



Women
With
Disabilities
Australia
(WWDA)

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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Hon Julia Gillard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

November 23rd, 2012

Dear Prime Minister Gillard

Women With Disabilities Australia (WWDA), the national peak NGO for women and girls with disabilities, thanks you and Attorney General Roxon for the invitation to respond to the *Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse*. WWDA commends the Gillard Government for its commitment to undertake the Royal Commission into Child Sexual Abuse. We welcome the Royal Commission as a long-overdue opportunity to address the pervasive and high incidence of sexual violence and abuse of girls with disabilities, both historically and currently, and we look forward to further opportunities to contribute to the Commission as it unfolds.

The Context

In Australia, girls and women with disabilities experience high levels of sexual assault and domestic/family violence, and have high levels of unmet needs in terms of access to sexual assault, violence and related community support services. It is now widely acknowledged that compared to non-disabled girls and women, women and girls with disabilities are at greater risk of severe forms of 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 girls and 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.^{1 2 3}

Girls and women with disabilities in Australia live in and experience, a vast range of 'institutional' settings, such as group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Girls and women with disabilities in institutions are at particular and significant risk of sexual violence and abuse due to a range of factors, including: the reinforced demand for compliant behaviours, their perceived lack of credibility, their

¹ Frohmader, C. & Meekosha, H. (2012) 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.

² 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.

³ 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.

social isolation and lack of access to learning environments, their dependence upon others, their lack of access to police, support services, lawyers or advocates; the lack of public scrutiny of institutions; and the entrenched sub-culture of violence and abuse prevalent in institutions.⁴

Research shows that:

- institutional sexual abuse is a significant and un-addressed problem for girls and women with disabilities;⁵
- more than 70% of women with a wide variety of disabilities have been victims of violent sexual encounters at some time in their lives;⁶
- the rates of sexual victimisation of girls and women with disabilities ranges from four to 10 times higher than for non-disabled women and girls;⁷
- the overwhelming majority of perpetrators of sexual abuse of disabled girls and women in institutions are male caregivers, a significant portion of whom are paid service providers who commit their crimes in disability service settings, and other forms of institutional settings;⁸
- perpetrators frequently target and select their victims for their perceived powerlessness and vulnerability - and for their seeming limitations;⁹
- crimes of sexual violence committed against girls and women with disabilities often go unreported, and when they are, they are inadequately investigated, remain unsolved or result in minimal sentences;¹⁰
- lack of reporting of sexual abuse of girls and women with disabilities in institutions, and cover up by staff and management, is acknowledged as a widespread and common problem in Australia,¹¹ and remains a significant factor in the lack of police investigation, prosecution and conviction of perpetrators;
- police are often reluctant to investigate or prosecute when a case involves a girl or woman with a disability in an institutional setting; and they also fail to act on allegations because there is no 'alternative to the abusive situation';¹²
- girls and women with disabilities, particularly those with intellectual and/or cognitive disabilities have less chance of being believed when reporting sexual abuse than non-disabled women and girls.¹³

Two recent examples highlights some of these facts:

*In June 2011, the South Australian Health Complaints Commissioner reported that there had been five cases of rape and serious sexual assault against girls and women with disabilities in the past year and, in the worst case of abuse in care, a 15 year old victim had become pregnant with the suspected rapist's child but the man had disappeared before any action could be taken against him. None of the five cases resulted in any serious police action because of a lack of corroboration or the extent of the impairment of the alleged victim.*¹⁴

In July 2011, 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,¹⁵ the police and the school authorities did not tell all

⁴ SafePlace Institute (2000) Stop the Violence. Break the Silence Training Guide & Resource Kit. Austin, Texas.

⁵ In Frohmader, C. (2011) Submission to the UN Analytical Study on Violence against Women and Girls with Disabilities. WWDA, Tasmania.

⁶ Stimpson & Best; cited in Elman, A. (2005). Confronting the Sexual Abuse of Women with Disabilities. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence.

⁷ Baladerian; Valenti-Hein & Schwartz; cited in Elman, A. (2005) OpCit.

⁸ Sobsey & Doe; cited in Elman, A. (2005) OpCit.

⁹ Elman, A. (2005) OpCit. See also Women With Disabilities Australia (WWDA) (2007b) OpCit.

¹⁰ Women With Disabilities Australia (WWDA) (2007b) OpCit. See also: Healey et al (2008) OpCit; See also: 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.

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

¹² French, P. (2007) OpCit; See also: French, P. et al (2010) OpCit.

¹³ In Frohmader, C. (2011) OpCit.

¹⁴ Ibid.

¹⁵ 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>

the parents whose children had come into contact with the accused.¹⁶ It was only as a result of a chance encounter between the parents, that the full extent of their children's abuse was revealed.

In recent times, the Australian Government has conceded that violence against girls and women with disabilities in Australia is 'widespread', and that women with disabilities, particularly those with intellectual disabilities, are extraordinarily vulnerable to violence and abuse.¹⁷ Yet violence against girls and women with disabilities in institutions remains largely outside the increasing public debate and policy responses to violence against women. In 2010, the United Nations made very strong recommendations regarding the need for urgent action by Australian governments to address the violence and abuse experienced by girls and women with disabilities living in institutions or supported accommodation.¹⁸ However, there is no evidence to date of any Government response to this specific recommendation, and there appears to be little interest in establishing a national response to address violence against girls and women with disabilities in institutions.

The sexual abuse of girls and women with disabilities, particularly of those in institutions, continues in a culture of silence, invisibility and apathy. 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 sexual abuse epidemic of girls and women with disabilities. Underlying these systemic failures is an entrenched culture throughout all levels of Australian society that devalues, stereotypes and discriminates against girls and women 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.

WWDA trusts that the Royal Commission into Institutional Responses to Child Sexual Abuse will do justice to the many girls and women with disabilities who have been let down by the very systems and settings which should be affording them, care, sanctuary and protection.

Terms of Reference, Scope and Function of the Royal Commission into Institutional Responses to Child Sexual Abuse

Given the short time frame for responses to the *Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse*, WWDA has taken this opportunity to highlight some key points for consideration in setting the scope and function of the Royal Commission. We respectfully request that they be considered in the establishment of the Commission, including the setting of the Terms of Reference (TOR).

Women With Disabilities Australia (WWDA) recommends that:

1. In keeping with the Australian Government's international human rights obligations, the TOR should be framed within a strong human rights framework, specifically the Convention on the Rights of the Child (CRC), and its four core principles: non-discrimination; best interests of the child; right to life, survival and development; and, respect for the views of the child. The TOR should also be underpinned by human rights principles that ensure inclusiveness for marginalised populations, such as people with disabilities, including: respect for the dignity, autonomy and independence of people with disabilities, and respect for the evolving capacities of children with disabilities.
2. The TOR should explicitly recognise and articulate the imperative to direct particular attention to marginalised, targeted and vulnerable groups. Those responsible for establishing the Royal Commission must ensure that additional resources and a wide range of specially tailored measures are made available for this purpose.

¹⁶ 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>

¹⁷ '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>

¹⁸ 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.

3. Gender analysis must be employed in the design of the Royal Commission in order to acknowledge that whilst both girls and women, and men and boys can be perpetrators and/or victims of sexual abuse, statistics and research overwhelmingly indicate that the majority of incidents are perpetrated by men and boys against women and girls.
4. 'Institutions' must be conceptualised and defined in a way which ensures that the full range of 'institutional' settings as experienced by children/people with disabilities, are included in all aspects of the work of the Royal Commission, including the TOR.
5. Definitions and understandings of 'sexual abuse' must be inclusive of the forms of sexual abuse as experienced by children/people with disabilities and encompass the circumstances and contexts within which children/people with disabilities experience, and have experienced such abuse.
6. The Royal Commission must make all necessary adjustments to ensure that people with disabilities, including those with cognitive and communication impairments are able to give evidence and bear witness to the abuses they have encountered. Critically, the Royal Commission must be structured and operationalised in ways that are fully inclusive of, and accessible to, people with disabilities. The Royal Commission processes must enable and encourage people with disabilities, particularly girls and women with disabilities, to voice their experiences and speak their histories in a safe and supportive environment.
7. The Royal Commission must critically examine the barriers and failures of current systems in identifying, reporting, preventing, responding to, and achieving justice for people with disabilities who have experienced, and borne witness to, sexual abuse.
8. The Commissioner/s, researchers and other relevant personnel appointed to undertake the work of the Royal Commission should be required to possess and demonstrate a sound understanding of human rights, gender, and the issue of sexual abuse in the context of marginalised, targeted and vulnerable populations, including those with disabilities.
9. Mechanisms should be established which enable girls and women with disabilities, including through their representative organisations and networks, to meaningfully participate in all aspects of the Royal Commission, on an equal basis with other women and girls. Organisations, networks and groups of girls and women with disabilities must be adequately resourced and supported in order to facilitate the participation of girls and women with disabilities, both individually and collectively.
10. The Royal Commission establish, as a priority and at the outset, the provision of specialised mechanisms and funding for ongoing counselling and support to women and girls with disabilities who have experienced and borne witness to, sexual abuse.

Once again, we thank you for the opportunity to comment on the *Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse*.

Yours sincerely



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