



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

We have a right to choose homes without violence

*Submission responding to the Disability Royal Commission's
Violence and Abuse of People with Disability at Home Issues
Paper (Dec 2020)*

**FEBRUARY
2021**

About PWDA

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

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

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

PWDA is a NSW and national peak organisation and founding member of Disabled People's Organisations Australia (DPO Australia) along with Women with Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. Disabled Peoples Organisations (DPOs) are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities.

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Our expertise

People with Disability Australia has extensive expertise in the area of violence, including domestic violence, and against children and adults with disability¹.

As a disability advocacy organisation, PWDA provides direct advocacy for people with disability who are experiencing or have experienced violence, be it in their homes or elsewhere.

As a national peak representative body for people with disability, we have provided policy advice to numerous inquiries related to violence, including violence against children with disability.

Examples of public consultations we have commented on include:

- the Senate Inquiry into Domestic Violence
- the Senate Inquiry into Violence, Abuse and Neglect of People with Disability
- the Third Action Plan for the National Framework for Protecting Australia's Children
- an Investigation of the Impacts on Family and Domestic Violence on People with Disability in Queensland
- a co-designed Peer Education: Healthy and Respectful relationships Course, funded by the NSW Governments Domestic and Family Violence Innovation Fund
- Building Access Project, a longitudinal project on building capacity in the NSW domestic violence sector to better respond to women and girls experiencing domestic and family violence funded by the NSW Government's Domestic and Family Violence Innovation fund.

We're also members of key group, including:

- The NSW Women's Alliance
- the Advisory Committee for 1800 Respect; Pathways for Women with Disability.

¹ For example: [Stop the Violence Project](#); [Women with Disability and Domestic and Family Violence: A Guide to Policy and Practice](#); [Disability Support for the Royal Commission into Institutional Responses to Child Sexual Abuse](#); [Women with Intellectual Disability and Domestic Violence Project](#); National Disability Abuse and Neglect Hotline; and [Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment](#).

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Introduction

People with Disability Australia (PWDA) takes an intersectional human rights approach to violence against people with disability and recognises the particular vulnerabilities of certain groups of people with disability, such as people required to cohabit in congregate settings. We are conscious of Australia's international obligations in this regard and seek to highlight where governments should take these rights into account.

The Australian Government ratified the *Convention on the Rights of Persons with Disabilities* (CRPD) in 2006, and the *Convention on the Elimination of All Forms of Discrimination against Women* in 1983. Along with other international human rights instruments² these obligations provide a guide to devising and implementing cross-sectional approaches to violence prevention, early intervention and response.³

However, despite Australia's ratification of these various human rights instruments, people with disability in Australia experience discrimination and rights violations and a heightened risk of violence.

In addition, because people with disability are frequently thought of as separate from the rest of the community, strategies already in place to respond to violence in the rest of the community – from domestic and family violence services, to police, to perpetrator intervention programs – are often not available or accessible to people with disability.⁴

An intersectional, human rights-based approach to violence prevention recognises that violence against people with disability occurs within certain contexts, and that violence may be more or less likely to happen to certain groups “depending on how they are positioned within social, economic and cultural hierarchies.”⁵

This is illustrated through often very limited data available. Women with disability experience much higher levels of violence than other women, and then men with

² Harpur, P and Douglas H. 2014. 'Disability and domestic violence: protecting survivors' human rights', *Griffith Law Review*, 23(3):405–433, School of Law, University of Queensland, pp.406–423. p417 (hereinafter Harpur and Douglas. 2014.); Healey, L. et al. 2008. pp43–44; International Network of Women with Disabilities. 2011. Document on Violence against Women with Disabilities, INWD. p9. Available: <http://wwda.org.au/wp-content/uploads/2013/12/inwwdviol2010.pdf>.

³ Women with Disabilities Australia. 2008. *We're women too! – WWDA Response to the Australian Government's Consultation on the National Plan to Reduce Violence against Women and their Children*.

⁴ Salthouse, S. 2007. 'Completely Knocked Out: Australian perspectives on disability, disempowerment and domestic violence', presented to Domestic Violence, Disability and Cultural Safety National Forum: Diverse and Inclusive Practice: Redrawing the Boundaries (on behalf of WWDA). p3.

⁵ Frohmader, C., Dowse, L. and Didi, A. 2015. *Preventing Violence against Women and Girls with Disabilities: Integrating a Human Rights Perspective* [PDF document], Women With Disabilities Australia. p7 (hereinafter Frohmader et al. 2015.). https://wwda.org.au/wp-content/uploads/2015/04/Think-Piece_WWD.pdf

disability.⁶ Aboriginal and Torres Strait Islander women with disability are likely to experience rates of violence that are higher than for other women with disability.⁷

Lesbian, gay, bisexual, transgender, intersex, queer and asexual (LGBTIQA+) people, including those with disability, experience much higher levels of violence than the rest of the community⁸.

Men with disability experience higher levels of interpersonal violence than other men.⁹

Disability is an exacerbating factor for all these groups with disability – women, First Nations, LGBTIQA+ and men with disability.

To protect, promote and uphold the human rights of all people with disability experiencing violence, intersectional risks and experiences across all areas of life must be thoroughly understood to address policy-siloing, exclusionary practices and to ensure that all areas and levels of government, services and other actors are aware of their roles in upholding and protecting these rights.¹⁰

For example, under Article 19 of the CRPD, people with disability have a right to live in the house they choose, with the people they choose.

Yet despite this human right of people with disability to choose where and with whom they live, accessible and appropriate housing is not available for all people with disability. PWDA's experience shows that the segregation of people in certain settings such as group homes, with the provision of support services being tied to these homes, can heighten the likelihood of violence.

Under Article 12 of the CRPD, people with disability should have access to justice on an equal basis with others. However, our experience has highlighted that the barriers that people with disability face when attempting to report to police, in pursuing investigation, or in taking matters to court, especially as victim/survivors, frequently mean that this right is not realised. Some of the barriers result from inadequacies within the justice system.

However, alternate pathways through the offices of the Public Guardian or Public Advocate, and/or civil and administrative tribunals are frequently preferred by a range of different agencies involved in an instance of violence or abuse against people with

⁶ ACDA submission to Senate Inquiry into Violence.

⁷ Phillips, J. and Vandebroek, P. *Domestic, Family and Sexual Violence in Australia: an overview of the issues*. Parliamentary Library of Australia. Available: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/ViolenceAust

⁸ Iliffe, J. and Black and White Media Australia. 2014. *Face the Facts: LGBTI and Violence*, Australian Human Rights Commission. Available: <https://www.humanrights.gov.au/face-facts-lesbian-gay-bisexual-trans-and-intersex-people>

⁹ World Health Organisation n.d. *Violence against adults and children with disabilities*. World Health Organisation. Available: <http://www.who.int/disabilities/violence/en>

¹⁰ Frohmander et al. 2015, p22.

disability, including disability service providers and even the police themselves. To put this more simply, the alternative pathway prefer community or civil processes, and not criminal processes such as active investigating.

This can mean that people with disability are not given the option of pursuing a criminal case or are discouraged from doing so. This is particularly the case where a person with disability is assumed to 'lack capacity' to be involved in a criminal investigation and prosecution. The decision not to pursue a case frequently occurs well in advance of the consideration of a criminal trial and testing of capacity required in a criminal trial.

An example is where people who are under guardianship orders never reach the point of being tested for competence to give evidence in a criminal trial, because they are diverted into the administrative 'pathways' provided by state and territory offices of the Public Guardian or Public Advocate, and/or civil and administrative tribunals.

While these pathways may appear more appropriate to many of those involved in a case, such decision-making, especially on behalf of a person with disability, may act as an impediment to accessing justice.

The CRPD affirms the right to 'additional support to enable persons with disabilities to access sources of help,'¹¹ yet in many circumstances, violence response services such as domestic and family violence services, are inaccessible to people with disability in a range of ways that act as barriers to services.

¹¹ Harpur and Douglas. 2014, pp. 406–423.

Responses to Issues Paper Questions

Question 1 – How do people with disability experience violence and abuse in the home? What are the impacts across their life?

People with disability experience violence and abuse at home. Home is the place they live. And violence at home affects their lives.

“It happens in the home,” Man, Mooloolah.

“[In] bedrooms,” Man, Mooloolah.

“[It happens] wherever people get together,” Man, Mooloolah.

“It can happen when there’s no one around ... someone not seeing you doing it,” Woman, Mooloolah.

“Also like showers, personal care abuse,” Woman, Townsville.

“Or lack of personal care which is often the case where people are put in a situation where they have to deal with only being able to have three showers a week, which nobody would choose to do. So why should people be forced into that circumstance?” Man, Townsville.

Question 2 – What are the specific intersectional experiences of violence and abuse in the home?

Evidence demonstrates that people with disability experience violence and are at a far greater risk of violence than others in the population, and that this violence often goes unrecognised and unaddressed.¹² More than a third of people with disability report experiencing violence or abuse, and almost 50% of people with disability report feeling unsafe where they live.¹³

¹² Disabled People's Organisations Australia (DPO Australia) (March 2019) [Violence Against People with Disability](#).

¹³ National CRPD Survey (2019) Findings.

A Women, girls and young people with disability

Compared to their peers, women and girls with disability experience significantly higher levels of all forms of violence, more intensely and frequently, and are subjected to violence by a greater number of perpetrators.¹⁴

Their experiences of violence last longer, result in more severe injuries, and they are far less likely to receive service support to address violence.¹⁵ Women and girls with disability are often not believed when reporting sexual assault and other forms of violence, are often denied the right to legal capacity¹⁶ and effective access to justice,¹⁷ and they have considerably fewer pathways to safety.¹⁸

There is a lack of expertise and a range of structural barriers within domestic violence, sexual assault and women's crisis services that prevent appropriate responses to support women with disability.¹⁹

Women with disability are treated differently to other women and face discrimination because of their disability. Women and girls with disability in Australia are more exposed to practices which qualify as torture or inhuman or degrading treatment, including state-sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.²⁰

The *National Plan to Reduce Violence Against Women and their Children 2010–2022*,²¹ is Australia's main policy framework designed to prevent violence against women. The national plan focuses only on sexual assault and domestic/family violence in the context of intimate partner violence.²²

¹⁴ Women With Disabilities Australia (WWDA) '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9.

¹⁵ Women With Disabilities Australia (WWDA) '[Improving Service Responses for Women with Disability Experiencing Violence: 1800RESPECT](#)'; Final Report. ISBN: 978-0-9585268-5-2.

¹⁶ United Nations General Assembly, Human Rights Council (2013) Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E Méndez; 1st February 2013; UN Doc. A/HRC/22/53.

¹⁷ Women With Disabilities Australia (WWDA) '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585268-6-9.

¹⁸ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) [Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia](#). Background Paper. Hobart: Women with Disabilities Australia.

¹⁹ A significant majority of domestic violence shelters are not accessible for women or children with disability, and there are additional barriers where there are also language or cultural requirements.

²⁰ Women With Disabilities Australia (WWDA) '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania.

²¹ Council of Australian Governments (2011) [National Plan to Reduce Violence against Women and their Children 2010-2022](#), Canberra.

²² The exclusion and neglect of women and girls with disability in the [national plan](#) has been identified in a number of reviews and inquiries at both national and international levels. For example, the report from the [Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#), released in November 2015, recommended that the Australian Government amend the National Plan to ensure that women with disability are afforded the full range of rights protections that are available to women without disability. The recommendation also specified that the national plan must be updated to include institutional and disability accommodation settings, and that in order to give effect to the national plan, there must be increased funding to support women with disability escaping domestic violence.

Crimes against women with disability are often disguised in reporting or approached using indirect language. We have witnessed this language in use at the New South Wales Ombudsman, where violence against women in New South Wales group home settings has been labelled “service delivery improvement opportunities.”

Sometimes violence against women with disability is omitted from reporting tools. For example, DVSAT now only captures serious intimate partner violence, meaning we have seen many women with disability experiencing violence from staff or housemates at home excluded from the valuable support of the Safer Pathway program.

Australia’s national plan conceals and renders invisible, structural and institutional forms of gender-based violence related to law, the state and culture that women and girls with disability not only experience but are more at risk of.²³ It excludes reproductive rights violations and many of the settings and spaces in which women and girls with disability experience violence such as prisons, detention centres and other forms of segregated and institutional settings.

There are also serious methodological restrictions in the main survey instruments used to capture data on violence against women,²⁴ resulting in significant under-representation of women with disability in population-based studies on the prevalence of domestic and family violence and sexual assault.²⁵

Despite recommendations from the Committee on the Rights of Persons with Disabilities (CRPD Committee),²⁶ other treaty bodies and United Nations (UN) mechanisms,²⁷ there remains no national legislation on the prevention of all forms of gender-based violence.²⁸

²³ Such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage.

²⁴ The [Personal Safety Survey \(PSS\)](#) is a national survey conducted by the [Australian Bureau of Statistics \(ABS\)](#). The PSS collects detailed information from men and women about the nature of violence experienced since the age of 15. However, it is widely recognised that the PSS has significant methodological restrictions and limitations. For example, the PSS systematically excludes people with disability living in institutional settings (i.e. not in a private home), and those who live in remote areas, where Aboriginal and Torres Strait Islander people with disability are over-represented. The [National Aboriginal and Torres Strait Islander Social Survey \(NATSISS\)](#) also operates within these sampling parameters. The PSS data collection methods do not involve inclusive research practices. The PSS is performed by an interviewer and a specific requirement of the survey is that all interviews are conducted alone in a private setting. Interpreters and support persons are excluded, and where a respondent requires the assistance of another person to communicate with the interviewer, the interview is not conducted. These methodological restrictions mean that the PSS not only misses (and excludes) a very significant proportion of people with disability, but it also means that reported data from the PSS relating to women with disability is inherently misleading.

²⁵ Australian Institute of Health and Welfare 2018. [Australia’s health 2018](#). Australia’s health series no. 16. AUS 221. Canberra: AIHW. See also: Australian Institute of Health and Welfare 2017. [Australia’s welfare 2017](#). Australia’s welfare series no. 13. AUS 214. Canberra: AIHW.

²⁶ See: UN Doc. CRPD/C/AUS/CO/1. See also: CRPD General Comment on Women with Disabilities (CRPD/C/GC/3).

²⁷ In its 2018 review of Australia’s eighth periodic report under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the CEDAW Committee expressed its concern at the lack of national legislation prohibiting all forms of gender-based violence against women. The CEDAW Committee recommended that the Australian Government: “Adopt commonwealth legislation that is in line with the Convention and prohibits all forms of gender-based violence against women and girls, and shift the power to legislate on this matter to the Commonwealth Parliament” See UN Doc No: CEDAW/C/AUS/CO/8. See also: CCPR/C/AUS/CO/6; E/C.12/AUS/CO/5; CAT/C/AUS/CO/4-5.

²⁸ Committee on the Elimination of Discrimination against Women (14 July 2017); General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. UN Doc No: CEDAW/C/GC/35.

Children and young people with disability experience violence and abuse at approximately three times the rate of children without disability.²⁹ Violence and abuse perpetrated against children and young people with disability in schools, educational and childcare settings, including out-of-home care, remains a widespread, unaddressed problem in Australia.³⁰

Case study 1: “Christina”

In a boarding house for people with intellectual disability, a woman we will call “Christina” made a complaint against a male co-resident on behalf of herself and two other women. These women shared the use of a bathroom with this man, and stated that he had been touching them inappropriately, making sexual comments towards them, intimidating them and making them feel unsafe in their home.

When the police visited the boarding house to investigate the incidents, a disability advocacy organisation supported Christina and the other two women in the police interviews. While the police officers were polite and provided the women with referrals for counselling, the police indicated that it would come down to the women’s word against the alleged perpetrator, and that the disability of the perpetrator would reduce the likelihood of him being found culpable of anything. The officers also informed Christina that the matter could not go to prosecution due to the difficulties determining dates and corroborating evidence.

The police did not pursue its investigation as it was decided there was no likelihood of successful conviction. Christina and the women still live together in the same house with the perpetrator. Christina was told she could not take out a domestic violence order on the perpetrator as he is not an intimate partner or a family member, despite him living permanently with Christina.

Case study 2: “Olivia”

A middle-aged woman we will call “Olivia” has intellectual disability. She receives support from a not-for-profit disability organisation that provides in-home support.

²⁹ See, Robinson 2012, [Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability](#), p. 12; Children and Young People with Disability Australia, Melbourne. See also: Robinson, S. & McGovern, D. (2014) [Safe at School? Exploring safety and harm of students with cognitive disability in and around school](#). Lismore, Centre for Children and Young People. Report completed for the NSW Law and Justice Foundation.

³⁰ The evidence base describing egregious breaches of the human rights of children and young people with disability in schools is rapidly increasing. See for eg: Children and Young People with Disability Australia (CYDA) (August 2016) [Bullying and abuse of school students with disability at alarming levels: Media Release 9 August 2016](#). See: Australian Broadcasting Corporation (ABC) (16 August 2016) [School investigated after claims boy with autism locked in ‘cage’](#). Australian Broadcasting Corporation (ABC) (31 August 2016) [School accused of leaving teen with autism outside on beanbag for whole term](#). The Canberra Times (11 August 2016) [Autism cage details emerge as United Nations investigates abuse of children](#). See also: Senate Community Affairs References Committee (November 2015) [Final Report: ‘Violence, abuse and neglect against people with disability in institutional and residential settings’](#). See also: Senate Education and Employment References Committee (2016) [Final Report: Access to real learning: the impact of policy, funding and culture on students with disability](#)

Olivia's behaviour changed suddenly. She started wetting the bed and constantly washing herself. Her mother found this behaviour odd and problematic, and looked for reasons to explain why it was happening. In her investigations, Olivia's mother found condoms in Olivia's bag. Olivia then disclosed to her mother that she had been coerced into sex by a support worker, "it was supposed to be our secret – he said he'd tell the cops I was stupid if I said anything, and no-one would believe me anyway. But I thought he was my boyfriend, I just wanted to be like other people, he said he'd look after me."

Olivia's mother took her straight to the police station. Once there, police officers immediately interviewed Olivia. This interview lasted a total of three hours, and was video-recorded. Olivia endured two hours of interviewing before the police allowed a support worker to assist her.

However, the support worker who was chosen to assist Olivia was a colleague of the perpetrator. This led to Olivia immediately shutting down and not telling the police any more information. Nonetheless, the police seemed confident about the likelihood of making charges at this stage.

The perpetrator of sexual assault then disappeared from work, and the police were unable to find him for an extended period. This drew out the process for Olivia and her mother, causing them immense amounts of stress and trauma.

When the perpetrator eventually returned to work, the police restarted their investigation. However, officers then decided that Olivia was not a reliable witness. Olivia's mother believes that this is because their views of Olivia have been influenced by the assisting support worker, who was a colleague of the perpetrator, and the perpetrator himself.

Olivia's mother is in the process of applying for the police video recording of Olivia's interview. She wants to understand more about why the police decided that Olivia was not a reliable witness. Olivia and her mother also made a complaint to the disability service. The service may be held responsible as it did not do a risk management assessment of the role performed by the perpetrator.

The perpetrator is still employed at the service, where he is able to be alone with clients in their bedrooms and personal spaces.

Case study 3: “Samantha”

A young adult we will call “Samantha” has severe intellectual, physical and communication disabilities. Her parents were in conflict. Numerous domestic violence orders were applied for by both parties. Parental contact with Samantha was the primary cause of matter going to Queensland Civil and Administrative Tribunal (QCAT).

At this hearing, the Office of the Public Guardian (OPG) was appointed as guardian, and the Public Trustee Queensland (PTQ) as administrator. After some time PTQ was replaced with Samantha’s mother, as Samantha’s pension is her only property.

The OPG decided to place Samantha in a group home where her mother alleged physical and sexual assault of Samantha, perpetrated by a support worker. This was only partially documented by medical professionals and was not thoroughly reported. It is unclear what investigations were undertaken because of these complaints. Samantha’s mother also alleges Samantha’s father (her ex-partner) perpetrated physical, psychological and verbal assault and financial neglect against Samantha, both while she lived in family home and later, during her time in the group home.

In response to ongoing threats to Samantha, her mother removed her from the group home. She alleged continued intimidation by Samantha’s father. Samantha’s mother connected with Queensland-based sexual violence and victims-of-crime advocate WWILD which worked with Samantha for a period regarding her trauma. The OPG terminated this arrangement.

Samantha’s mother fears further violence against herself and Samantha, so she fled the state with her daughter to be closer to family and informal supports. She refused to disclose exact home address to any authorities in Queensland, for fear that her ex-partner may find her and Samantha. However, she made contact with and advised her new address to police, medical and disabilities services in the new jurisdiction.

The OPG was not informed of the mother’s intent to flee, so they pursued Samantha’s return to Queensland by phone/email, and with the police. The OPG notified Samantha’s mother that they had made application to QCAT to have the mother removed as administrator and sought an order for return of Samantha to Queensland. Samantha’s mother was formally advised that upon return to Queensland, Samantha would be placed in a group home.

Samantha's mother sought leave to attend QCAT hearing via Skype. This was refused and she was directed to return to attend in person.

Samantha's mother registered Samantha in her new jurisdiction for disability services. However, funding remained unavailable as the OPG refused to transfer Samantha's file. The OPG responded that they cannot transfer file without knowing the correct home address. Samantha's mother provided their new address on condition it is not provided to the father.

B First Nations people with disability

The rate of disability for Indigenous people, including children³¹ is twice as high as that among the general population.³² Violence against Indigenous Australians is approximately 10 times higher than against non-Indigenous people.³³ Aboriginal women are 35 times more likely to suffer family violence and 80 times more likely to sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence than non-Aboriginal women.³⁴

C Culturally and linguistically diverse people with disability

It is globally recognised that refugees and asylum seekers with disability are at heightened risk of violence, including sexual and domestic violence.³⁵ Australia's asylum seeker laws, policies and practices have resulted in institutionalised, severe and routine violations of the prohibition on torture and ill-treatment; have subsequently been found to create serious physical and mental pain and suffering, and continue to cause life-long disability and impairments.³⁶

D Older people with disability

Intersectional discrimination has unique and specific effects on people with disability and, in many cases, may lead to different or new forms of discrimination. Some older people will have experienced disability from a young age, others may have acquired disability as a

³¹ Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015: [Aboriginal and Torres Strait Islander People with Disability](#).

³² Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.

³³ Australian Institute of Health and Welfare 2018. [Family, domestic and sexual violence in Australia, 2018](#). AIHW, Canberra.

³⁴ See for example: OurWatch, [Changing the picture: preventing violence against Aboriginal and Torres Strait Islander women](#).

³⁵ United Nations High Commissioner for Refugees, cited in National Ethnic Disability Alliance (NEDA) (2015) [The Plight of People Living with Disabilities within Australian Immigration Detention: Demonised, Detained, and Disowned](#). NEDA, Canberra.

³⁶ Legislation permits children with disability from asylum seeker backgrounds to be held indefinitely in immigration detention facilities. UN General Assembly (24 April 2017) [Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru](#). UN Doc. No. A/HRC/35/25/Add.3.

result of ageing, accidents or incidents. As such, many older people with disability will have experienced different forms of discrimination throughout their lives.

Our advocates work across various jurisdictions and note that financial abuse is often prevalent with older people with disability. This may include withholding pension money, selling the family home without fully informed consent, and putting older people with disability under guardianship orders to obtain financial benefit.

Far too many older people with disability are unnecessarily placed under guardianship orders, and other measures that limit their self-determination and personal autonomy, rather than having their rights protected and promoted initially through the provision of support that would enable them to exercise control over their decisions and their own lives. The substitution of decision-making and legal capacity by others often provides heightened risk of financial, physical and emotional violence against older people with disability.

Additionally, older people with disability are routinely subjected to unregulated and under-regulated restrictive practices which can cause physical pain, discomfort and trauma, deprivation of liberty, prevent freedom of movement, and altered thought and thought-processes. The use of restrictive practices is often justified through the operation of regimes that fail to recognise and engage with the legal capacity of people with disability and older people.³⁷

Question 3 – What drives violence and abuse in the home? What increases risk, and how do these ‘risk factors’ vary among people with disability?

The disproportionate violence experienced by people with disability in their homes – the places where they ought to be able to feel most safe – is alarming and demands an urgent yet thoughtful response. Violence against people with disability is reflective of their intractable and ongoing social devaluation and accompanying marginalisation as unequal citizens in society.

The social model of disability is now enshrined in the international human rights law to which Australia is a party, the CRPD. The social model rejects the understanding of disability as medicalised deficit and focuses instead on disability as arising in the interaction between an impaired body and a disabling society.³⁸

One of the simplest examples of this social disability is the physical environment – without stairs, a person in a wheelchair would not be disabled from accessing the whole of the community. People with disability, in this understanding, are not disabled by their bodies,

³⁷ Extract from, https://pwd.org.au/wp-content/uploads/2018/09/DPOA_ALRCdiscussionpaper_elderabuse_060317.pdf

³⁸ Oliver, M. & Barnes, C. 2012. *The New Politics of Disablement*, Palgrave, London. p48.

but are disabled by the society in which they live – and its social, attitudinal, environmental and communication barriers.³⁹

However, despite a general move towards the social model of disability, the medical model of disability often persists in policies, practices and legislation at the state level, nationally and internationally.⁴⁰ Australia's National Disability Insurance Scheme (NDIS) was intended to be a rare exception to this rule, however as the Scheme has rolled nationally, it has veered back toward a medical model of disability approach. The medical model also remains prevalent when considering public perceptions and understandings of disability, especially those that perceive disability to be a burden or a tragedy.⁴¹

Public perceptions, stereotypes and myths about disability exclude and marginalise people with disability from those without; indeed, some academics have referred to disability as a 'social apartheid'.⁴² These stereotypes and perceptions are not only a barrier to an inclusive society, but are also instrumental in enabling the devaluing of, and violence towards, people with disability.⁴³ Stereotypical views about people with disability can leave them feeling powerless and invisible.⁴⁴

Our advocates have reported that there seems to be a large percentage of financially motivated violence alongside incidents of isolation and control. Abuse is often couched as protecting the person with disability from harm by outside sources, this argument can be used by perpetrators to deflect further investigation of a potentially abusive situation.

The social model has a particular relationship with prevailing understandings of violence. Much of the literature about violence against people with disability characterises this group as especially 'vulnerable' to violence, understanding a person's impairment as increasing their risk of violence.

³⁹ Healey, L. 2013. *Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria. p15 (hereinafter Healey, L. 2013.).

⁴⁰ Frawley, P., Dyson, S., Robinson, S. and Dixon, J. 2015. 'What does it take? Developing informed and effective tertiary responses to violence and abuse of women and girls with disabilities in Australia: State of knowledge paper', Australia's National Research Organisation for Women's Safety. Issue 3. p8 (hereinafter Frawley et al, 2015.).

⁴¹ Women with Disabilities Australia, First Peoples Disability Network, People with Disability Australia, Children with Disability Australia and National Ethnic Disability Alliance. 2014. Senate Standing Committee on Finance and Public Administration 'Inquiry into Domestic Violence in Australia': Joint Submission from National Cross-Disability Disabled People's Organisations (DPOs), p41 (hereinafter National Cross-Disability Disabled People's Organisations submission to Senate Inquiry into Domestic Violence).

⁴² Healey, L. 2013. p43; Goggin, G. and Newell, C. 2005. *Disability in Australia: Exposing a Social Apartheid*. UNSW Press.

⁴³ Healey, L., Howe, K., Humphreys, C., Jennings, C. and 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*, Available:

<http://www.wdv.org.au/documents/BTE%20Final%20Report.pdf>, p41 (hereinafter Healey et al. 2008.); MIMs and Associates Brisbane. 1998. *Domestic Violence and Women with Disability Project, Final Report to Department of Families, Youth and Community Care Queensland*, p16 (hereinafter MIMs and Associates. 1998.); Salthouse, S. and Frohmader, C. 2004. *Double the Odds – Domestic Violence and Women with Disabilities*, presented to the 'Home Truths' Conference, Sheraton Towers, Southgate, Melbourne, 15 -17 September 2004. Available: <http://www.wda.org.au/issues/viol/viol2001/odds>; Woodlock, D., Healey, L., Howe, K., McGuire, M., Geddes, V. and Granek, S. 2014. *Voices Against Violence Paper One: Summary Report and Recommendations*. Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria p16 (hereinafter *Voices Against Violence: Summary Report*).

⁴⁴ Healey, L. et al. 2008. p41; *National Cross-Disability Disabled People's Organisations submission to Senate Inquiry into Domestic Violence*. p41.

However, this obscures the reality that the majority of exacerbating factors for people with disability, and their risk of experiencing violence, arise from barriers within the community, not from the impairment itself. People with disability are in fact rendered vulnerable by the failures of the systems intended to respond to and protect them from violence.

Factors that increase this vulnerability to violence may include limited social connections, multiple service providers, limited choice and control afforded to an individual, and limited community oversight.⁴⁵ This vulnerability to violence is particularly increased in contexts that devalue people with disability,⁴⁶ and is exacerbated for some, especially Aboriginal and Torres Strait Islander people with disability, people with disability from diverse cultural and linguistic backgrounds, LGBTIQ+ people with disability, and women with disability.

The social model thus provides an important corrective to existing ways of understanding and responding to domestic and family violence, as it intersects with people with disability. It shapes PWDA's countering violence at home recommendations to the Disability Royal Commission, which propose a holistic, cross-sectoral response to address both the wider structural barriers and systemic failures relating to domestic and family violence against people with disability.⁴⁷

Question 4 – What are the gaps in safeguards for people with disability?

A very significant gap in safeguards for people with disability is the absence of national mechanism that captures the incidence, prevalence, extent, nature, causes and impact of violence, abuse, exploitation and neglect against people with disability.⁴⁸ There is no national process to report on available data of the experiences of people with disability, understand data quality issues, or to identify and fill data gaps.⁴⁹

While we acknowledge that the National Disability Data Asset goes some way to address this gap, there is an overwhelming need for a more nuanced data capture approach. Currently, there is no national, accessible, oversight, complaint and redress mechanism for people with disability who have experienced violence, abuse, exploitation and neglect in all settings.

⁴⁵ Children with Disability Australia, 2012. *Enabling and Protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*. p12 (hereinafter Enabling and Protecting)

⁴⁶ Healey, L. et al. 2008. p36.

⁴⁷ Enabling and Protecting, p12; Healey, L. et al. 2008. p36.

⁴⁸ See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) [Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings](#). Australian Cross Disability Alliance (ACDA); Sydney, Australia.

⁴⁹ Australian Institute of Health and Welfare 2017. [Australia's welfare 2017](#). Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

The NDIS Quality and Safeguards Commission only directs limited capacity towards investigating matters of violence abuse and neglect. Specifically, only NDIS-registered service providers are subject to any potential investigations. Of the 4.5 million people with disability in Australia, only 10% have access to the NDIS. This means that people without NDIS supports are reliant upon a biased and rigid justice system that has inconsistencies across jurisdictions, and which has yet to take up across the board, the UN Human Rights Commission recommendation of implementing disability justice action plans.

State and territory-based oversight agencies also use limited resources towards investigating violence and abuse, with proactive investigations of unreported abuses not being a common approach.

Question 5 – How do domestic and family violence services and disability services work to prevent and respond to violence and abuse of people with disability, including children, in their homes?

For many people with disability, disability service providers are part of their everyday lives. Such services are often able to prevent and provide a response to violence when it does occur. However, it is unclear that workers are supported to do this; in many circumstances they do not have access to the knowledge or expertise required to meaningfully support victims.

Similarly, the domestic and family violence sector lacks awareness of how to support people with disability, especially when people's experiences differ from those of other victims. Even with very willing workers, it may be difficult to access the necessary information, funding and support, especially given the division between disability specialist services and mainstream or 'universal' services such as domestic and family violence services. This 'siloing' has significant impacts on people with disability and appears to continue despite commitments to integrating the service systems.

A range of barriers have been identified for people with disability to access and navigate integrated service responses. These barriers include:

- significant gaps in the referral processes of current integrated service responses
- lack of integrated communication between services
- lack of disability awareness across all services
- lack of access to disability support, impeding access to other services, including domestic and family violence services and crisis accommodation
- lack of representation of disability expertise on integrated service response teams.
- lack of a strategy in responding to clients with disability among current integrated service responses

- over-reliance on advocacy organisations to mediate and advocate on behalf of clients with disability, which affects their capacities and already stretched resources.

A range of barriers have been identified for people with disability to access support from disability service providers regarding domestic and family violence and violence more generally, and these include:

- lack of understanding of the nature and dynamics of domestic and family violence by disability service providers and their workers
- inadequate service-based responses to violence experienced by clients, for example in service incident investigations
- unwillingness to involve police in matters that pertain to violence and clients, including domestic and family violence
- lack of accountability of paid support workers who may be involved in or complicit to acts of violence against clients
- unwillingness to support clients with referrals, or in accessing other services.

Question 6 – Should legal and policy definitions of domestic and family violence include violence and abuse by support workers, unpaid carers, housemates, co-residents and wider First Nations kinship networks?

Many people with disability who experience violence in their homes do not fall within the current legislative definition of domestic and family violence in most jurisdictions, because domestic and family violence is generally defined as being perpetrated by a partner or, in NSW only, an unpaid carer. Violence perpetrated by co-residents, or paid carers, falls outside the current definition. People with disability have little recourse to the protections of the legal system, should they experience violence in the place where they live.

Many of the homes that people with disability inhabit (by choice or otherwise) do not seem to fit the current understanding of domestic and family violence; they include institutions, group homes and boarding houses. Yet these locations are experienced as 'home' for people with disability: the safe space from the rest of the world, at least until they are interrupted by violence.

Co-residents are a key relationship for many people with disability. In some circumstances, co-residents may not be freely chosen by a person with disability. Instead, accessing appropriate housing and support is treated as conditional upon accepting a particular co-resident. Although these relationships are often compared to those between people sharing a house, they differ markedly: co-residents are rarely chosen, and people with

disability rarely find it easy to move on from a particular house if they no longer get along with their co-residents, partly due to a shortage of accessible houses.

Finally, there is often a level of expected interaction between co-residents: many attend activities during the day with these co-residents. Violence in such relationships, then, can be extremely disruptive.

“[Living in a group home] makes it easier for the individual that is providing the support, the care, whatever, with no respect and no consideration to the individual on the receiving end,” Man, Townsville.

For many participants, support workers are an everyday part of their lives, a key relationship often of substantial familiarity. However, support workers are also in a position to exercise extraordinary levels of ‘coercion and control’ over the life of a person with disability.

By way of example we have found in our ongoing research into violence with people with disability, that support workers who are present in research settings often continually interrupt to provide their own opinion, or to correct the alleged misapprehensions regarding the relationships of a person with disability, and in some cases to imply that certain participants had brought instances of violence on themselves. This occurs despite support workers signing agreements not to participate in their own right as part of the research.

In many circumstances a support worker may be able to:

- facilitate, or deny, access to the community by a person with disability
- facilitate, or deny, access to a person’s mobility aids or other support equipment
- limit a person’s access to medication, or overmedicate them
- facilitate, or deny, a person’s access to their own money, or the ‘comforts’ purchased with that money
- lock a person in a room or within the house
- call police for assistance in having a person with disability returned to the house (even if they do not wish to return)
- facilitate, or deny, a person with disability independent access to food
- facilitate, or deny, a person with disability choices in what food they eat
- decide what time a person with disability gets up, goes to bed, has showers, uses the toilet, or has meals
- provide a person with disability with appropriate or inappropriate intimate personal care, including assistance with showering, toileting and getting dressed
- accompany a person with disability to the doctor, and potentially speak authoritatively to the doctor on behalf of the person (which can result in inappropriate medication, or deny a person with disability the opportunity to disclose experiences of violence)

- enter the room of a person with disability without knocking
- oversee all use of the public areas of the house, which usually includes the telephone (in most circumstances, the telephone is first answered by a support worker, enabling them to act as gatekeeper to the contacts and relationships of the person with disability).

This list demonstrates that the realities of relationships between people with disability and support workers can enable an extraordinary level of control. Obviously, many relationships are functional, working relationships that provide the support to which people with disability are entitled to, and work to facilitate rather than control an individual's life. However, such relationships can also facilitate violence and abusive coercion and control, and this can occur in ways which can be difficult to discern.

Once domestic violence might have been understood to overlap almost entirely with 'intimate partner violence,' however, it is increasingly recognised that there are a variety of relationships in which violence within the home can occur.

Similarly, at one time the focus on 'domestic violence' excluded certain forms of violence particularly prevalent against children and some in Aboriginal and Torres Strait Islander communities which occurred between family members but not necessarily within the domestic setting. The addition of 'family' to create 'domestic and family violence' ensured full inclusiveness.

In many circumstances, the forms of violence experienced by people with disability in their homes echo similar patterns seen in intimate partner violence – for example, control of money, of access to food, and of access to friends, family and community are common to both. However, in some cases, the coercion and control utilised by support workers can be legitimated by the expectations of the sector, their employer and oversight mechanisms in the state or territory, including the office of the Public Guardian or Public Advocate, civil and administrative tribunals, and police.

Disability advocates and researchers have long pointed to a key problem in the dominant understanding of 'domestic and family violence' that prevails in most Australian states and territories. There is growing recognition that the forms of violence that people with disability experience within their homes should be understood as domestic and family violence, regardless of whether their homes are institutional or not, and regardless of the relationship between the perpetrator and the victim.

In NSW, the *Crimes (Domestic and Personal Violence) Act 2007*, has explicitly included institutional and residential settings as a potential location for domestic and family violence, and relationships with co-residents and paid and unpaid support workers as

potential relationships in which domestic and family violence can occur (section 5).⁵⁰ The NSW legislation stands apart in its attempt to include of people with disability and the forms of violence they experience within their homes.

The Senate Inquiry into Domestic Violence commented on this issue in its final report.⁵¹ In Victoria's 2015–2016 Royal Commission into Family Violence, numerous organisations including the Victorian Office of the Public Advocate supported a call for the broadening of family violence legislation, including the *Family Violence Protection Act 2008*.⁵² The Victorian Parliamentary Inquiry into Disability Abuse formally recommended that the family violence legislation be amended to recognise violence in institutional and residential settings, and at the hands of co-residents and support workers.

Similarly, the Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Residential and Institutional Settings (hereinafter Senate Inquiry into Violence Against People with Disability) highlighted the barriers raised to the full recognition of violence against people with disability in their homes, including by the service sector, by limited legislative definitions.⁵³

Perhaps most significantly of all, the *Third Action Plan: National Plan to Reduce Violence against Women and their Children 2010–2022* addresses women with disability as a specific cohort. Additionally, a key action is to “build ... a strong evidence base on the types of violence experienced by women with disability to inform future responses. This includes improving understanding of the settings where violence takes place and who the perpetrators are.”⁵⁴

This action responds directly to ongoing advocacy from the disability rights sector, including from organisations of and for people with disability, regarding the problems with the operating definition of domestic and family violence within the third National Action Plan (reflected, for example, in recommendation 24 of the Senate Inquiry into Violence Against People with Disability.)

⁵⁰ Crimes (Domestic and Personal Violence) Act NSW (2007) No 80, Available: <http://www.legislation.nsw.gov.au/inforce/a5381466-7b2a-4d15-dee4-f50eb61a222d/2007-80.pdf>

⁵¹ Senate Finance and Public Administration Committee. 2015., *Domestic Violence in Australia*. Commonwealth of Australia. Available: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence

⁵² Royal Commission into Family Violence. 2016. *Summary and Recommendations*. Government of Victoria. Available: <https://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>

⁵³ Senate Community Affairs Committee. 2015. *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. Commonwealth of Australia. Available: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report. pp168–172.

⁵⁴ *Factsheet: How the Third Action Plan supports Women with Disability*. 2016. Department of Social Services, Australian Government. Available at: <https://www.dss.gov.au/women/programs-services/reducing-violence/fact-sheet-how-the-third-action-plan-supports-women-with-disability>

Question 9 – What is the experience of people with disability when reporting violence and abuse at home to the police?

People with disability may be fearful of contacting the police in response to domestic and family violence for several reasons, including a fear that they will not be believed, that they will be criminalised by the police or that there will be other negative consequences of making a report.⁵⁵

People with psychosocial disability may also be afraid to report to the police due to previous negative experiences with police and the justice system.⁵⁶ There is a need for new research in this area, although we note the release of the Victorian Royal Commission into Mental Health's final report is imminent. However, a 2003 study found that a number of women believed that police work from a medical model of disability, and that as women with disability are not valued in wider society, violence against this cohort is not seen as requiring police or criminal investigation.⁵⁷

Our research with focus groups around reporting to police highlighted a real reluctance on behalf of people with psychosocial disability to report violence including domestic and family violence. A repeated theme from focus groups around reporting to police was, "they don't take you seriously".

Recent research and policy investigations have found that police may be reluctant to investigate crimes against people with disability and may perform inadequate or sub-standard investigations as a result.⁵⁸

Police may also fail to intervene and investigate as they believe there is no alternative to the violence; as if the violence were a form of behaviour intervention.⁵⁹ Police officers may also be unduly influenced by legislation. For instance, Queensland legislation around protection orders highlights that victims may be expressing fear and terror.⁶⁰ However, 'some women report they experience anger as a response to domestic violence or even normalise it and feel "numb".'⁶¹

⁵⁵ Victorian Equal Opportunity and Human Rights Commission, 2014; Sisters Inside. 2014. Submission to: An Inquiry into Domestic Violence in Australia. The Senate Finance and Public Administration References Committee. Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissionns. pp2–6; Victorian Equal Opportunity and Human Rights Commission. 2014. Beyond doubt: the experiences of people with disabilities reporting crime. Available: <http://www.humanrightscommission.vic.gov.au/our-projects-a-initiatives/experiences-of-people-with-disability-reporting-crime> for more information (hereinafter Beyond Doubt).

⁵⁶ Cockram, J. 2003.

⁵⁷ Cockram, J. 2003.

⁵⁸ French, P., Dardel, J., & Price-Kelly, S. 2009 op cit. pp62–63, Healey, L. et al. 2008. p40.

⁵⁹ Healey, L. et al. 2008. p40.

⁶⁰ Harpur, P and Douglas H. 2014. 'Disability and domestic violence: protecting survivors' human rights', *Griffith Law Review*, 23(3):405–433, School of Law, University of Queensland, p408.

⁶¹ Harpur and Douglas. 2014, p408.

As such, the police should be trained in the areas of disability, gender and violence to ensure appropriate, gender-informed and disability-aware responses to violence.⁶²

*“Don’t they regulate those places to make sure violence doesn’t happen there?”
QPS Officer.*

“I don’t see why I should treat someone with one leg as any different to anyone else,” QPS Officer.

“They [Police] should be trained better instead of treating them like flaming rubbish. That’s what the police do,” Woman, Hervey Bay.

There are a number of barriers that people with disability face in attempting to access police responses to domestic and family violence. These barriers include:

- lack of understanding and awareness of disability by front-line police officers and across state and territory police services, including the vulnerable persons units
- lack of training for officers to work with people with disability
- the belief that people with intellectual disability have the ‘mind of a child’ and are then responded to as children and not as adults.
- lack of pathways for accessing disability expertise, for identification of disability, or fulfilment of disability support needs.
- unclear guidelines in police operations manuals for officers to work with and inadequate access to information and support for police attempting to support people with disability, especially people with intellectual disability
- lack of trust of police by people with disability
- lack of dissemination and implementation of existing police-force disability action plans
- successful engagement with police tends to rely on advocates.

Question 10 – What is the experience of people with disability with legal systems or processes when they have been subject to violence and abuse at home?

People with disability are marginalised in Australia’s legal and judicial systems, and experience barriers to justice across the various elements of criminal and civil justice proceedings.⁶³ This is due to perceptions around the limited credibility of people with disability, police attitudes and stereotypes about disability, poor reporting practices, limited

⁶² Voices Against Violence: Interviews. p14.

⁶³ Women with Disabilities Australia, 2007. *Forgotten sisters: a global review of violence against women with disabilities*, Women with Disabilities Australia. pp.43–52 Available: http://wwda.org.au/wp-content/uploads/2013/12/Forgotten_Sisters.pdf (hereinafter Forgotten Sisters.).

complaints protocols, inaccessible courts and discriminatory rules of capacity, evidence and courtroom procedures.⁶⁴

Indeed, research has ‘found few examples of women with disabilities receiving a positive response and outcome from the justice system. These difficulties are heightened for women with disabilities who use non-verbal communication.’⁶⁵ This is especially concerning as people with disability are less likely to come forward more than once, if their initial reports or disclosures are ignored or not taken seriously.⁶⁶

“I went in there [to court] and I collapsed. It was too much,” Man, Brisbane.

“It’s very intimidating, extremely scary,” Woman, Brisbane.

The experience of giving evidence in court was particularly traumatic for some focus group participants.

“My [court experience] was crap, useless, harrowing and numbing – and it made me even more depressed it pushed me farther – deeper into that hole because he got off with 100 hours’ community service because I couldn’t remember the colour of my pyjamas,” Woman 1, Caboolture.

“Yeah, I was too scared to go – pretty confident that I had to re-tell what happened. I was like nope, not going,” Woman 2, Caboolture.

There are a number of barriers for people with disability gaining access to justice. These barriers include:

- lack of understanding and awareness of disability among court staff, including magistrates and judges
- lack of training for court staff, magistrates and judges on working with people with disability.
- lack of policy, procedures and guidelines that specifically support court staff, magistrates and judges to identify and make appropriate supports for people with disability – beyond being ‘vulnerable witnesses’
- lack of provision within current legislation and court processes to support people with disability give evidence and to recognise their competence to do so with adequate supports

⁶⁴ Forgotten Sisters. p43

⁶⁵ McGuire, M. 2014. *Voices Against Violence Paper Five: Interviews with Staff and Volunteers from the Office of the Public Advocate, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria.* p89 (hereinafter *Voices Against Violence: Interviews*).

⁶⁶ United Nations General Assembly. 2012. *Advancement of women – Note by the Secretary-General.* Sixty-seventh session, item 28 of the provisional agenda. A/67/227, p11.

- lack of information for people with disability to support them through the court process, for example easy English or Braille brochures, or Auslan in information videos
- lack of dissemination or apparent knowledge of existing draft disability service plans by Departments of Justice and Attorney-Generals.

Barriers to justice do not emerge solely from Commonwealth, state and territory legislation, but rather involve a range of systemic and overarching issues, such as the police failing to recognise, respond to or communicate with people with disability.

However, these factors are in turn impacted by legislation governing the admissibility of evidence.⁶⁷ Without adequate legislation ensuring that people with disability can give their best possible evidence in court, criminal acts of violence, and the protections of the civil system of domestic violence orders, the protections of the justice system are undermined specifically for people with disability.

Sometimes, when instances of abuse are brought to light this results in legislative change, such as in South Australia.⁶⁸

Question 11 – What crisis support and accommodation is available to people with disability, including children, when they experience violence and abuse?

Currently, the limited number of crisis and support accommodation across the nation has minimal to no capacity to support people with disability who experience violence. While programs such as 1800 RESPECT have made efforts to develop disability awareness programs, this is only one area of the domestic violence (DV) service system.

Crisis accommodation is scarce in the first instance and very often it is not accessible. This is further complicated if the person requiring crisis accommodation has complex needs.

As noted above, DV workers are not always trained in disability awareness nor may they be able to identify a person with a hidden or invisible disability (such as psychosocial or cognitive disability). An overall lack of funding for crisis support and accommodation exacerbates the experience of people with disability seeking to flee violence, abuse and neglect.

Additionally, in order to holistically support survivors of violence, a transition to a long-term program of sustainable accommodation and support for women and their children needs to

⁶⁷ Voices Against Violence: Legislative Review. p16.

⁶⁸ https://www.royalcommission.gov.au/sites/default/files/2019-07/case_study_9_-_findings_report_-_st_anns_special_school.pdf

be instigated across all jurisdictions. Crisis accommodation is not only extremely limited it often does not help survivors in the long term.

Case study 4: “Jazlyn”

A woman with cerebral palsy we will call “Jazlyn” uses a motorised wheelchair. Jazlyn was living with her spouse in a specifically adapted townhouse. Jazlyn’s spouse was regularly violent and abusive. On one occasion her spouse depowered her motorised chair. The partner smashed glass around her chair and left the home, locking Jazlyn inside. Jazlyn spent several hours alone and was incontinent.

Eventually, neighbours found her and helped her out of the house. The neighbours called the crisis DV line in the area and were told “just put her on a bus to the shelter.” When the call centre was informed Jazlyn was a wheelchair user, call centre staff said there were no other options available and the shelter could not accommodate a wheelchair user.

Case study 5: “Trixie”

A young woman we will call “Trixie” has intellectual disability and psychosocial disability. Trixie was living with her boyfriend who became increasingly abusive and violent. Trixie sought support from an advocacy organisation who then tried to locate crisis support and accommodation for her.

When the case worker approached the local refuge to help Trixie, they were told “we don’t deal with those people, they are a potential risk to the other clients.” This assumption of risk was reportedly made by the refuge manager and was based purely on Trixie’s disability.

Key recommendations

People with Disability Australia has the following key recommendations for the Disability Royal Commission in relation to violence at home.

Legislative reform

1. The Disability Royal Commission recommends that all state and territory governments amend their respective domestic and family violence Acts to ensure the full inclusion of people with disability, by including, that perpetrators may include paid and unpaid support workers and co-residents as this violence occurs in the domestic/home setting.
2. The Disability Royal Commission recommends that all state and territory governments amend their respective criminal legislations to introduce a criminal offence regarding failures to report violence against people with disability to police, or behaviour that jeopardises a police investigation of such a crime, similar to section 327 of the Victorian *Crimes Act 1958*, which would:
 - a. apply to all government and non-government service providers
 - b. apply to staff of civil and administrative tribunals, all staff of the office of the public guardian, and all staff of the office of the public advocate or ombudsman, as the case may be
 - c. address any actions taken to jeopardise police investigations (such as service providers undertaking internal investigations before reporting).

The offence would apply except where a victim–survivor with disability, provided with adequate independent decision-making support where appropriate, requests that the information not be provided to police. The burden of proof regarding the provision of decision-making support should rest with the person claiming the protection of the exception.

3. The Disability Royal Commission recommends that all state and territory governments amend their respective evidence legislation in line with the recommendations of the Australian Law Reform Commission:
 - a. to provide that a person is not ‘competent to give evidence about a fact’ if the person cannot be supported to:
 - (i) understand a question about the fact, or

- (ii) give an answer that can be understood to a question about the fact.
 - b. to provide that a person who is 'competent to give evidence about a fact' is not competent to give sworn evidence if the person cannot understand that he or she is under an obligation to give truthful evidence and cannot be supported to understand. See addendum for further explanation.
4. The Disability Royal Commission recommends that all state and territory governments fund and implement a registered intermediary scheme in line with that in existence in England, Wales and Northern Ireland, to resource police and courts to communicate with people with disability and gain their best possible evidence.
5. The Disability Royal Commission recommends that all state and territory governments create a disability and violence crisis response initiative, in line with the Victorian Disability and Domestic Violence Crisis Response to provide immediate needs funding for disability supports (of whatever kind) for people with disability (including children) escaping domestic and family violence; and that all application processes are as accessible as possible, and that domestic and family violence services are trained in supporting people with disability to make such applications.
6. The Disability Royal Commission recommends that all state and territory governments support, through National Cabinet, the establishment of a national, independent, statutory protection watchdog that has broad functions and powers to protect, investigate and enforce findings related to situations of violence, abuse and neglect of people with disability, in line with the recommendation from the Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings (2015), and this agency should, at a minimum:
 - be required to work in collaboration with existing state and territory oversight mechanisms
 - cover all disability workers, organisations and people with disability, without being restricted to National Disability Insurance Scheme (NDIS) participants or disability service providers, as is the case with the NDIS Quality and Safeguards Commission
 - include a mandatory incident reporting scheme
 - include a national worker registration scheme with pre-employment screening and an excluded worker register.

See also, Women with Disabilities Australia's submission – Policy siloing, page 19.

Ensuring access to justice

7. The Disability Royal Commission recommends that all state and territory governments implement a disability justice strategy in line with the recommendations of the Australian Human Right Commission, including:
 - the full inclusion of people with disability, including children, as partners in the development, implementation and monitoring of policies, programs and legislation under the disability justice strategy
 - the development and implementation of a program to fund all communication supports a person with disability may require, including interpreters for Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds
 - the funding and implementation of an on-going program of education and training for all police and court personnel, including judges and magistrates, across all jurisdictions. To improve responses and attitudes of staff, addresses the impact of intersectional experiences of disability, gender and violence, and emphasises the rights of people with disability to make their own decision, with support as necessary, as per Article 12 of the CRPD (Equal recognition before the law)⁶⁹
 - the updating of referral pathways for all state and territory police to include relevant disability specialist services, disability advocacy organisations, communication support specialists and disability support services, to assist victims and perpetrators, and aid meaningful diversion programs.
 - a Commonwealth, state and territory government commitment to the funding and implementation of an ongoing program of education and training to facilitate people with disability in their use of the criminal justice system and the service system
 - Commonwealth, state and territory government funding of research by organisations such as PWDA into why people with certain types of disability are over-represented in the criminal justice system (as perpetrators, and victim–survivors)
 - state and territory government support for the creation of assessment protocols that assist police, courts, and correctional institutions in identifying people with disability to determine the need for independent communication support workers, witness intermediaries, and disability

⁶⁹ United Nations, 2006, *Convention on the Rights of Person with Disabilities*, article 12. Available: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>

advocates or other support people, and the adjustment of procedures to ensure effective access to justice.

- the adjustment of the physical environment of courts, including the availability of quiet rooms for people with disability to wait, meet, or spend break times while in court, as per Article 9 of the CRPD (Accessibility)⁷⁰
- the amendment of relevant legislation to ensure that failure to provide necessary accommodations to a person with disability can create legitimate mitigating circumstance that a court should consider, or which could be the basis of appeal
- the creation of data collection frameworks across state and territory police and courts that monitor and evaluate the participation rates by people with disability as victims of crime, witnesses, accused, defendants, offenders and jurors in all parts of the justice system.

8. The Disability Royal Commission recommends that Australian, state and territory governments increase funding, resourcing and support to disability advocacy services, especially in regional and remote areas.
9. The Disability Royal Commission recommends that state, territory and national disability advocacy program funding models be updated to fund support program so advocates can assist people with disability through court matters, and provides appropriate funding for proper support and training.

Strengthening capacity building and resourcing

10. The Disability Royal Commission recommends that the Fourth Action Plan: National Plan to Reduce Violence Against Women and their Children 2010–2022⁷¹ include reference to women with disability as a priority population, and ensure that all legislation, policies and programs include consultation to support specific consideration of the impacts on, and needs of, this cohort and the violence that they experience.
11. The Disability Royal Commission recommends that all integrated service responses (ISR) developed or being developed across all states and territories become fully inclusive of people with disability, by ensuring:
 - each ISR has disability advocacy organisations as members

⁷⁰ United Nations, 2006, *Convention on the Rights of Person with Disabilities*, article 9. Available:

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html>

⁷¹ Department of Social Services, 2019, *Fourth Action Plan: National Plan to Reduce Violence Against Women and their Children 2010–2022* DSS, Commonwealth of Australia. Available: <https://www.dss.gov.au/women-publications-articles-reducing-violence/fourth-action-plan>

- all members of ISRs are encouraged to become independently disability aware and accessible
 - each common assessment framework used by an ISR be amended to recognise the specific risk factors that affect people with disability
 - each ISR maintain a list of relevant disability service providers to ensure the support needs of any client with disability are addressed quickly.
12. The Disability Royal Commission recommends that state and territory governments fund prevention and/or respectful relationships programs designed specifically for people with disability, including people with intellectual disability, and make these available without charge to all people with disability living.
13. The Disability Royal Commission recommends that domestic violence pilot programs in NSW, such as the Peer Education, Healthy and Respectful Relationships Project and the Building Access Project, initially funded by Women NSW as seed projects, receive ongoing state and national funding to further develop sector capacity and an intersectional response to violence prevention.

Evidence Acts testing

The test proposed by PWDA regarding evidence Acts, is whether a person ‘cannot be supported’ to understand, or give an answer that can be understood [emphasis added]. This test is consistent with the Recommendation 7–7 in the Australian Law Reform Commission’s final report, *Equality, Capacity and Disability in Commonwealth Laws*.⁷²

This test could be used to assess the evidence Acts that exist across Australia’s various legal jurisdictions.

According to Article 12 of the *Convention on the Rights of Persons with Disabilities*, a person’s capacity should not be considered in isolation, but must rather be assessed according to whether a person can give evidence *with available supports*. PWDA’s recommended approach is aimed at ensuring compliance with this provision.

Article 12(1)-(2) enshrines the right to equal recognition before the law for persons with disabilities, requiring States Parties to recognise that people with disabilities ‘enjoy legal capacity on an equal basis with others’.

PWDA’s recommendation comes from the requirement in article 12(3) that States Parties shall take measures to provide people with disability with access to the support they may require in exercising their legal capacity. Legal capacity therefore does not reside solely within an individual, but is instead linked to relationships, contexts and available means of assisting a person to express their will and preferences.

The Committee on the Rights of Persons with Disabilities has made clear that ‘respect [for] the rights, will and preferences of persons with disabilities’ is the starting point for the provision of support in the exercise of legal capacity.⁷³ In other words, people with disability should be supported to make their own decisions through expressing their will and preferences, and any assessment of their ability to make decisions about giving evidence in legal proceedings should take into account of whether they can do so *if provided with appropriate and available supports*.

The witness intermediary schemes referred to in our submission to the Disability Royal Commission above are one example of support in the exercise of legal capacity in the context of legal proceedings, including through intermediaries assisting individuals to give evidence in court.

⁷² Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Final Report, ALRC Report 124 (August 2014), p18.

⁷³ Committee on the Rights of Persons with Disabilities, *General Comment No. 1* (2014) – Article 12: Equal recognition before the law, CRPD/C/GC/1 (19 May 2014, 4[17]).

A comment on language

PWDA would like to take this opportunity to provide feedback on the style and language used in the *Violence and Abuse of People with Disability at Home Issues Paper*.

- The document makes a point to include intersectionality in its overlook of violence in communities, including First Nations, LGBTQA+ and culturally and linguistically diverse peoples. However, this document uses the umbrella term of people with disability without highlighting or identifying the different aspects of disability.

There is no acknowledgement of the difference abuse that people with for example intellectual disability face, the type and nature of abuse and violence.

- In the section that talks about First Nations people with disability there is no acknowledgment of cultural practices and or sensitivities around these cases. This is also found in the sections on culturally and linguistically diverse peoples which overall is a rather broad generalisation. There needs to be a breakdown of those communities and groups to identify what the practices are to deal with violence, how it is viewed in the community and so on. Note, this document does not draw on research from these communities.
- Another overwhelming theme in this document and is especially the language used in the questions section, are the assumptions about how people with disability react and respond to these types of inquiry. How the question is framed and throughout the document paints people with disability as 'incapable' to address and answer these questions for themselves. The assumptions are exclusionary and ableist.
- Gender binaries are also use throughout this document excluding people who do not identify with 'traditional' gender binary's (male/female).



**PEOPLE WITH DISABILITY
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For individual advocacy support contact the **Wayfinder Hub** between 9 am and 5 pm (AEST/AEDT) Monday to Friday via phone (toll free) on **1800 843 929** or via email at info@wayfinderhub.com.au.

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