

Violence against People with Disability

Evidence demonstrates that people with disability experience, and are at a far greater risk of violence than others in the population and that this violence often goes un-recognised and un-addressed.¹ 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.²

There is no national mechanism that captures the incidence, prevalence, extent, nature, causes and impact of violence, abuse, exploitation and neglect against people with disability.³ 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.⁴

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.⁵ Their experiences of violence last longer, more severe injuries result, they are far less likely to receive service support to address violence,⁶ they are often not believed when reporting sexual assault and other forms of violence, are often denied the right to legal capacity⁷ and effective access to justice,⁸ and they have considerably fewer pathways to safety.⁹ 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.¹⁰ 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.¹¹

The *National Plan to Reduce Violence Against Women and their Children 2010-2022*,¹² 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.¹³ It 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.¹⁴ It excludes reproductive rights violations and many of the settings and spaces in which women and girls with disability experience violence.¹⁵ There are serious methodological restrictions in the main survey instruments used to capture data on violence against women,¹⁶ resulting in significant under-representation of women with disability in population-based studies on the prevalence of domestic and family violence and sexual assault.¹⁷ Despite recommendations from the CRPD Committee,¹⁸ other treaty bodies and UN mechanisms,¹⁹ there remains no national legislation on the prevention of all forms of gender-based violence.²⁰

Children and young people with disability experience violence and abuse at approximately three times the rate of children without disability.²¹ Violence and abuse perpetrated against children and young people with disability in schools, educational and child care settings, including out-of-home care, remains a widespread, unaddressed problem in Australia.²²

The rate of disability for Indigenous people, including children²³ is twice as high as that among the general population.²⁴ Violence against Indigenous Australians is approximately 10 times higher than against non-Indigenous people.²⁵ 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.²⁶

It is globally recognised that refugees and asylum seekers with disability are at heightened risk of violence, including sexual and domestic violence.²⁷ 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.²⁸

In April 2019, after years of sustained advocacy by people with disability and their allies²⁹ - and reflecting

recommendations from a Senate Inquiry³⁰ and UN treaty monitoring bodies³¹ - the Australian Government announced the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*.³² People with disability welcome the inclusion in the Terms of Reference of all forms of violence and abuse against people with disability, in all settings. However, people with disability have concerns that some appointed Commissioners have held senior positions within service systems that will be investigated resulting in unmanageable conflicts of interest. People with disability and their allies,³³ along with the Australian Senate,³⁴ have called on the Australian Government to immediately remove two Commissioners and replace them with individuals who meet the positive criteria set out by the disability community. These calls have to date, been rejected by the Australian Government.

People with disability are also deeply concerned and disappointed that the Terms of Reference for the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability* do not include provision for a redress scheme.³⁵

Recommendations

That Australia:

- Establish a national, accessible, oversight, complaint and redress mechanism for all people with disability who have experienced violence, abuse, exploitation and neglect in all settings.
- Develop and enact national legislation on the prevention of all forms of gender-based violence.
- Ensure that the *National Plan to Reduce Violence Against Women and their Children* is inclusive of all forms of gender-based violence, regardless of the setting and the perpetrators of such violence.
- Address the methodological restrictions in data collection instruments used to capture data on violence against women.
- Ensure gender-based violence services are inclusive of women and girls with disability.
- Resource and support DPOs to develop and implement initiatives to address violence against women with disability.
- Consistent with the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [A/RES/60/147], ensure provision for a redress scheme in the *Royal Commission into Violence, Abuse, Exploitation and Neglect of People with Disability*.
- Review the conflicts of interest of Commissioners appointed to the Royal Commission and remove those Commissioners who have worked in service systems that will be investigated.

Endnotes

¹ Disabled People's Organisations Australia (DPO Australia) (March 2019) *Violence Against People with Disability*.

² National CRPD Survey (2019) Findings.

³ 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.

⁴ Australian Institute of Health and Welfare 2017. *Australia's welfare 2017*. Australia's welfare series no. 13. AUS 214. Canberra: AIHW.

⁵ 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

- ⁶ Women With Disabilities Australia (WWDA) '[Improving Service Responses for Women with Disability Experiencing Violence: 1800RESPECT](#)'; Final Report. ISBN: 978-0-9585268-5-2.
- ⁷ 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.
- ⁸ 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
- ⁹ 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.
- ¹⁰ 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.
- ¹¹ Women With Disabilities Australia (WWDA) '[WWDA Position Statement 1: The Right to Freedom From All Forms of Violence](#)'. WWDA, September 2016, Hobart, Tasmania.
- ¹² Council of Australian Governments (2011) [National Plan to Reduce Violence against Women and their Children 2010-2022](#), Canberra.
- ¹³ 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.
- ¹⁴ 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.
- ¹⁵ Including for eg: prisons, segregated settings, detention centres, and other forms of institutional settings.
- ¹⁶ 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.
- ¹⁷ 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.
- ¹⁸ See: UN Doc. CRPD/C/AUS/CO/1. See also: CRPD General Comment on Women with Disabilities (CRPD/C/GC/3).
- ¹⁹ 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.
- ²⁰ 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.
- ²¹ 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.
- ²² 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](#)
- ²³ Australian Bureau of Statistics, 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015: [Aboriginal and Torres Strait Islander People with Disability](#).
- ²⁴ Australian Institute of Health and Welfare 2018. [Australia's health 2018](#). Australia's health series no. 16. AUS 221. Canberra: AIHW.
- ²⁵ Australian Institute of Health and Welfare 2018 [Family, domestic and sexual violence in Australia, 2018](#). AIHW, Canberra.
- ²⁶ See for eg: OurWatch, [Changing the picture: preventing violence against Aboriginal and Torres Strait Islander women](#).
- ²⁷ 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.
- ²⁸ 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.

²⁹ See for eg: Disabled People's Organisations Australia (DPO Australia) (June 2017) Civil Society Statement to the Australian Government Calling for a Royal Commission into Violence, Abuse and Neglect of People with Disability.

³⁰ The critical need for a 'Royal Commission into Violence against People with Disability' was the headline and key recommendation from the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings.

³¹ See for eg: E/C.12/AUS/CO/5; CRPD/C/AUS/QPR/2-3; See also: A/HRC/38/47/Add.1; A/C.3/72/L.18/Rev.1.

³² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

³³ Disabled People's Organisations Australia (DPO Australia) (23 July 2019) Disability community renews our calls for Commissioners to stand aside.

³⁴ Disabled People's Organisations Australia (DPO Australia) (25 July 2019) Senate supports disability community's call for the Federal Government to immediately remove two Royal Commissioners.

³⁵ Reflecting Australia's obligations under the international human rights treaties to which Australia is a party, and the United Nations 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms. UN Doc. No A/RES/60/147.