰ Healey, L. et al (2008) OpCit.

²⁷¹ Women With Disabilities Australia (WWDA) (2007b) OpCit.

²⁷² Ibid.

²⁷³ Dowse, L., Frohmader, C. and Meekosha, H. (2010) Chapter 14: 'Intersectionality: Disabled Women'. In Easteal, P. (ed) *Women and the Law in Australia*, Reed International Books Australia.

135. Research in 2008 undertaken by Women With Disabilities Victoria, found that of Victoria's 23 secure refuge and crisis accommodation, only four described their properties as providing 'full physical access', (which means that there are no steps at the entrance, there is good access inside and accessible bathroom and kitchen facilities). A further five described their properties as having 'limited physical access' (in that there are no major impediments for women with a physical disability, such as internal stairs, but there may be narrow passages in the house that make manoeuvring a wheelchair or frame impossible). The remaining fourteen refuges were located in properties which were described as giving 'no physical access' to women with physical disabilities.²⁷⁴

136. Service providers within community support services (such as women's refuges and other crisis services) may share some stereotypes and myths held by society at large regarding women with disabilities.²⁷⁵ Limitations in workers awareness of the broader issues of accessibility and disabilities, negative or ambivalent attitudes about providing access, lack of knowledge of the complex nature and multiple forms of violence against women with disabilities, limited recognition of the sexuality of women with disabilities, and a tendency to focus on the disability rather than the violence may all stem from this.²⁷⁶ Resources, attitudes and narrow prescriptions of responsibility are often the reasons for women's services and generic services maintaining exclusionary practices.²⁷⁷ For example, Women With Disabilities Victoria, in its 2008 *'Building the Evidence Report'*, gave the example of a family violence worker who said they were doubtful that their management would see supporting women with disabilities as "part of their core business" in providing a family violence service:

*"I think there would be great cost implications. I'm not sure that it [referral of women with disabilities] is something we would like to encourage. I feel money, space and other resources would need to be in place if we were going to encourage this type of referral....."*²⁷⁸

137. Maroondah Halfway House²⁷⁹ in Victoria is one example of a women's refuge service which is working hard to ensure it is accessible to women with disabilities (and their children). In 2008-09, the service secured funding from the Victorian Government to re-develop part of the refuge into a universal access unit. The unit has two bedrooms, which can each sleep three people, and a separate living area. It can accommodate family or, potentially two single women. It is adjacent to the existing refuge accommodation but has an independent entry point. Since the day it opened, the unit has been fully occupied. Staff have undertaken training in developing Disability Action Plans and have also completed the Domestic Violence Resource Centre (Victoria) *'Getting Safe Against the Odds'* training program on working with women with disabilities.²⁸⁰

²⁷⁴ Healey et al (2008) OpCit.

²⁷⁵ Cockram, J. (2003) *Silent Voices: Women With Disabilities and Family and Domestic Violence*. A joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University, Perth, Australia.

²⁷⁶ Women With Disabilities Australia (WWDA) (2007b) OpCit.

²⁷⁷ Jennings, C. (2004) *The health impact of violence: a disability perspective*. Paper presented to the 'Home Truths' Conference, Sheraton Towers, Southgate, Melbourne, Australia.

²⁷⁸ Healey et al (2008) OpCit.

²⁷⁹ Maroondah Halfway House is located in the eastern region of Melbourne and provides emergency crisis and transitional housing and support for women and children experiencing family violence.

²⁸⁰ For more information on the Maroondah Halfway House work to accommodate women with disabilities escaping violence, see article *'A Safe Place for Women With Disabilities: new universal access unit at Maroondah Halfway House'* in the WWDA News, Issue 2, 2010, available online at: <http://www.wdda.org.au/wwdanewsletter.htm>



prosecution and punishment

Are there disaggregated statistics on crimes against persons with disabilities?

138. There is no data collection in Australia on crimes perpetrated against people with disabilities. The Australian Bureau of Statistics (ABS) produces two key data sources that can inform the community about crime victimisation in Australia. The first of these is a measure of crimes reported to and recorded by police; and the second is a household survey collecting direct reports from members of the public about their experiences of crime.²⁸¹ Neither of these sources include data on people with disabilities.

Please provide information on the total amount of registered complaints for violence against women and girls with disabilities? Of the total amount how many were dismissed? What were the main reasons for dismissal? Of the cases that were prosecuted, how many resulted in convictions?

139. Despite high levels of violence against women with disabilities in Australia, few cases are prosecuted. Many cases involving crimes committed against women and girls with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences.^{282 283 284} It has been well documented for decades that police are reluctant to investigate and report cases of violence against women with disabilities (particularly women with intellectual, cognitive, developmental, psychosocial disabilities).^{285 286 287} This is in part due to the stereotypical perceptions of women with disabilities that have been found to be operating at almost all levels of the criminal justice system, including police and courts – ie: that women with disabilities are sexually promiscuous, provocative, unlikely to tell the truth, asexual, childlike, or unable to be a reliable witness.^{288 289} Research has also found that police are reluctant to

²⁸¹ Australian Bureau of Statistics (2011) *Recorded Crime - Victims, Australia, 2010*. Cat.No. 4510.0. Accessed online October 2011 at:

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4510.0Main%20Features12010?opendocument&tabname=Summary&prodno=4510.0&issue=2010&num=&view=>

²⁸² Women With Disabilities Australia (WWDA) (2007b) OpCit.

²⁸³ Healey et al (2008) OpCit.

²⁸⁴ French, P., Dardel, J., & Price-Kelly, S. (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

²⁸⁵ Women With Disabilities Australia (WWDA) (2007b) OpCit.

²⁸⁶ French, P. (2007) *Disabled Justice: The barriers to justice for persons with disability in Queensland*. Queensland Advocacy Incorporated (QAI), Brisbane. Accessed online October 2011 at: http://www.qai.org.au/images/stories/docs/1987-2007/doc_199.pdf

²⁸⁷ French, P. et al (2010) OpCit.

²⁸⁸ Women With Disabilities Australia (WWDA) (2007b) OpCit.

investigate allegations made by women with disabilities about violence perpetrated against them by family members and/or carers; and they also fail to act on such allegations because there is no 'alternative to the abusive situation'.²⁹⁰ ²⁹¹ As recently as November 2011, a Chief Justice of the Supreme Court of Western Australia suggested that the 'biggest problem' in the legal system's fight against domestic violence is the lack of reporting, including the continued 'reluctance of women to report abuse'.²⁹²

140. Senior public officials in Australia have recently openly acknowledged that police are not investigating cases of rape and serious sexual assault against the disabled because police believe the '*current court system offers no chance of conviction*'.²⁹³ In June 2011, the South Australian Health and Community Services Complaints Commissioner²⁹⁴ reported that there had been five cases of rape and serious sexual assault against disabled people in the past year and, in the worst case of abuse in care, the victim had become pregnant with the suspected rapist's child but the man had disappeared before any action could be taken against him. None of the five cases resulted in any serious police action because of a lack of corroboration or the extent of the impairment of the alleged victim.²⁹⁵

141. In July this year, authorities in South Australia decided not to proceed with a case claiming sexual abuse of a child with an intellectual disability. The prosecution formed the view that the child could not give reliable evidence. The accused was released. Although it transpired that up to 30 other intellectually disabled children had been abused by the accused (a volunteer bus driver with a school for intellectually disabled children) and introduced into a ring of paedophiles,²⁹⁶ the police and the school authorities did not tell all the parents whose children had come into contact with the accused.²⁹⁷ It was only as a result of a chance encounter between the parents, that the full extent of their children's abuse was revealed.

142. It often transpires that it is only when cases of alleged abuse against people with disabilities are reported in the media, that some investigative action is pursued by police. For example, in 2006, in a case that shocked the nation, a group of 12 boys all aged under 18, made and sold a DVD depicting the group sexually assaulting and humiliating a 17-year-old intellectually disabled girl. The girl was forced to perform oral sex on two boys, had her hair set alight three times, was stripped of some of her clothing, was spat at and urinated on during a sustained and degrading assault.²⁹⁸ The DVD of the assault, entitled '*Cunt: The Movie*' was sold at schools for

²⁸⁹ Healey et al (2008) OpCit.

²⁹⁰ French, P. (2007) OpCit.

²⁹¹ French, P. et al (2010) OpCit.

²⁹² Banks, A. (2011) 'Women reluctant to report abuse: top judge'. *The West Australian*, November 22, 2011. Accessed online November 2011 at: <http://au.news.yahoo.com/thewest/a/-/wa/11898578/women-reluctant-to-report-abuse-top-judge/>

²⁹³ Kemp, M. (2011) Disabled rape 'too hard to prosecute'. *The Advertiser*, June 27, 2011. Accessed online October 2011 at: <http://www.adelaidenow.com.au/ipad/disabled-rape-too-hard-to-prosecute/story-fn6bqphm-1226082413035>

²⁹⁴ The Health and Community Services Complaints Commissioner (HCSCC) helps people – service users, carers and service providers – resolve complaints about health and community services in South Australia, when a direct approach to the service provider is either unreasonable, or has not succeeded. See: <http://www.hcsc.sa.gov.au>

²⁹⁵ Ibid.

²⁹⁶ Australian Broadcasting Corporation (ABC) (2011) *Church denies disabled kids' sex abuse cover-up*. ABC TV 'Four Corners' September 26, 2011. Accessed online October 2011 at: <http://www.abc.net.au/news/2011-09-26/four-corners-child-abuse-claims/2942602>

²⁹⁷ Australian Broadcasting Corporation (ABC) (2011) *St Ann's Secret*. ABC TV 'Four Corners', October 3, 2011. Accessed online October 2011 at: <http://www.abc.net.au/4corners/stories/2011/09/22/3323669.htm>

²⁹⁸ Miletic, D. (2006) 'Outcry over teenage girl's assault recorded on DVD'. *The Age*, October 25, 2006. Accessed online October 2011 at: <http://www.theage.com.au/articles/2006/10/24/1161455722271.html>

\$5 and widely distributed throughout the community in Victoria.²⁹⁹ Segments of the DVD were posted on the popular YouTube website and viewed by more than 9000 people before it was removed from the site due to 'terms of use violation'.³⁰⁰ Eight of the boys were subsequently charged with assault, manufacturing child pornography and procuring sexual penetration by intimidation. In November 2007, all eight of the boys involved avoided any form of detention, instead being ordered to participate in a rehabilitation program for male adolescents about positive sexuality. Seven had convictions recorded against them. Six were placed on youth supervision orders for between 12 and 18 months and two on probation for 12 months.³⁰¹ 'Cunt: The Movie' remains catalogued on Wikipedia – described as a '2006 Australian movie produced by The Teenage Kings of Werribee'.³⁰²

143. In 2010, three intellectually disabled women living in accommodation run by the Victorian Department of Human Services were allegedly raped and assaulted after being left alone with a male carer in the state-run house.³⁰³ The mother of one of the women said that her daughter was "covered in bruises" after the alleged attack but did not receive counselling until 10 days later, and even then the women were only given one session of one-on-one counselling.³⁰⁴ It was only after the media reported the story that the Department of Human Services undertook 'an internal investigation' and police became involved. However, the outcome of the 'internal investigation' is unknown, as is the result of the police investigation. This lack of transparency is a familiar theme in cases of violence and abuse against women and girls with disabilities.

144. In November 2011, it was reported that a major mental health service in Victoria has been covering up sexual assaults of its patients, and that the same service has been previously investigated for allegedly failing to protect an intellectually disabled teenage girl from being sexually exploited by a 34 year old male patient. The latest allegations involved a 20 year old female mental health patient allegedly sexually assaulted by a male nurse. When the young woman complained to a female staff member, she was told not to tell anyone else about it to avoid it "becoming office gossip". Police investigated the case but did not lay charges on the grounds it would be difficult to prosecute. An internal investigation was conducted and "appropriate disciplinary action implemented" however, it is not known what disciplinary action was taken, and it has been reported that 'soon after the alleged incidents' the male nurse resumed working in mental health services, and 'remains in a role where he interacts with female patients'.³⁰⁵ In most jurisdictions in Australia there is no register of perpetrators of violence against people with disabilities in care settings. Consequently, it is

²⁹⁹ Shtargot, S. (2007) Werribee DVD youths plead guilty, avoid jail. *The Age*, July 21, 2007. Accessed online October 2011 at:

<http://www.theage.com.au/news/national/werribee-dvd-youths-plead-guilty-avoid-jail/2007/07/20/1184560043673.html>

³⁰⁰ Ziffer, D. (2006) YouTube yanks assault DVD. *The Age*, October 26, 2006. Accessed online October 2011 at:

<http://www.theage.com.au/news/national/youtube-yanks-assault-dvd/2006/10/26/116174922232.html>

³⁰¹ Teens avoid jail over sex assault. *Brisbane Times*, November 5, 2007. Accessed online October 2011 at:

<http://www.brisbanetimes.com.au/news/national/teens-avoid-jail-over-sex-assault/2007/11/05/1194117944173.html>

³⁰² Wikipedia 'Cunt: The Movie'. Accessed online October 2011 at: http://en.wikipedia.org/wiki/Cunt:_The_Movie

³⁰³ Mickelborough, P. (2010) Mentally disabled women 'raped by carer' in state-run house. *Herald Sun*, October 11, 2010. Accessed online October 2011 at:

<http://www.heraldsun.com.au/news/victoria/mentally-disabled-women-raped-by-carer-in-state-run-house/story-e6frf7kx-1225936849896>

³⁰⁴ Grace, R. (2010) Rape claims levelled against DHS worker. *The Age*, October 11, 2010. Accessed online October 2011 at:

<http://www.theage.com.au/victoria/rape-claims-levelled-against-dhs-worker-20101011-16erd.html>

³⁰⁵ Baker, R. & McKenzie, N. (2011) Patient 'silenced' after sex abuse. *The Age*, November 21, 2011. Accessed online November 2011 at:

<http://www.theage.com.au/victoria/patient-silenced-after-sex-abuse-20111120-1npeh.html>

relatively easy for perpetrators to move from one place of employment to another when they are discovered or dismissed.³⁰⁶

145. The entrenched culture of violence and abuse against people with disabilities in institutions, along with the lack of reporting and cover up by staff and management is acknowledged as a widespread and common problem,^{307 308 309} and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators. For example, a recent investigation by the Victorian Ombudsman into assault of a disabled client by department-employed carers found that the Victorian Department of Human Services fabricated evidence in an attempt to cover up the assault.^{310 311} Similarly, in Tasmania in 2005, an investigation was undertaken into an acute mental health facility after allegations of staff sexual misconduct and concerns about the standard of care and treatment of mental health patients. The investigation by the Tasmanian Health Complaints Commissioner found that management had not adequately addressed the incidents and complaints, and staff who had raised concerns claimed they had been victimised by management as a consequence.³¹²

146. An investigation by the NSW Ombudsman in 2011 into residents with psychological and intellectual disabilities living in boarding houses licensed by the state government, found that residents have been physically and sexually assaulted by staff and other residents, have died in appalling circumstances, and been denied basic rights, including contact with their families.^{313 314 315} Disturbingly, the report from the investigation is the Ombudsman's fourth in less than 10 years on the failure of the state to protect boarding house residents, in particular those with psychological and intellectual disabilities.³¹⁶ It was only after significant media coverage and sustained advocacy by the NSW peak organisation for people with disabilities, that police became involved. Forty three residents who had been subjected to significant experiences of abuse and violence were removed from one of the boarding houses under investigation, and police have now established a Taskforce to 'investigate alleged incidents of assault, attempted suicides, fire and "missing persons" at the state government-licensed boarding house'.³¹⁷

³⁰⁶ French, P. et al (2010) OpCit.

³⁰⁷ French, P. (2007) OpCit.

³⁰⁸ Stewart, D. Chapter 11 Institutional culture and people with intellectual disabilities: Experiences of an inquirer. In Hauritz, M. Sampford, C. & Blencowe, S. (Eds) (1998) *Justice for People with Disabilities – Legal and Institutional Issues*. The Federation Press, Leichhardt, NSW.

³⁰⁹ French, P. et al (2010) OpCit.

³¹⁰ Brouwer, G. (2011) *Ombudsman Investigation Assault of a Disability Services Client by Department of Human Services Staff*. Ombudsman Victoria. Accessed online October 2011 at:

http://www.ombudsman.vic.gov.au/resources/documents/Assault_of_a_Disability_Services_Client_by_Department_of_Human_Services_Staff.pdf

³¹¹ The Ombudsman's damning report, tabled in Parliament in March 2011, states: 'The department's response to the incident was inadequate and shows a disregard for the resident's human rights and its duty of care.'

³¹² Office of the Health Complaints Commissioner (Tasmania) (2005) *Report of an investigation into Ward 1E and Mental Health services in Northern Tasmania*. Report by the Health Complaints Commissioner, Tasmania.

³¹³ NSW Ombudsman (2011) *More than board and lodging: the need for boarding house reform*. NSW Ombudsman, Sydney.

³¹⁴ See: 'PWD Advocacy and Grand Western Lodge' at: <http://www.pwd.org.au/gwl.html> for a more detailed background and the current situation.

³¹⁵ See also: Horin, A. (2011) Shocking abuse and neglect revealed in boarding houses across NSW. *The Sydney Morning Herald*, August 17, 2011; Accessed online October 2011 at: <http://www.smh.com.au/lifestyle/life/shocking-abuse-and-neglect-revealed-in-boarding-houses-across-nsw-20110816-1iwbk.html>

³¹⁶ The Ombudsman's 2011 report states: "My office has made many recommendations over the past nine years aimed at improving the circumstances of people living in licensed boarding houses and progressing the broader reforms. We have received repeated advice from ADHC about its intentions to progress a review of the legislation governing licensed boarding houses, and interagency work to explore options for reform of the boarding house sector. However, almost a decade in, the legislative review has not been completed, and no decisions have been made about the proposed reforms. The slow pace of work and the lack of practical action to commence necessary reforms are unreasonable given the implications for the individuals living in boarding houses. The need for concerted and sustained cross-government action to achieve real and improved outcomes for people living in licensed and unlicensed boarding houses is overdue." See Brouwer, G. (2011) OpCit ['Ombudsman's message'].

³¹⁷ Silmalis, L. (2011) Taskforce's house of horror fear. *The Sunday Telegraph*, October 16, 2011. Accessed online October 2011 at: <http://www.news.com.au/taskforces-house-of-horror-fear/story-e6freuzi-1226167575416>

147. Violence perpetrated against women and girls with disabilities by co-residents of institutions, is another grave systemic problem that receives little attention, with cases unlikely to be reported, or adequately investigated and perpetrators prosecuted. For example, in 2009, a severely disabled teenage girl had her nose almost bitten off in a 'sickening attack' at a NSW government respite home.³¹⁸ The young girl was unable to fend off her 22-year-old male attacker who was in the same facility, despite government policy dictating children should be in separate homes to adults. It was reported that the intellectually disabled man climbed into her bed during the night and tore into her face and chest with his teeth, leaving her with severe bites, black eyes, bruises and scratches all over her body. No charges were laid.³¹⁹

148. It is often the case that violence perpetrated against women and girls with disabilities by co-residents of institutions is rarely characterised as domestic violence and rarely are domestic violence related interventions deployed to deal with this type of violence. Where action is taken at all, the typical response is to move and/or remove the victim rather than the perpetrator, which tends to compound the trauma experienced by the victim.³²⁰ Research also suggests that resident on resident assaults in specialist disability services are '*typically reframed and detoxified as 'challenging behaviour' and the response tends to be one of 'call for a psychologist' and adopt behaviour management strategies rather than involve police and protect the victim.*'³²¹

149. Women and girls with disabilities are socialised or compelled to tolerate a high degree of personal indignity, mishandling, and even violence, abuse, exploitation and neglect as an incident of service delivery to them. This can lead to their desensitisation to, or to a sense of resignation or despondency about, sexual abuse and other violence,³²² and is a contributing factor to the lack of reporting of violence. Because of the limited recognition of the sexuality of women with disabilities, along with the ignorance around the intersection of gender, disability and violence, there is also a tendency for family members, carers, service providers and other professionals to interpret evidence (such as bodily injuries, verbal or gestural cues, and behaviour) that may be indicative of violence, as a characteristic of impairment or disability.^{323 324} This can result in a failure to identify, report and investigate incidents of violence perpetrated against women and girls with disabilities.

150. There are some reported cases where perpetrators of violence against women and girls with disabilities have been brought to justice, however such outcomes are difficult to locate (or publicly unavailable) unless they are reported in the media. For example, in 2010, a father of six was jailed for nine years for sexually abusing his intellectually disabled daughter and prostituting her for money to a group of 'truck-driving mates'.^{325 326}

³¹⁸ Jones, G. (2009) Defenceless girl attacked while under the state's care. *The Daily Telegraph*, July 22, 2009. Accessed online October 2011 at: <http://www.dailytelegraph.com.au/news/defenceless-girl-attacked-while-under-the-states-care/story-e6freuy9-1225753486026>

³¹⁹ Ibid.

³²⁰ French, P. et al (2010) OpCit.

³²¹ Ibid.

³²² French, P. (2007) OpCit.

³²³ Ibid.

³²⁴ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³²⁵ Lowe, A. (2010) Father prostituted disabled girl. *The Age*, March 19, 2010. Accessed online October 2011 at: <http://www.theage.com.au/victoria/father-prostituted-disabled-girl-20100318-qico.html>

³²⁶ Norrie, R. (2010) Father of six pimped intellectually-disabled daughter to mates. *Herald Sun*, June 08, 2010. Accessed online October 2011 at: <http://www.heraldsun.com.au/news/victoria/father-of-six-pimped-intellectually-disabled-daughter-to-mates/story-e6frf7kx-1225876970047>

The sexual abuse began when the girl was 11 years old and continued for nine years. The court also heard she was raped seven times by a neighbour when she was aged fourteen. The father 'loaned her out to friends' for up to \$300 a time. Police were only able to identify one man who paid for sex with the daughter; he was charged with two counts of entering into an agreement of sex with a child under 18. The outcome of that charge is unknown.

151. In September 2011, a 62 year old South Australian man was sentenced to three and a half years jail for 'persistently sexually exploiting' an intellectually disabled 12 year old girl. Although sentenced to three and a half years jail, the man will be eligible for parole in 21 months, 'because he is the sole carer for his sick wife'.³²⁷

What system is in place to ensure legal aid for women and girls with disabilities who have been victims of violence?

152. Australian governments provide some legal aid for people assessed as being least able to afford to cover the costs of a court appearance. The Federal Attorney-General's Department is responsible for administering funding for the provision of legal aid services for federal law matters through Legal Aid Commissions (LAC),³²⁸ administering a Community Legal Services Program³²⁹ and managing legal aid services for Indigenous Australians.³³⁰ State and territory governments fund legal aid services for cases being tried under state and territory law. There are eight independent legal aid commissions, one in each of the states and territories. Funding is provided by the federal government and state and territory governments. The federal government also funds a network of Family Violence Prevention Legal Services³³¹ across rural and remote Australia, which provide services specifically to Indigenous victims of family violence and/or sexual assault or abuse. Disability Discrimination Act Legal Services (DDLs) are funded as a component of the Community Legal Services Program. These services operate in each State and Territory of Australia and are funded to address the needs of people experiencing discrimination because of a disability or a perceived disability or because a family member or friend has a disability.³³²

³²⁷ Fewster, S. (2011) Cadet volunteer jailed for abusing disabled girl, 12. *Adelaide Now*, September 16, 2011. Accessed online October 2011 at: <http://www.adelaidenow.com.au/news/south-australia/community-volunteer-jailed-for-abuse/story-e6frea83-1226137785170>

³²⁸ See: Australian Government Attorney-General's Department; 'Legal Aid Program'. Accessed online October 2011 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_LegalAidProgram

³²⁹ See: Australian Government Attorney-General's Department; 'Community Legal Services Program'. Accessed online October 2011 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_CommunityLegalServicesProgram_TheCommunityLegalServicesProgram

³³⁰ See: Australian Government Attorney-General's Department; 'Indigenous Legal Assistance and Policy Reform Program'. Accessed online October 2011 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Indigenoulawprograms_LegalaidforindigenousAustraliansprogram

³³¹ See: See: Australian Government Attorney-General's Department; 'Family Violence Prevention Legal Services'. Accessed online October 2011 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Indigenoulawprograms_Familyviolencepreventionlegalservices

³³² Australian Government Attorney General's Department 'Disability Discrimination Act Legal Services'. Accessed on line October 2011 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_CommunityLegalServicesProgram_TheCommunityLegalServicesProgram#disability

153. Despite the existence of a range of legal services in Australia, it is widely recognised, and borne out by WWDA's experience, that women with disabilities continue to face significant barriers in accessing legal processes and services.³³³ Just some examples of barriers include:

- *A lack of awareness of legal rights and options* – many women with disabilities experiencing, or at risk of violence do not realise that what is occurring to them is a criminal offence.^{334 335} Whilst violence is a significant presence in the lives of large numbers of women with disabilities, many are unaware of the services and options available to them or lack the confidence to seek help and support.³³⁶
- *Dependence on others to take action* – some women with disabilities who have experienced violence are simply unable to access legal services or bring their own legal actions because they are totally dependent on others to act on their behalf. Women with severe impairment may be denied the opportunity to participate in court processes unless a third party can gain standing to bring an action on their behalf;³³⁷
- *Lack of knowledge of the nature and forms of violence against women with disabilities* – throughout all levels of the legal system, there is a lack of knowledge of the complex nature and multiple forms of violence against women with disabilities, limited recognition of the sexuality of women with disabilities, and a common tendency to focus on the disability rather than the violence;³³⁸
- *Lack of knowledge about disability* – there is a significant lack of knowledge, expertise and experience within the legal sector about disability generally and the intersection of gender and disability specifically.^{339 340} The systemic gender bias in the criminal justice system remains a very real issue.³⁴¹ The lack of knowledge of disability is reflected in a myriad of ways, such as: limitations in workers awareness of the broader issues of accessibility and disabilities, negative or ambivalent attitudes about providing access, assumptions about the capacity/incapacity of women with disabilities;³⁴²
- *Fear of retribution* – this is particularly the case when women with disabilities are dependent upon perpetrator/s of the violence;^{343 344}
- *Misconceptions about women with disabilities* - commonly held perceptions of women with disabilities (particularly those with intellectual, cognitive, developmental, psychosocial impairments) reduce the likelihood of incidents of violence being reported, investigated and prosecuted;³⁴⁵
- *Affordability and Eligibility* – for many women with disabilities, commercial legal services are simply unaffordable and yet they may be assessed as ineligible for publicly funded legal assistance;³⁴⁶
- *Practice Issues* – these can include for example: absence of protocols for dealing with women with disabilities who make complaints; rules of evidence which discriminate against people with disabilities

³³³ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³³⁴ Gray, A., Forell, S. & Clarke, S. (2009) *Cognitive impairment, legal need and access to justice*. Law and Justice Foundation of NSW, Justice Issues, Paper 10, March 2009.

³³⁵ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³³⁶ Ibid.

³³⁷ Gray, A. et al (2009) OpCit.

³³⁸ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³³⁹ Ibid.

³⁴⁰ French, P. (2007) OpCit.

³⁴¹ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³⁴² Ibid.

³⁴³ Gray, A. et al (2009) OpCit.

³⁴⁴ French, P., Dardel, J., & Price-Kelly, S. (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, Sydney.

³⁴⁵ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³⁴⁶ French, P. (2007) OpCit.

giving evidence; courtroom procedures that unfairly impinge on the rights of people with disabilities; the reliance on formal written processes; and general lack of access to courts;^{347 348}

- *Lack of and under-resourcing of specialist services* – there is an acute lack of specialist legal services for people with disabilities, and where these do exist, they are severely under-resourced.³⁴⁹ General community legal services do not necessarily have the time, skills, expertise or resources to address the legal needs of women with disabilities experiencing violence, and specialist services often lack the capacity to provide assistance.³⁵⁰

154.A 2007 study commissioned by Queensland Advocacy Incorporated (QAI), examined in detail, the barriers to justice for people with disabilities in Queensland. The study found that access to legal services, and the quality of legal services, were two of the most significant barriers to justice for people with disabilities.³⁵¹

What special measures have been envisaged in legislation and practice for victims and witnesses with disabilities?

155. When researching information on Australian policies and legislation around victims and witnesses with disabilities, one of the most notable findings is the lack of information, including the paucity of research, on the issue. Gudjonsson (2010) has observed that *'England has taken the lead in improving the police interview process and the protection of vulnerable interviewees'*, although *'there still remains a huge unmet need among vulnerable witnesses with regard to identification and implementation of the special measures'*.³⁵² Australian researchers have recommended that future Australian research should build upon the UK developments and that any policy initiatives in this context should not only adopt contemporary terminology, but also comply with Australia's requirements under the Convention on the Rights of Persons with Disabilities (CRPD) to *'promote appropriate training for those working in the field of administration of justice, including police and prison staff'* (Article 13) to ensure effective access to justice for persons with disabilities.³⁵³

156. In a recent paper on *'Police interviews with vulnerable adult suspects'*³⁵⁴ Dr Lorana Bartels from the Australian Institute of Criminology, found that the relevant Australian legislation in relation to the special needs of vulnerable persons interviewed by police, revealed 'significant differences in approach', and that there is a need for more comprehensive and compatible legislation. Bartels work gives an overview of the Australian

³⁴⁷ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³⁴⁸ Gray, A. et al (2009) OpCit.

³⁴⁹ French, P. (2007) OpCit.

³⁵⁰ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³⁵¹ French, P. (2007) OpCit.

³⁵² Gudjonsson, G. cited in Bartels, L. (2011) *Police interviews with vulnerable adult suspects*. Research in Practice, Report No. 21 July 2011, Australian Institute of Criminology, Canberra.

³⁵³ Cited in Bartels, L. (2011) *Police interviews with vulnerable adult suspects*. Research in Practice, Report No. 21 July 2011, Australian Institute of Criminology, Canberra.

³⁵⁴ Bartels, L. (2011) *Police interviews with vulnerable adult suspects*. Research in Practice, Report No. 21 July 2011, Australian Institute of Criminology, Canberra.

legislation and police policies governing police interviews in circumstances where police deal with vulnerable adults.³⁵⁵ She found that:

- *the legislation in all jurisdictions except the Northern Territory makes some provision for police to arrange an interpreter where the interviewee's English is limited and some jurisdictions have explicit provisions in relation to foreign nationals. The legislation in New South Wales is the most extensive and makes special provision for a range of vulnerable persons. Queensland's legislation relates to Indigenous people and those of 'impaired capacity', while the Commonwealth provisions are limited to Indigenous people. The issue of protections for vulnerable witnesses is currently being considered by the Tasmania Law Reform Institute and the ACT Government.*

In examining the relevant police policies and manuals, Bartels found that:

- *New South Wales and Tasmania provide detailed instruction to officers in relation to their dealings with vulnerable witnesses and suspects, with such information readily available online. Queensland and Western Australia have some information available publicly and more detailed policies were kindly provided for the purposes of the paper. The Northern Territory also provided copies of its policies, which require the use of an interpreter for suspects and witnesses who give responses not in English. The policy provided by Victoria Police relates to deaf and mute and non-English speaking people and those with a mental disorder or affected by drugs or alcohol, but does not refer to the specific circumstances of Indigenous people.*

157. Bartels suggests that:

*'in evaluating police policies and practices in this area, future research should therefore consider the practical effects of such measures in terms of police training, the management of police interviews and ultimately, the impact on criminal investigations. Key research issues in this context are: to what extent are policies on interviewing vulnerable adults—where they exist—applied in practice? And, does the use of these guidelines actually assist in producing more satisfactory outcomes for all parties?'*³⁵⁶

158. In June 2011, the South Australian Attorney-General announced that changes would be made to the *South Australian Evidence Act (1929)* part 34CA, in response to the lack of investigation and prosecution of recent cases of sexual assault against people with disabilities.³⁵⁷ Part 34CA of the Act placed severe restrictions on the evidence which can be heard in court by the severely disabled and children. The *(South Australia) Evidence (Hearsay Rule Exception) Amendment Bill 2011* was tabled in the South Australian Parliament on 14th September 2011, and applies to: *'an alleged victim of a sexual offence who is (a) a young child; or (b) a person who suffers from a mental disability that adversely affects the person's capacity to give a coherent account of the person's experiences or to respond rationally to questions'*.^{358 359}

159. The *Independent Third Person's (ITP's) Program*³⁶⁰ is administered by the Office of the Public Advocate (OPA) in Victoria. ITP's are volunteers who assist people with a cognitive disability or mental illness during interviews, or when giving formal statements to Victoria Police. The person with a cognitive disability or

³⁵⁵ The paper categorises 'adult vulnerability' as physical disability, mental/intellectual disability, Indigenous status and Non-English Speaking background.

³⁵⁶ Bartels, L. (2011) OpCit.

³⁵⁷ Kemp, M. (2011) Rau vows to change sex-alert system for disabled. *The Advertiser*, June 30, 2011. Accessed online October 2011 at:

<http://www.adelaidenow.com.au/rau-vows-to-change-sex-alert-system/story-e6frea6u-1226085192929>

³⁵⁸ South Australia Evidence (Hearsay Rule Exception) Amendment Bill 2011. Accessed online November 2011 at:

[http://www.legislation.sa.gov.au/LZ/B/CURRENT/EVIDENCE%20\(HEARSAY%20RULE%20EXEMPTION\)%20AMENDMENT%20BILL%202011/B_AS%20INTRODUCED%20IN%20HA/EVIDENCE%20EXEMPTION%20AMENDMENT%20BILL%202011.UN.PDF](http://www.legislation.sa.gov.au/LZ/B/CURRENT/EVIDENCE%20(HEARSAY%20RULE%20EXEMPTION)%20AMENDMENT%20BILL%202011/B_AS%20INTRODUCED%20IN%20HA/EVIDENCE%20EXEMPTION%20AMENDMENT%20BILL%202011.UN.PDF)

³⁵⁹ For a detailed and comprehensive overview and analysis of Australian legislation dealing with evidence in sexual assault proceedings, see Chapter 27 of the Australian Law Reform Commission (2010) *Family Violence - A National Legal Response (ALRC Report 114)*. Available online at:

<http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

³⁶⁰ Office of the Public Advocate (Vic) *'Independent Third Persons'*. Accessed online October 2011 at: <http://www.publicadvocate.vic.gov.au/services/108/>

mental illness may be an alleged offender, victim or witness. Victoria Police members are responsible for contacting an ITP. An ITP can also be requested, at any time, by the person with a cognitive disability or mental illness, or someone close to them. The Intellectual Disability Rights Service (IDRS)³⁶¹ in New South Wales provides a *Criminal Justice Support Network* which supports people with intellectual disabilities involved in any type of criminal matter. Support is available 24 hours a day, 7 days a week and includes a court support service (includes legal appointments and other court processes); support at police stations; and support at court for parents with intellectual disability involved in care proceedings. Queensland Advocacy Inc (QAI)³⁶² provides a *Justice Support Program* designed to respond to the needs of people with disabilities in the justice and related systems. QAI also provides the *Human Rights Legal Service (HRLS)* which assists persons with impaired capacity who are subject to restrictive practices and involuntary treatment in Queensland. Support includes representing the client or the client's guardian in relevant legal hearings. Despite high demand for the HRLS, it was closed in September 2011 due to lack of funding, and remains closed whilst QAI attempts to source funds to reinstate the service.

What specific training is conducted for law enforcement and legal personnel on the rights of women and girls with disabilities and effective ways to communicate with them?

160. Disabled women come into contact with the criminal justice system both as victims of crime and as offenders. While the range of risk factors precipitating such contact for these two groups of women is complex and the systemic responses are various, it is often the presence of disability that initially heightens their vulnerability to coming into contact with the police and courts, and which results in their incarceration in the first place. Risk of contact with the criminal justice system has been recognised as particularly heightened for women with intellectual and psychiatric impairments. Becoming the victim of a crime or experiencing incarceration may also be implicated in the production of disability, in particular psychological or psychiatric disorders, including post-traumatic stress disorder.³⁶³ Other areas of this Paper have highlighted the many barriers that women and girls with disabilities face in accessing legal processes and services, and the urgent need for targeted, gendered training for those working at all levels of the criminal justice system, including police and courts.

161. There are limited examples of targeted education and training programs in Australia for law enforcement and legal personnel on the rights of women and girls with disabilities. Most disability awareness training and education programs are un-gendered and focus on people with intellectual or cognitive disabilities. There are however, some initiatives which can be highlighted. For example, the Queensland-wide WWILD Sexual

³⁶¹ The Intellectual Disability Rights Service (IDRS) is a specialist legal advocacy service for people with intellectual disability in New South Wales. See: <http://www.idrs.org.au>

³⁶² Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and legal advocacy organisation for people with disability in Queensland, Australia. See: <http://www.qai.org.au>

³⁶³ Dowse, L., Frohmader, C. and Meekosha, H. (2010) Chapter 14: 'Intersectionality: Disabled Women'. In Easteal, P. (ed) *Women and the Law in Australia*, Reed International Books Australia.

Violence Prevention Service,³⁶⁴ provides a 'Disability Training Program Victims of Crime' Program which works with individuals, organisations and systems that have contact, or provide a service to, people with intellectual and developmental disabilities who are victims or witnesses to crime. The NSW Intellectual Disability Rights Service (IDRS) provides a range of programs through its *Criminal Justice Support Network*. One such program is the IDRS tailored *Disability Awareness Training* for local court staff; Sheriff's Officers; Transit Officers; Special Constables and Police.

162. The *Queensland Criminal Justice Centre (QCJC)*³⁶⁵ is a government funded resource based website for Queensland's criminal lawyers and other professionals working within the criminal justice system. The primary intention of the site is to provide information that will assist lawyers conduct criminal defences where a relevant disability may be at issue. The QCJC conducts disability awareness training across Queensland for lawyers, police and court volunteers. In 2008 the NSW Attorney Generals Department developed a *Capacity Toolkit*,³⁶⁶ in response to requests from lawyers, medical professionals, health workers, carers and advocates who required more information about capacity, some general capacity principles and guidelines on assessing a person's capacity to make decisions. The Toolkit applies only to the civil (non-criminal) areas of law. In 2009 the Law Society of NSW developed 'A Practical Guide for Solicitors: When a client's capacity is in doubt'. This resource is a short, practical guide for solicitors on what to do and what resources are available to assist them if they are concerned that their client may lack capacity to give instructions or make their own legal decisions.³⁶⁷

³⁶⁴ WWILD works with women with intellectual and learning disabilities that have experienced or at risk of experiencing sexual violence or have become a victim of crime. WWILD runs two main programs: *The Sexual Violence Prevention Program* provides support to women with intellectual and learning disabilities aged over 15 who have experienced or are at risk of experiencing sexual violence. The *Victims of Crime Disability Training Program* provides support to people with learning and intellectual disabilities who are a victim of crime and the professionals seeking to support them. See: <http://www.wwild.org>

³⁶⁵ For more information on the Queensland Criminal Justice Centre (QCJC), go to: <http://www.qcjc.com.au>

³⁶⁶ Attorney General's Department of NSW (2008) *Capacity Toolkit*. Accessed online November 2011 at:

http://www.lawlink.nsw.gov.au/lawlink/diversityservices/LL_DiversitySrvces.nsf/pages/diversity_services_capacity_toolkit

³⁶⁷ Law Society of NSW (2009) *A Practical Guide for Solicitors: When a client's capacity is in doubt*. Accessed online October 2011 at: <http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/023880.pdf>



recovery, rehabilitation and social reintegration

What measures (legislative, administrative, social, educational or other) are in place to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of women and girls with disabilities who have been victim of any form of exploitation, violence or abuse?

163. This paper has highlighted a range of legislative, administrative, social, educational and other mechanisms within Australia which are designed to prevent, address, and respond to, violence against women and their children. This Paper has also highlighted and demonstrated that such mechanisms are woefully inadequate in ensuring the rights of women and girls with disabilities to freedom from violence, exploitation and abuse and to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

164. As highlighted throughout this Paper, there have been, and remain, significant systemic failures in legislation, regulatory frameworks, policy, administrative procedures, availability and accessibility of services and support to prevent and address the epidemic that is violence against women and girls with disabilities. Underlying these systemic failures is an entrenched culture throughout all levels of society that devalues, stereotypes and discriminates against women and girls with disabilities, and invariably perpetuates and legitimises not only the multiple forms of violence perpetrated against them, but also the failure of governments to recognise and take action on the issue.³⁶⁸

165. In addressing violence against women with disabilities in Australia, it is not possible to truly move forward without an understanding of the depth and seriousness of past and current violations of the rights of women and girls with disabilities to freedom from violence, exploitation and abuse. WWDA has consistently urged the Australian Government to take leadership in this area by commissioning a National Public Inquiry or Royal Commission into Violence Against People with Disabilities in Australia, both historically and currently.

166. There is no specific legal and institutional framework for the investigation and prosecution of violence against people with disabilities in Australia.³⁶⁹ ³⁷⁰ There is no national co-ordinated strategic framework for the prevention of violence against people with disabilities. As a matter of urgency, and consistent with

³⁶⁸ Women With Disabilities Australia (WWDA)(2007b) OpCit.

³⁶⁹ French, P. et al (2010) OpCit.

³⁷⁰ Women With Disabilities Australia (WWDA)(2007b) OpCit.

recommendations from other key Australian disabled people's organisations, the Australian Government should establish and adequately resource an independent, statutory, national protection mechanism for 'vulnerable' adults,³⁷¹ where the requirement for mandatory reporting is legislated. The Australian Government, in consultation with people with disabilities, should act immediately to develop and adopt, a gendered National Violence & Disability Prevention Strategy, which includes targeted, gendered initiatives to build capacity of individuals and organisations to prevent violence against people with disabilities and to ensure appropriate responses when it does occur.³⁷²

³⁷¹ French, P. et al (2010) OpCit.

³⁷² See also: French, P. et al (2010) for a more detailed discussion on the need for a national coordinated strategic framework.



appendix 1: projects on violence against women with disabilities 1990-2010

STAR Conference on Sterilisation (VIC) (1990)

This report details the proceedings of a Conference held in Victoria (Australia) for women with intellectual disabilities, parents and workers on the issue of sterilisation. The report includes the voices of women with intellectual disabilities and contains a series of recommendations in the areas of: Women's Issues and Rights; Legal; Health; Information; Education; and, Resources.

<http://www.wwda.org.au/record.htm>

Access to services for women with disabilities who are subjected to violence (National) (1993)

This research project was funded and commissioned by the National Committee on Violence Against Women (1993). The project sought to examine the effectiveness of service delivery to women with disabilities who have been subjected to violence. The study specifically looked at access to police, legal and support services. The major recommendations stemming from the research were detailed under the headings of: Support Groups; Education & Training; Data Collection; Access to Services.

ISBN: 0 644 29597 X

Reclaiming Our Rights - Access to Existing Police, Legal & Support Services for Women with Disabilities or who are Deaf or Hearing Impaired who are Subject to Violence (NSW) (1995)

This research project was conducted by the NSW Department for Women in 1995. The aim of the project was to investigate the degree of access women with disabilities have to existing services after they have been assaulted. The recommendations of the research report came from the women involved and key service providers including those in the areas of police, health, community services and the justice system. They are classified in the report under three headings which sum up the needs of women with disabilities and women who are deaf/hearing impaired who have been abused. These headings are: empowerment; access to quality services; advocacy. Report is available from the National Library of Australia.

<http://catalogue.nla.gov.au/Record/1375541>

Every Boundary Broken: Sexual Abuse of Women Patients in Psychiatric Institutions (NSW) (1997)

This research project by Women and Mental Health Inc (NSW) was funded by the NSW Department for Women and the NSW Health Department. The Project relates to one of the most disadvantaged groups of women in the community: those who are disempowered and vulnerable by having a mental illness, and are then sexually abused or exploited within the institution in which they are placed for their own safety. This study is a qualitative, exploratory study of the experiences of women who were abused while they were inpatients in a psychiatric hospital, and of the institutional responses to that abuse. The Project Report, Every Boundary Broken: Sexual Abuse of Women Patients in Psychiatric Institutions, by Jane Davidson, is available from the National Library of Australia.

<http://catalogue.nla.gov.au/Record/1816439>

The Sterilisation of Girls and Young Women in Australia - A Legal, Medical and Social Context (National) (1997)

This report concentrates on the sterilisation of girls and young women. The report poses a range of unanswered and grave questions about the fundamental breach of human rights and well-being of children subject to unauthorised sterilisation procedures. It suggests that a genuine concern for protection of the child's best interests should be about a broader advocacy of the child's interests not simply the narrow legal questions of who should make the decisions and how they should be made. The report suggests that fundamental to the success of protecting and ensuring best interests is the support and cooperation of a broader community of medical practitioners, human service providers,

specialist consultants in disability, advocates and others. Any weak link will compromise positive outcomes for the child.

<http://www.wwda.org.au/brady.htm>

More Than Just A Ramp - A Guide for Women's Refuges to Develop Disability Discrimination Act Action Plans (National) (1997)

This Project was undertaken by Women With Disabilities Australia (WWDA) in 1997. The Project report includes a discussion and analysis of: gender and disability, and women with disabilities and violence. It discusses the barriers women with disabilities face when accessing domestic violence services. The report provides information on the Disability Discrimination Act (1992) including a discussion on 'discrimination'. The report details step by step how to develop a Disability Discrimination Act Action Plan. The Report was updated in 2007 as part of WWDA's 'Resource Manual on Violence Against Women With Disabilities'.

<http://www.wwda.org.au/vrm2007.htm>

Woorara Women's Refuge Disability Action Plan (National/VIC)(1997)

This Project was undertaken by Women With Disabilities Australia (WWDA) in 1997 in collaboration with Woorara Women's Refuge in Victoria. The report details the project which was to develop a Disability Action Plan for the Woorara Women's Refuge. The report sets the context for the study - providing information about the Disability Discrimination Act (1992) including the legislative requirements. The Project Methodology is outlined, including findings from consultations conducted with women with disabilities as part of the project. The report includes the Action Plan developed with Woorara Women's refuge as part of the project.

More information available from WWDA. Email: wwda@wwda.org.au

Domestic Violence and Women with Disability Project (QLD) (1998)

This small, six-month project was funded by the Queensland Department of Families, Youth and Community Care and conducted by MIMS and Associates. The Project aimed to research and design information resources and strategies for women with disabilities about domestic violence. The research component of the Project involved interviews with 9 women with disabilities and surveys to 68 service providers in the disability and violence sectors. The research findings included: service providers' lack of knowledge and skills about the needs of women with disabilities; inaccessible services; and lack of information and resources for women with disabilities experiencing or at risk of experiencing domestic violence.

More information available from WWDA. Email: wwda@wwda.org.au

National Workshop on Violence Against Women With Disabilities (National) (1998)

In 1998, Women With Disabilities Australia (WWDA) conducted a National Violence Against Women With Disabilities Workshop, the first of its kind in Australia and unique in that it was planned, organised, attended and run by, women with disabilities. This report documents the proceedings of the National Women With Disabilities and Violence Workshop. It contains a wide range of information including: background and context information; articles on the intersection of gender, disability and violence; details on work occurring in Australia on domestic violence generally as well as specific work on the issue of violence against women with disabilities; issues and problems identified by workshop participants requiring action; detailed strategies to address areas such as: Education; Research; Information; Social Action; Networking; Service and Program Planning and Delivery.

More information available from WWDA. Email: wwda@wwda.org.au

Making a statement: An exploratory study of barriers facing women with an intellectual disability when making a statement to the police about sexual assault (NSW) (2001)

This Project was funded by the NSW Department of Corrective Services and conducted by the NSW Intellectual Disability Rights Service (IDRS). In this study, sexual assault workers and members of the New South Wales police service in the greater Sydney area were interviewed to identify the barriers that arise when women with intellectual disability decide to make a statement to police following sexual assault. The study's findings demonstrate a need for greater awareness within the police service of police policies and procedures, and legislation, as well as greater co-operation between the police service and other organisations, which have an impact on the lives of women with intellectual disability.

More information available from WWDA. Email: wwda@wwda.org.au

The Sterilisation of Girls and Young Women in Australia: Issues and Progress (National) (2001)

The Report from this study summarises some developments since the 1997 Report 'The Sterilisation of Girls and Young Women in Australia - A Legal, Medical and Social Context', including responses to it, most notably debate about the numbers of sterilisations being performed. It provides up-to-date information on the number of applications to

the Family Court or relevant State Guardianship Tribunals. It is written to contribute to further community discussion in this sensitive area.

<http://www.wwda.org.au/brady2.htm>

Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities (National) (2001)

In 2001, Women With Disabilities Australia (WWDA) undertook a national project on the sterilisation and reproductive health of women and girls with disabilities. The Project report provides a context for the discussion of sterilisation and reproductive health of women and girls with disabilities. It explores the assumptions made in discussing the issues and examines how they come to manifest themselves in the denial of human rights to bodily integrity and rights to reproductive choice and parenting. It examines the major issues in the debate around sterilisation of girls and women with disabilities and reports on developments both in Australia and internationally. It also outlines significant issues in reproductive health for women with disabilities. The report reflects the experiences and perspectives of women and girls with disabilities in reporting on the National Forum on Sterilisation and Reproductive Health for Women and Girls with Disabilities held in Sydney (Australia) in February 2001.

More information available from WWDA. Email: wwda@wwda.org.au

Domestic Violence Against Women With Disabilities Project (NSW) (2000-2004)

The project's aim was to increase access to domestic violence services and support for women with disabilities through training and resource information for health and community workers. The Project was a 4 year project of the Benevolent Society and Macarthur Disability Services, and was funded by the Macarthur Area Assistance Scheme. The Project produced a resource kit entitled: *Fabulous femmes: a resource kit: inspiration and resources to improve services for women with disabilities affected by domestic violence*.

<http://www.bensoc.org.au/uploads/documents/fabulous-femmes-nov04.pdf>

Be Safe Be Sure Project: A Project for Women with Intellectual Disabilities on Safety and Sexuality (NSW) (2002).

This one year Project was funded by the NSW Department of Urban Affairs and Planning and undertaken in the Western area of Sydney. The Project was an educational project for women with intellectual disabilities in the area of safety and sexuality. The Project also aimed to build partnerships between disability services in the area, mainstream services, Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.

<http://www.wwda.org.au/BeSafeBeSure1.pdf>

Violence Against Women With Disabilities Project (VIC) (2002-2003)

The primary focus of this Project from the Domestic Violence and Incest Resource Centre (DVIRC), was to create partnerships between disability services and services for women experiencing violence, in order to better address the needs of women with disabilities who are marginalised by the service system. The Project took the form of a one year demonstration project in the Western Metropolitan region of Victoria. The Report of the Project '*Triple Disadvantage: Out of sight, Out of mind*' details the Project, and includes a series of recommendations.

<http://www.wwda.org.au/triple1.pdf>

Sexual Offences Project for Women with Disabilities (VIC) (2003)

The Sexual Offences Project for Women with Disabilities, conducted in Victoria in 2003, aimed to examine the issues and problems victim/survivors with cognitive impairment experience when reporting sexual assault and proceeding with prosecution in Victoria. The Project found, amongst other things that: the policies and practices of disability service providers and other professionals working with people with disabilities, still often lead to silence and isolation in the name of protection. It also found that as a result of sexual assault, victim/survivors with cognitive impairment are often: not believed when they do report sexual assault; not considered reliable witnesses; and, not considered capable of participating in the justice process. It was decided that victim/survivors would not be directly interviewed. The Project instead invited those people who work with victim/survivors to give case studies that illustrate important issues and experiences when reporting and/or seeking access to justice.

<http://www.wwda.org.au/beyondbelief1.pdf>

Silent Voices: Women With Disabilities and Family and Domestic Violence (WA) (2003)

This research project arose as a result of the widespread experience of women with disabilities, disability and community agencies and the paucity of relevant literature in family and domestic violence. The project was a joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University, Perth. The objectives for the research were to: document the nature and extent of family and domestic violence against women with disabilities who have accessed services in Western Australia; and identify whether the needs of women with disabilities are being adequately addressed by relevant services.

<http://www.wwda.org.au/cockram2.pdf>

Four Corners (ABC TV) 'Walk In Our Shoes': Documentary on Sterilisation (National) (2003)

In June 2003, the current affairs program Four Corners (ABCTV) broadcast a program entitled 'Walk In Our Shoes'. The program explored the issue of whether, and in what circumstances, disabled women (and men) should be sterilised. In this emotionally compelling documentary, the people at the heart of the sterilisation debate – disabled people, their parents and their carers – speak with remarkable candor about their experiences, frustrations and dilemmas. The transcript of the Program is available from the WWDA website.

<http://www.wwda.org.au/4corners.htm>

Looking After Me Project (LAM) (NSW) (2004-2007)

The Looking After Me Resource Kit is one of the outcomes of the Looking After Me Project (LAM). LAM was an innovative three and a half year project that began in January 2004, funded by Western Sydney Area Assistance Scheme. The project was auspiced by the Penrith Women's Health Centre and focussed on the Penrith Local Government Area. The Kit provides visual aids that can be used when discussing domestic violence issues with women with intellectual disabilities.

http://www.whnsw.asn.au/Looking_After_Me/Resource-Looking_After_Me.htm

Pandora's Box: Hume Region Family Violence and Disability Project (VIC) (2006)

This Project, auspiced by Women's Health Goulburn North East, aimed to address the barriers faced by women with disabilities in seeking assistance from both the family violence and disability support systems within the Hume region of Victoria. The Project developed a Resource Guide as part of the Project.

http://www.whealth.com.au/documents/publications/whp-pandora_box_resource_guide.pdf

Violence Against Women with Disabilities Project (VIC) (2008)

The Domestic Violence and Incest Resource Centre (DVIRC) undertook a Project on violence against women with disabilities, which resulted in the development of an online resource for women with disabilities, and an online resource for service providers in the family violence and disability sectors.

<http://dvrcv.org.au/Disability/AboutthisSite.htm>

<http://www.dvrcv.org.au/Disability/ServiceProviderGuide.htm>

Resource Manual on Violence Against Women With Disabilities (National) (2007)

This Project was undertaken by Women With Disabilities Australia (WWDA) and culminated in the development of a Resource Manual on Violence Against Women With Disabilities. The Manual is made up of four booklets which include: narratives from women with disabilities who experience violence; a global review of the issue; information about domestic violence and women with disabilities; and a model process for women's refuges and other crisis services to re-orient their practices to be accessible and inclusive. Audio, e-text & Large Print PDF versions of the Booklets are included on a CD-ROM which accompanies the Manual. Braille and DAISY versions are also available on request.

<http://www.wwda.org.au/vrm2007.htm>

Building the Evidence Project (VIC) (2008)

The Building the Evidence Project was undertaken as a research collaboration between the Victorian Women with Disabilities Network Advocacy Information Service, the Alfred Felton Research Program at the University of Melbourne, and the Domestic Violence Resource Centre Victoria. The Project analyses the extent to which current Victorian family violence policy and practice recognises and provides for women with disabilities who experience violence; and makes recommendations to improve responses to women with disabilities dealing with family violence.

<http://www.wdv.org.au/publications.htm#bte>

Improving Access to Services for Women from non-English Speaking Backgrounds with Disability Experiencing Violence Project (NSW) (2010)

This Project was conducted by the Multicultural Disability Advocacy Association of NSW (MDAA) with funding provided by the NSW Premiers Department (Office for Women) and Clubs NSW. The Project worked with women with disabilities from non-English Speaking Backgrounds (NESB), and service providers to improve responses to women from NESB with disability experiencing domestic violence.

<http://www.wwda.org.au/mdaaviol1.pdf>

Women With Disabilities Accessing Crisis Services (ACT) (2010)

The project was a collaboration between Women's Centre for Health Matters (WCHM), the Domestic Violence Crisis Service (DVCS) and Women with Disabilities ACT (WWDACT), and which focussed on increasing the capacity for service

providers to support women with a disability escaping domestic and family violence. It was funded by a grant from the Women's Services Network (WESNET). The project aimed at exploring current practices, raising awareness and assisting domestic violence / crisis services in the ACT to become more accessible for women with disabilities by developing a set of best practice principles.

<http://www.wwda.org.au/wwdcrisis1.pdf>

Accommodating Violence – Disability and Domestic Violence in Residential Settings Project (NSW) (2010)

This research study was undertaken by People With Disability Australia (PWD). The project report documents the experience of domestic violence and people with disability, particularly women with disability living in licensed boarding houses. The findings outlined in the Project's report derive from a range of activities, consultations, legislative and policy analysis undertaken in the course of the Disability and Domestic Violence in Residential Settings Project (the DDV project) funded by the NSW Office for Women's Policy for the period June 2009 – July 2010.

<http://www.pwd.org.au/documents/pubs/Accommodating%20Violence%20Report.pdf>



appendix 2: definitions of ‘family violence’ in legislation

JDN	STATUTE	DEFINITION OF FAMILY VIOLENCE	COMMENT
CTH	Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (before Senate)	<p>4AB Definition of family violence etc.</p> <p>(1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful.</p> <p>(2) Examples of behaviour that may constitute family violence include (but are not limited to):</p> <ul style="list-style-type: none"> (a) an assault; or (b) a sexual assault or other sexually abusive behaviour; or (c) stalking; or (d) repeated derogatory taunts; or (e) intentionally damaging or destroying property; or (f) intentionally causing death or injury to an animal; or (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or (j) unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty. <p>(3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.</p>	<p>Amends the: <i>Family Law Act 1975</i> to protect children and families at risk of violence or abuse by: prioritising the safety of children in parenting matters; including harmful behaviour in the definitions of ‘abuse’ and ‘family violence’; requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children; placing additional reporting requirements on certain parties to provide evidence to courts; and state and territory child protection authorities participating in family law proceedings where appropriate; and Bankruptcy Act 1966 and Family Law Act 1975 to make technical amendments.</p>

		<p>(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:</p> <p>(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or</p> <p>(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or</p> <p>(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or</p> <p>(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or</p> <p>(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.</p>	
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STATE	STATUTE	DEFINITION OF FAMILY VIOLENCE	COMMENT
	Family Violence Protection Act 2008	<p>s5. Meaning of family violence</p> <p>1) For the purposes of this Act, family violence is-</p> <p>(a) behaviour by a person towards a family member of that person if that behaviour-</p> <p>(i) is physically or sexually abusive; or</p> <p>(ii) is emotionally or psychologically abusive; or</p> <p>(iii) is economically abusive; or</p> <p>(iv) is threatening; or</p> <p>(v) is coercive; or (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or</p> <p>(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).</p> <p>Examples: The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)-overhearing threats of physical abuse by one family member towards another family member; seeing or hearing an assault of a family member by another family member; comforting or providing assistance to a family member who has been physically abused by another family member; cleaning up a site after a family member has intentionally damaged another family member's property; being present when police officers attend an incident involving physical abuse of a family member by another family member.</p> <p>(2) Without limiting subsection (1), family violence includes the following behaviour-</p> <p>(a) assaulting or causing personal injury to a family member or threatening to do so;</p> <p>(b) sexually assaulting a family member or engaging in another form of sexually coercive</p>	<p>Passed by the Victorian Parliament on 12 September 2008. Replaces the Crimes (Family Violence) Act.</p> <p>Empowers the police to issue family violence safety notices which may include the same conditions as a family violence intervention order and last until the application for a family violence intervention order is brought before the court.</p> <p>Broadens the definition of family member to include carers.</p> <p>Broadens the definition of family violence to include economic and emotional abuse.</p> <p>Restricts the ability of self-represented respondents to personally cross-examine the alleged victim in court.</p> <p>Violent partners barred from questioning victims in court.</p> <p>Police will be able to issue safety notices outside court hours, giving them the power to remove violent family members.</p>

		<p>behaviour or threatening to engage in such behaviour; (c) intentionally damaging a family member's property, or threatening to do so; (d) unlawfully depriving a family member of the family member's liberty, or threatening to do so; (e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.</p> <p>(3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence. s6. of the Act defines economic abuse. s7. of the Act defines emotional or psychological abuse.</p>	<p>Allows women and children to remain in the family home following a violent incident while the perpetrator is removed.</p> <p>The Crimes (Family Violence) (Holding Powers) Act 2006 allows police to detain a person suspected of family violence for up to six hours.</p> <p>The Crimes Amendment (Rape) Act 2007 amends provisions applying to sexual offences in Victoria making it easier for witnesses to give evidence in sexual offence trials.</p>
QLD	Domestic and Family Violence Protection Act 1989	<p>Section 11 - What is domestic violence (1) Domestic violence is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons— (a) wilful injury; (b) wilful damage to the other person's property; Example of paragraph (b)—wilfully injuring a defacto's pet (c) intimidation or harassment of the other person; Examples of paragraph (c)— 1 following an estranged spouse when the spouse is out in public, either by car or on foot 2 positioning oneself outside a relative's residence or place of work 3 repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night) 4 regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent's fortnightly pension cheque (d) indecent behaviour to the other person without consent; (e) a threat to commit an act mentioned in paragraphs (a) to (d). (2) The person committing the domestic violence need not personally commit the act or threaten to commit it.</p>	<p>As part of the Queensland Government's responsibility for administering the Domestic and Family Violence Protection Act 1989, a review of the Act is currently underway. The draft <i>Domestic and Family Violence Protection Bill 2011</i> has been gathered to inform the review. The review is expected to be completed in late 2011.</p> <p>Provide for the safety and protection of a person who is in a domestic relationship where violence is committed against them by the other party to the relationship.</p> <p>Achieved by the court making a domestic violence order to protect the person against further violence.</p> <p>Substantial amendments made in 2003 extending the types of make application to a Magistrates' Court.</p> <p>Domestic violence is committed under the Act if it takes place between two people in the following domestic relationships: - a spousal relationship; - an intimate personal relationship; - a family relationship; and - an informal care relationship. (see section 11A)</p>

WA	Acts Amendment (Family and Domestic Violence) Act 2004	<p>S6. Meaning of “act of family and domestic violence” and “act of personal violence” (1) In this Act — act of family and domestic violence” means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship —</p> <p>(a) assaulting or causing personal injury to the person;</p> <p>(b) kidnapping or depriving the person of his or her liberty;</p> <p>(c)damaging the person’s property, including the injury or death of an animal that is the person’s property;</p> <p>(d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;</p> <p>(e) causing the person or a third person to be pursued — (i) with intent to intimidate the person; or (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;</p> <p>(f) threatening to commit any act described in paragraphs (a) to (c) against the person.</p> <p>(2) In this Act — “act of personal violence” means one of the following acts that a person commits against another person with whom he or she is not in a family and domestic relationship —</p> <p>(a) assaulting or causing personal injury to the person;</p> <p>(b) kidnapping or depriving the person of his or her liberty;</p> <p>(c) causing the person or a third person to be pursued — (i) with intent to intimidate the person; or (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;</p> <p>(d) threatening to commit any act described in paragraph (a) or (b) against the person;</p> <p>(e) if the person who commits the act has an imagined personal relationship with the person against whom the act is committed, an act that would constitute an act of family and domestic violence if those persons were in a family and domestic relationship.</p> <p>(3) For the purposes of this Act, a person who procures another person to commit an act of abuse, or part of such an act, is to be taken to have also committed the act himself or herself.</p> <p>(4) In this section — “assaulting” includes — (a) an assault within the meaning of The Criminal Code; and (b) behaving in a manner described in paragraph (a), (b) or (c) of section 319(3) of The Criminal Code;</p> <p>“intimidate” has the same meaning as in section 338D of The Criminal Code ; “kidnapping or depriving the person of his or her liberty ” includes behaving in a manner described in section 332 of The Criminal Code ;“pursue” has the same meaning as in section 338D of The Criminal Code .</p>	<p>Makes important changes to Western Australia’s family violence legislative framework [which mainly consists of the Restraining Order Act 1997, The Criminal Code and the Bail Act 1982].</p> <p>Better protection for direct and indirect victims of domestic violence.</p> <p>Seven major changes to Western Australia’s domestic violence law including:</p> <ul style="list-style-type: none"> - increasing penalties where domestic violence is committed in circumstances of aggravation; - significantly limiting the defences to breaching an order; - making it possible to vary or cancel an interim order as opposed to only a final order; - allowing for a violence restraining order to be granted automatically in some cases; - providing better protection to the interests of children in the court environment; - giving police stronger investigation powers and enabling them to issue on-the-spot temporary restraining orders to immediately remove violence offenders from the home; and - reclassifying the various types of restraining orders to include domestic violence rather than just violence.
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NSW	The Crimes Amendment (Apprehended Violence) Act 2006	<p>562A Definitions</p> <p>domestic relationship—see section 562B.</p> <p>domestic violence offence means a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship.</p> <p>personal violence offence means: an offence under, or mentioned in, section 19A, 24, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200 or 562ZG, or an offence of attempting to commit an offence referred to in paragraph (a).</p>	<p>Assented to on 27 October 2006.</p> <p>562E Objects of Division 2 [Apprehended DV orders]</p> <p>(1) The objects of this Division are:</p> <p>(a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and</p> <p>(b) to reduce and prevent violence between persons who are in a domestic relationship with each other, and</p> <p>(c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and</p> <p>(d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.</p> <p>(2) This Division aims to achieve its objects by:</p> <p>(a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation, stalking and harassment, and</p> <p>(b) ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice.</p> <p>(3) In enacting this Division, Parliament recognises:</p> <p>(a) that domestic violence, in all its forms, is unacceptable behaviour, and</p> <p>(b) that domestic violence is predominantly perpetrated by men against women and children, and</p> <p>(c) that domestic violence occurs in all sectors of the community, and</p> <p>(d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and</p> <p>(e) that domestic violence occurs in traditional and non-traditional settings, and</p> <p>(f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and</p> <p>(g) that domestic violence is best addressed through an integrated framework of prevention and support and, in certain cases, may be the subject of appropriate intervention by the court.</p>
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SA	Domestic Violence Act 1994	<p>s4 spells out the grounds for making a domestic violence restraining order and states that a defendant commits domestic violence if:</p> <p>(2)For the purposes of this Act, a defendant commits domestic violence—</p> <p>(a) if the defendant causes personal injury to a member of the defendant's family; or</p> <p>(b) if the defendant causes damage to property of a member of the defendant's family;</p> <p>or if on two or more separate occasions—</p> <p>(i) the defendant follows a family member; or</p> <p>(ii)the defendant loiters outside the place of residence of a family member or some other place frequented by a family member; or</p> <p>(iii) the defendant enters or interferes with property occupied by, or in the possession of, a family member; or</p> <p>(iv) the defendant—</p> <p>(A) gives or sends offensive material to a family member or leaves offensive material where it will be found by, given to, or brought to the attention of a family member; or</p> <p>(B) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a family member; or the defendant communicates with a family member, or to others about a family member, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or</p> <p>(v)the defendant keeps a family member under surveillance; or</p> <p>(vi)the defendant engages in other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear.</p>	<p>The South Australian Parliament passed a number of Acts in 2008, namely:</p> <p><i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i> Reforms many offences, including persistent sexual abuse, unlawful sexual intercourse, incest, and offences with animals. Rape defined more comprehensively, including a continuation of sexual intercourse when consent is withdrawn. Introduces a new offence of compelled sexual activity and defines reckless indifference to consent to sexual acts, as well as consent to sexual activity.</p> <p><i>Statutes Amendment (Evidence) Act 2008</i> Reforms laws about the special arrangements for witnesses giving evidence, particularly from vulnerable witnesses including children and victims of serious offences. Reforms the way witnesses may be questioned, the manner in which judges warn or direct juries about the evidence of children, and restricts access to sensitive material that is to be used as evidence. Enable a victim to read impact statements by pre-recording them or for a representative to read them.</p> <p><i>Victims of Crimes Act 2001</i> Provides for a Commissioner for Victim's Rights. Able to require a public agency or official to consult about steps the agency or official might take to further the interests of victims. After consultation, the Commissioner may recommend that the agency or official issue a written apology to the victim. The Commissioner is required to have regard to the wishes of the victim.</p>
TAS	<i>Family Violence Act 2004</i>	<p>s. 7 Family violence In this Act –</p> <p>"family violence" means –</p> <p>(a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:</p>	<p>Includes most of the recommendations from <i>Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania</i> (2003).</p> <p>Includes non-physical abuse, such as verbal abuse, intimidation, coercion, stalking, threats, abduction, emotional abuse and economic abuse.</p>

		<p>(i) assault, including sexual assault; (ii) threats, coercion, intimidation or verbal abuse; (iii) abduction; (iv) stalking within the meaning of section 192 of the Criminal Code; (v) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv); or</p> <p>(b) any of the following:</p> <p>(i) economic abuse; (ii) emotional abuse or intimidation; (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO.</p> <p>s8. of the Act defines economic abuse</p> <p>Includes emotional abuse or intimidation</p>	<p>Inclusion of economic abuse in a definition of family violence was an Australian first.</p> <p>Includes the withholding of financial support, maintenance and money for household expenses.</p> <p>The only Australia domestic violence legislation to include sexual assault in its definition of domestic/family violence.</p> <p>Creates a presumption against bail for alleged perpetrators, requiring the decision-maker to consider the likely effect of release on the safety, wellbeing and interests of the victim or affected child.</p> <p>Safety of victims is a primary concern, should be able to remain in the family home.</p> <p>Increased penalties for breaches of orders.</p> <p>A breach that exposes a child to violence considered an aggravating factor in sentencing.</p> <p>Police mandated to notify the Child Protection services of any children present during an incident of family violence and considered at risk.</p>
ACT	<i>Domestic Violence and Protection Orders Act 2008</i>	<p>s. 13 What is domestic violence?</p> <p>(1) For this Act, a person’s conduct is domestic violence if it— (a) causes physical or personal injury to a relevant person; or (b) causes damage to the property of a relevant person; or (c) is directed at a relevant person and is a domestic violence offence; or (d) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), (b) or (c); or (e) is harassing or offensive to a relevant person; or (f) is directed at a pet of a relevant person and is an animal violence offence; or (g) is a threat, made to a relevant person, to do anything to a pet of the person or another relevant person that, if done, would be an animal violence offence.</p> <p>(2) In this Act: domestic violence offence means an offence against— (a) section 90 (which is about contravening protection orders); or (b) a provision mentioned in an item in schedule 1 (Domestic violence offences against other</p>	<p>Section 6 of the Act outlines the objects of the Act which include:</p> <p>(a) to prevent violence between family members and others who are in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response; and</p> <p>(b) to facilitate the safety and protection of people who fear or experience violence by-- (i) providing a legally enforceable mechanism to prevent violent conduct; and (ii) allowing for the resolution of conflict without the need to resort to adjudication.</p>

		<p>legislation) of an Act mentioned in the item.</p> <p>(3) In this section: animal violence offence means an offence against any of the following provisions of the Animal Welfare Act 1992:</p> <p>(a) section 7 (Cruelty); (b) section 7A (Aggravated cruelty); (c) section 8 (Pain); (d) section 12 (Administering poison); (e) section 12A (Laying poison); (f) section 13 (Electrical devices).</p> <p>offence, other than in relation to the <i>Public Order (Protection of Persons and Property) Act 1971</i> Cth, section 11 (Additional offences on premises in a Territory), includes conduct, engaged in outside the ACT, that would be an offence if it were engaged in within the ACT.</p> <p>personal injury includes nervous shock.</p> <p>S14 defines personal violence.</p>	
NT	<i>Domestic and Family Violence Act 2007</i>	<p>s5 - <i>Domestic violence</i> is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:</p> <p>(a) conduct causing harm; <i>Example of harm for paragraph (a)</i> <i>Sexual or other assault.</i></p> <p>(b) damaging property, including the injury or death of an animal; (c) intimidation; (d) stalking; (e) economic abuse; (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).</p> <p><i>Note - Under Part 2.2, a DVO may be sought, and made, against a person if the person counsels or procures someone to commit the domestic violence, see section 17</i></p> <p>s.6 of the Act defines intimidation s.7 of the Act defines stalking s.8 of the Act defines economic abuse</p>	<p>Replaced the Domestic Violence Act (NT). Commenced on 1 July 2008.</p> <p>Provides for the protection of people in a domestic relationship against violence.</p> <p>Simplifies the processes associated with domestic violence orders to protect women and children.</p> <p>Defines domestic violence to include economic abuse and intimidation as being explicit grounds for orders, as is violence that impacts on the welfare of a child.</p> <p>Provides for the option for children to apply for a Domestic Violence Order (DVO) on their behalf.</p> <p>Increasing the maximum penalty for breaching a Domestic Violence Order from 6 months to 2 years.</p> <p>Presumption in favour of a DVO applicant, who has children in their care, remaining in the family home.</p> <p>Economic abuse and intimidation being explicit grounds</p>

			<p>for orders, as is violence that impacts on the welfare of a child.</p> <p>The Northern Territory Government introduced the Victims of Crime Assistance Act 2006 to establish schemes to help victims of violent acts with counselling and financial assistance.</p>
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