



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITY

Submission to inform the *Fourth Action Plan (2019-2022)* of the *National Plan to Reduce Violence Against Women and their Children 2010-2022* and the development of a National Plan beyond 2021

DECEMBER 2018





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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, National Disability Awards 2017
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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WWDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national disabled people's organisations (DPO's) in Australia. See: <http://dpoa.org.au>

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About Women With Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA)¹ is the national, non-government Disabled People's Organisation (DPO)² for women and girls with all types of disability in Australia. WWDA is run by women with disability, for women and girls with disability. DPOs are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. DPO's are organisations of people with disability, as opposed to organisations who may represent people with disability.

WWDA operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA's work is grounded in a rights-based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. WWDA represents more than 2 million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is internationally recognised for its global leadership in advancing the human rights of women and girls with disability. Strengthening the promotion and protection of the rights of women and girls with disability is at the foundation of WWDA's work.

WWDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national, population specific and cross-disability DPO's in Australia. DPO Australia was founded by, and is comprised of: Women With Disabilities Australia (WWDA); First Peoples Disability Network Australia (FPDN); People with Disability Australia (PWDA); and, National Ethnic Disability Alliance (NEDA). 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 and strategic priorities and opportunities. DPO Australia is a recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

About this Submission

This brief Submission has been developed by WWDA as a follow up to consultations conducted around Australia regarding the development of the Fourth Action Plan (2019-2022) '*Turning the Corner*' of the twelve year *National Plan to Reduce Violence Against Women and their Children 2010-2022*.

WWDA's Submission also provides key areas for consideration in the development of any new National Plan to Reduce Violence Against Women and their Children, post 2021.

About the National Plan to Reduce Violence Against Women and their Children 2010-2022

In May 2008, the *National Council to Reduce Violence Against Women and their Children* (the National Council) was established by the Australian Government to develop an evidence-based plan for reducing violence against women and their children. The National Council's report, called '*A Time for Action*'³ recommended that all Australian governments agree to a long-term plan to reduce violence against women, with the Commonwealth government taking a leading role. Following extensive consultation with the community, the *National Plan to Reduce Violence Against Women and their Children 2010-2022* (the National Plan) was developed in partnership with all states and

territories, formally endorsed by the Council of Australian Governments,⁴ and publicly released in February 2011.

The National Plan targets two 'forms' of gender-based violence: domestic and family violence, and sexual assault.⁵ Over its twelve-year period, it aims to achieve the following six outcomes:

- communities are safe and free from violence;
- relationships are respectful;
- Indigenous communities are strengthened;
- services meet the needs of women and children experiencing violence;
- justice responses are effective; and
- perpetrators stop their violence and are held to account.

The six outcomes are delivered through four three-year Action Plans, each underpinned by a key theme to drive necessary change needed to achieve a significant and sustained reduction in violence against women.⁶ The four three-year Action Plans and the themes they highlight are:

- The first Action Plan (2010-2013) *Strong Foundation* focused on building a strong foundation for the National Plan. It identified key strategies and actions as well as national initiatives to create a foundation for future work to be undertaken during the life of the National Plan.
- The second Action Plan (2013-2016) *Moving Ahead* endeavoured to take stock of what worked well in the first three years and consolidate the evidence-base for the effectiveness of the strategies and actions implemented.
- The third Action Plan (2016-2019) *Promising Results* aimed to deliver solid and continuing progress in best practices and policies.
- The fourth Action Plan (2019-2022) *Turning the Corner* is expected to see the delivery of tangible results in terms of reduced prevalence of violence against women and their children, reduced proportions of children witnessing violence, and an increased proportion of women who feel safe in their communities.

Eight years on from the commencement of the 12 year National Plan, it is now widely recognised that the National Plan has significant limitations in addressing and preventing violence against women and girls with disability. Although the Australian Government has articulated its commitment that the "*National Plan demonstrates Australia's commitment to upholding the human rights of all Australian women to live free from violence*",⁷ the Plan, and its first three action plans have focused largely on 'traditional' and narrow conceptual understandings of 'domestic/family violence' (ie: intimate partner/spousal violence) and sexual assault, which has resulted in other forms of violence against women and girls with disability becoming further obscured, and excluded from policy and service responses designed to address and prevent violence against women.⁸

Summary of Recommendations

1. A Human Rights Framework

- 1.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children is framed by and operationalised within, a comprehensive human rights framework, consistent with Australia's obligations under the international human rights treaties to which Australia is a party, as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), formally endorsed by Australia in 2009.

2. Legislation

- 2.1 WWDA recommends that the Australian Government develop and enact national legislation on the prevention of all forms of gender-based violence. Commonwealth legislation should utilise the definition of 'gender-based violence' as articulated in CEDAW General Recommendation 35 'Gender-based Violence Against Women' (2017).
- 2.2 WWDA recommends that the Australian Government develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.

3. Definitions and Concepts

- 3.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children utilises the definition of 'gender-based violence' as articulated in CEDAW General Recommendation 35 'Gender-based Violence Against Women' (2017).

4. Intersectionality

- 4.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children be developed and operationalised in an intersectional framework.

5. Inclusion of women and girls with disability

- 5.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children should reflect and include initiatives to address the Concluding Recommendations to Australia regarding gender-based violence from the international human rights treaty monitoring bodies.
- 5.2 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children should prioritise women and girls with disability; CALD women and girls; and Aboriginal and Torres Strait Islander women and girls. These cohorts of women are recognised as experiencing higher rates of all forms of gender-based violence, and remain marginalised within, and excluded from, policies and service responses designed to address and prevent gender-based violence.

6. Primary Prevention

- 6.1 WWDA recommends that consistent with CEDAW General Recommendation 35 'Gender-based Violence Against Women', the 'Change the Story' framework be updated to a primary prevention framework that is inclusive of all forms of gender-based violence, regardless of the setting in which it occurs and regardless of who perpetrates the violence.

7. Data Collection

- 7.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children address as a priority, the current data gaps relating to specific 'at risk' population groups, including women and girls with disability; CALD women and girls; Aboriginal and Torres Strait Islander women and girls; and LGBTIQ+ people.
- 7.2 WWDA recommends that the methodological restrictions and limitations of the Personal Safety Survey (PSS) be addressed, in order to ensure a more accurate and comprehensive picture of gender-based violence in Australia.
- 7.3 Consistent with long standing recommendations from the international human rights treating monitoring bodies, WWDA recommends that the Australian Government commission and fund a comprehensive, national assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the human rights treaties to which Australia is a party can be measured.
- 7.4 WWDA recommends that the National Plan Data Collection and Reporting Framework be broadened to include all forms of gender-based violence, regardless of the setting in which it occurs and regardless of who perpetrates the violence.

8. Service Responses

- 8.1 WWDA recommends that Medibank Health Solutions (MHS) continue to be supported to deliver the 1800RESPECT service utilising its current operating model and framework, in order to provide a pathway to safety for women and girls with disability experiencing, or at risk of experiencing, gender-based violence.
- 8.2 WWDA recommends that the recommendations stemming from the Stop the Violence Project (STVP) be implemented in their entirety.
- 8.3 WWDA be commissioned to develop a model, national Accessibility and Inclusivity Guide for all services engaged in the provision of services to prevent, address and respond to gender-based violence.

1. A Human Rights Framework

The current *National Plan to Reduce Violence Against Women and Their Children* (*The National Plan*) and its four 3-year Action Plans are framed only by Australia's obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) ([1983] ATS 9). However, addressing violence against women and girls in Australia is equally a key obligation under the six other international human rights treaties to which Australia is a party,⁹ as well as the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP), which Australia formally endorsed in 2009.

Together, these international human rights instruments provide the requisite framework to delineate the respective obligations and responsibilities of governments and other duty-bearers to comprehensively prevent, address, and provide redress for all forms of gender-based violence. Critically, implementation of these instruments is not mutually exclusive. They must be viewed and implemented as, complementary mechanisms through which to create a holistic framework of rights protection for, and response to, **all** forms of gender-based violence.

As a party to these international human rights treaties, Australia has chosen to be bound by the treaty requirements and has an international legal obligation to implement the treaty provisions through its laws and policies.

The United Nations treaty monitoring bodies have strongly recommended that the Australian Government ensure *The National Plan* is framed and operationalised in a comprehensive human rights framework, to ensure that all women and girls are fully included in public policy and programs on the prevention of gender-based violence, and are ensured equal access to an effective, integrated response system.¹⁰

Recommendations

- 1.1 **WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children is framed by and operationalised within, a comprehensive human rights framework, consistent with Australia's obligations under the international human rights treaties to which Australia is a party, as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), formally endorsed by Australia in 2009.**

2. Legislation

In Australia, there is no uniform definition or consensus as to what constitutes violence against women.¹¹ It is generally understood in the context of 'domestic', 'spousal' or 'family' violence. There is no consistency across the varying jurisdictions, with the laws in each State and Territory containing different definitions.¹²

No existing Commonwealth or State/Territory domestic and/or family violence legislation is framed in a human rights framework setting it in the context of Australia's obligations under the international human rights treaties it has ratified.

Without appropriate and inclusive legislation, there are limited legal means to address violence against women and girls with disability. Legislation has the potential to demonstrate that violence against women and girls with disability is a public issue, not a private concern. Definitions in family violence legislation are critical, because they set the scope for who is covered and under what circumstances. Causes, interventions and prevention strategies are contingent upon the validity of the definitions available.¹³ They also provide the benchmark for translation into relevant policy frameworks, policies and service responses. The lack of effective recognition across the legal system results in poorer protection for women and girls with disability and less likelihood of such women and girls benefiting from integrated and coordinated responses and prevention.

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.

For more than 15 years, United Nations treaty monitoring bodies, the UN General Assembly, UN Special Procedures and international medical bodies¹⁴ have categorically confirmed that forced sterilisation¹⁵ of children (and of adult women with disability without their prior, full and informed consent) is a clear breach of some of the most fundamental human rights – including the right to bodily integrity; the right to freedom from violence; the right to privacy; the right to equality before the law; and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

For over a decade, several of the treaty monitoring bodies have made it clear that the Australian Government must act to develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults with disability in the absence of their prior, fully informed and free consent.

In addition, the treaty monitoring bodies have continued to express concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.¹⁶

To date, Australia's response¹⁷ to these recommendations has retained the focus on regulation and non-binding guidelines rather than prohibition. Australian Governments remain of the view that it is an acceptable practice to sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party.¹⁸

Forced sterilisation is recognised as a particularly egregious form of gender-based violence that has no place in a civilized world.¹⁹

Recommendations

- 2.1 WWDA recommends that the Australian Government develop and enact national legislation on the prevention of all forms of gender-based violence. Commonwealth legislation should utilise the definition of 'gender-based violence' as articulated in CEDAW General Recommendation 35 'Gender-based Violence Against Women' (2017).**

- 2.2 WWDA recommends that the Australian Government develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.**

3. Definitions and concepts

The current *National Plan* and its four 3-year Action Plans primarily focus on two ‘types’ of violence against women (sexual violence/assault and ‘domestic/family violence’).²⁰ What emerges is an apparent underlying assumption that ‘violence against women’ and/or ‘gender-based violence’ means ‘domestic and family violence and/or sexual violence/assault’ and vice-versa.

Both these definitions have become inherently limiting, problematic and outdated. They do not reflect contemporary understandings of what constitutes gender-based violence nor the complexity of the myriad of forms it takes, and the settings in which it occurs. The focus on narrow conceptual understandings of domestic and family violence (as ‘spousal and/or intimate partner violence’) and sexual assault risks seeing other forms of violence against women, become further obscured, resulting in their marginalisation in, and exclusion from, policies and service responses designed to address and prevent violence against women.²¹

Conceptualising ‘violence against women’ principally as ‘domestic/family violence’ and and/or ‘sexual violence/sexual assault’, 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 (and other marginalised groups of women) not only experience, but are more at risk of²² – 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.²³ It also excludes many of the settings and spaces in which women and girls with disability (and others) experience, and are at risk of violence (including for eg: prisons, segregated settings, detention centres, and other forms of institutional settings).

Reducing and addressing violence against women should never be dependent on where a woman lives, or the space/s she occupies, nor the type of violence she experiences, or is at risk of experiencing. To place a ‘hierarchy’ on what ‘types’ of violence and settings are included in a country’s major policy framework to prevent gender-based violence, is out of step with contemporary and global understandings of what is meant by ‘violence against women’ and/or ‘gender-based violence’.

In 2017, in its revised General Recommendation on ‘*Gender-based Violence Against Women*’²⁴ the United Nations *Committee on the Elimination of Discrimination against Women*, recognised the need to provide more detailed authoritative guidance to States parties in order to accelerate the elimination of **all** forms of gender-based violence against women. In so doing, the Committee clarified that:

gender-based violence against women, whether committed by States, intergovernmental organisations or non-state actors, including private persons and armed groups, remains pervasive in all countries of the world, with high levels of impunity. It manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries.

Furthermore, the CEDAW Committee’s revised *General Comment* has made explicit that:

Violations of women’s sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information,

goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.²⁵

Gender-based violence should be conceptualised on a continuum that spans interpersonal and structural violence; acknowledges the structural aspects and factors of discrimination, including structural and institutional inequalities; and analyses social and economic hierarchies between women and men (inter-gender inequalities) and among women (intra-gender inequalities).

Recommendations

- 3.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children utilises the definition of 'gender-based violence' as articulated in CEDAW General Recommendation 35 'Gender-based Violence Against Women' (2017).**

4. Intersectionality

Regardless of culture, religious belief, disability, sexual orientation, socio-economic status, gender, and gender identity, all women have a right to be safe from violence. Women from culturally and linguistically diverse (CALD) backgrounds, women with disability and/or those who identify as lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI), face and experience a heightened risk of violence. The impacts of this violence can be more severe and prolonged for these groups and are often exacerbated for those who experience multiple, intersecting types of disadvantage and discrimination.

For example, women and girls with disability are more likely to be subjected to forced interventions which infringe their reproductive rights (such as forced sterilisation and forced contraception) than women without disability and men with disability. Women with disability in institutional settings are more likely to be subject to guardianship proceedings for the formal removal of their legal capacity. This facilitates and may even authorise forced interventions. Aboriginal women with disability are more likely to be subject to indefinite detention than non-Aboriginal people with disability and people without disability. These human rights violations are perpetrated on account of the interaction and intersection of various layers of identity, social position, and experiences.

More than three decades of evidence - globally and domestically - categorically demonstrates that women and girls with disability face multiple and intersecting discrimination and are overwhelmingly more disadvantaged than men and boys with disability in similar circumstances. Recognising how different systems and structures of oppression intersect to shape the experiences of discrimination is essential to a comprehensive understanding of the complex and diverse effects it has in practice.

Intersectional discrimination recognises that women and girls with disability do not experience discrimination as members of a homogenous group but rather, as individuals with multidimensional layers of identities, statuses and life circumstances. Conceptualising intersectional discrimination in the context of disabled women and girls, means acknowledging the lived realities and experiences of the heightened disadvantage of women and girls with disability caused by multiple and intersecting forms of discrimination, which requires targeted and additional measures with respect to disaggregated data collection, consultation, participation, policymaking, enforceability of non-discrimination and provision of effective remedies.²⁶

Recommendations

- 4.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children be developed and operationalised in an intersectional framework.**

5. Inclusion of women and girls with disability

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 2015,²⁷ 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.²⁸

The United Nations treaty monitoring bodies have clearly articulated the need for Australia to substantially improve its efforts to address **all** forms of violence against women, including particularly egregious forms of gender-based violence that are recognised to disproportionately affect marginalised cohorts of women and girls (including for eg: women and girls with disability; women from CALD backgrounds; Aboriginal and Torres Strait Islander women; women in prisons; detainees, etc).²⁹

In its 2017 List of Issues³⁰ prior to the submission of the combined second and third periodic reports of Australia, the *Committee on the Rights of Persons with Disabilities* specifically requested that the Australian government:

provide information on how public programmes and policies on the prevention of gender-based violence, especially the National Plan to Reduce Violence against Women and their Children (2010-2022), recognize and address all of the various forms of violence perpetrated against women and girls with disabilities, including in institutions and residential settings and with respect to their sexual and reproductive health rights. Please also provide information about the resources allocated and the steps taken to improve support and services to women with disabilities who experience or are at risk of violence and sexual abuse.

The *Committee on the Rights of Persons with Disabilities*³¹ also requested that the Australian Government provide information on:

- (a) Measures taken to implement the recommendations of the Senate Community Affairs References Committee's 2016 report, "Violence, abuse and neglect against people with disability in institutional and residential settings", in particular its recommendation to establish a Royal Commission into violence, abuse and neglect of people with disability (recommendation 1);
- (b) Measures taken to ensure freedom from exploitation, violence and abuse, including through the establishment of accessible oversight, complaint and redress mechanisms, for all persons with disabilities, with particular attention to those with intellectual disabilities and women with disabilities, in all settings, not just for persons with disabilities covered by the National Disability Insurance Scheme Quality and Safeguards Framework;

- (c) Measures taken to provide appropriate counselling for persons with disabilities, particularly those with intellectual and or psychosocial disability, who have been exposed to violence or abuse in institutional settings.

and

the measures taken to harmonize the legal frameworks at the national, state and territory levels that, in the absence of the free, prior and informed consent of the person concerned, prohibit the following:

- (a) Sterilization of children and adults with disabilities;
- (b) Administration of unnecessary medical interventions, with particular attention to an individual's sexual and reproductive health and to people born with variations of sex characteristics.

Recommendations

- 5.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children should reflect and include initiatives to address the Concluding Recommendations to Australia regarding gender-based violence from the international human rights treaty monitoring bodies.**
- 5.2 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children should prioritise women and girls with disability; CALD women and girls; and Aboriginal and Torres Strait Islander women and girls. These cohorts of women are recognised as experiencing higher rates of all forms of gender-based violence, and remain marginalised within, and excluded from, policies and service responses designed to address and prevent gender-based violence.**

6. Primary Prevention

The Our Watch National Primary Prevention Framework '*Change the Story*'³² is widely considered to be a model Framework to prevent and address gender-based violence, including through addressing the key drivers of such violence. These drivers are articulated in the '*Change the Story*' framework as: 1) Condoning of violence against women; 2) Men's control of decision-making and limits to women's independence; 3) Rigid gender roles and identities; and, 4) Male peer relations that emphasise aggression and disrespect towards women.

However, the '*Change the Story*' framework is limiting, in that it explicitly excludes particular types of gender-based violence and also excludes several cohorts of women and girls. The framework's emphasis is on the prevention of intimate partner violence and non-partner sexual assault of women. It explicitly excludes other forms of violence against women, such as violence perpetrated against women by their adult children, forced sterilisation, violence in lesbian relationships, sex trafficking and other slavery-like practices, female genital mutilation/cutting, so-called 'honour' crimes and forced or early marriage. It explicitly excludes elder abuse, or violence perpetrated against women in institutional, residential and other formal care settings particularly against women with disability, or in prisons or detention centres. The framework does not include strategies specifically aimed at preventing these particular forms of violence, or cohorts of women and girls who experience these forms of violence.³³

Recommendations

6.1 WWDA recommends that consistent with CEDAW General Recommendation 35 'Gender-based Violence Against Women', the '*Change the Story*' framework be updated to a primary prevention framework that is inclusive of all forms of gender-based violence, regardless of the setting in which it occurs and regardless of who perpetrates the violence.

7. Data Collection

The COAG *National Summit on Reducing Violence against Women and their Children*, held in late 2016, recognised that: “*Violence experienced in diverse communities is not sufficiently captured by commonly-used terminology such as “domestic and family violence”*.”³⁴ The lack of clarity around definitions and terminology, and some of the ramifications of this lack of clarity, has recently been acknowledged by the Australian Government in its Draft Sixth Periodic Report³⁵ under the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT):

Data relating to violence against women and their children varies across states and territories due to the inconsistency of definitions of domestic and family violence, differences in legislation, and the division of responsibilities for key services such as education, policing and health.

Several of the human rights treaty monitoring bodies have consistently expressed regret and concern at the lack of data and information about women and with disability in Australia, including indigenous women and girls with disability. Both the CEDAW and CRPD Committees have expressly and repeatedly recommended that the Australian Government “*commission and fund a comprehensive assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the Convention can be measured.*”³⁶

The CRPD Committee, in its *General Comment on Women with Disabilities*,³⁷ has provided strong evidence based commentary and recommendations on the issue of violence against women and girls with disability. It has, for example, clarified for States that certain forms of violence, exploitation or abuse perpetrated against women and girls with disability, may be considered as torture, and/or cruel, inhuman, degrading treatment or punishment and breach a number of international human rights treaties. Among these are forced, coerced and otherwise involuntary sterilisation or pregnancy; as well as any other medical procedure or intervention performed without free and informed consent, including those related to contraception and abortion; invasive and irreversible surgical practices including psychosurgery, female genital mutilation or surgery or treatment performed on intersex children without their informed consent; sexual violence (including rape); the administration of electroshocks, chemical, physical or mechanical restraints; and, isolation or seclusion.

In its List of Issues³⁸ prior to the submission of the combined second and third periodic reports of Australia, the *Committee on the Rights of Persons with Disabilities* specifically requested that the Australian government provide information on:

- (a) Efforts to increase the systematic collection of, reporting on and coordination, between all entities at the federal, state and territory levels, for collecting disaggregated data relating to the full range of obligations under the Convention;
- (b) The outcome of any assessment conducted particularly on the situation of girls and women with disabilities in the State party, for the purpose of formulating and implementing policies to give effect to their rights under the Convention.

In its 2018 publication on *‘Family, domestic and sexual violence in Australia’*,³⁹ the Australian Institute of Health and Welfare specifically identified the lack of data on family, domestic and sexual violence

in relation to particular cohorts of women:

Although much is known about many aspects of family, domestic and sexual violence, there are several data gaps that need to be filled to present a comprehensive picture of its extent and impact in Australia. Specifically, there is no, or limited, data on specific at-risk population groups, including Indigenous Australians, people with disability, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, including those in same-sex relationships.

The Australian Government cites the Personal Safety Survey (PSS) as “*the most comprehensive prevalence data source available in Australia*”. The 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.⁴⁰ 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.⁴¹ 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.

Recommendations

- 7.1 WWDA recommends that the Fourth Action Plan and any new National Plan to Reduce Violence Against Women and Their Children address as a priority, the current data gaps relating to specific ‘at risk’ population groups, including women and girls with disability; CALD women and girls; Aboriginal and Torres Strait Islander women and girls; and LGBTIQ+ people.**
- 7.2 WWDA recommends that the methodological restrictions and limitations of the Personal Safety Survey (PSS) be addressed, in order to ensure a more accurate and comprehensive picture of gender-based violence in Australia.**
- 7.3 Consistent with long standing recommendations from the international human rights treating monitoring bodies, WWDA recommends that the Australian Government commission and fund a comprehensive, national assessment of the situation of girls and women with disability, in order to establish a baseline of disaggregated data against which future progress towards the human rights treaties to which Australia is a party can be measured.**
- 7.4 WWDA recommends that the National Plan Data Collection and Reporting Framework be broadened to include all forms of gender-based violence, regardless of the setting in which it occurs and regardless of who perpetrates the violence.**

8. Service Responses

The national COAG Reform ‘*Stop the Violence Project*’⁴² (STVP), was implemented by WWDA from 2012 to 2013 and sought to build the evidence base to identify structural issues to improve service responses to women and girls with disability experiencing or at risk of violence.⁴³ The project intended to lay the groundwork for improved service provision by building the evidence-base for future reforms so that the service system is more responsive to the needs of women and girls with disability.

The STVP found that even though there are some ‘pockets’ of good policy and practice in Australia, overall there is an inadequate service response to issues of violence against women and girls with disability. It found that violence against women with disability is poorly understood at all levels – including in violence prevention legislation, in policy frameworks, in program development, in organisations and services across a range of sectors, and at the broader community level. Amongst other things, it found that there is an urgency for sector development to recognise, respond and address all forms of violence perpetrated against women and girls with disability when and where it occurs in a timely, effective and appropriate manner.

A synthesis of the STVP national survey findings, consultations with women with disability, research literature and legislative and policy mapping, and a national symposium of high-level stakeholders and decision-makers, resulted in six key thematic areas plus two critical over-arching mechanisms to support the development of good policy and the provision of good practice in service provision to address and prevent violence against women and girls with disability.⁴⁴

In its 2017 review of Australia’s sixth periodic report under the *International Covenant on Civil and Political Rights* (ICCPR)⁴⁵ the Human Rights Committee expressed concern that violence against women in Australia continues to affect disproportionately indigenous women and women with disability. The Committee also expressed its ongoing concern about the compatibility of the practice of involuntary non-therapeutic sterilisation of women and girls with intellectual disability and/or cognitive impairment with the Covenant, in particular the prohibition against cruel, inhuman and degrading treatment, the right to privacy and equality before the law. In relation to violence against women and girls with disability, the Human Rights Committee specifically recommended that:

The State party should strengthen its efforts to prevent and combat all forms of violence against women, including improving support services to women with disability including through the implementation of relevant recommendations from the Stop the Violence Project STVP;

and that;

The State party should abolish the practice of involuntary non-therapeutic sterilisation of women and girls with intellectual disability and/or cognitive impairment.

Whilst many of the recommendations from the STVP are yet to be implemented, WWDA has seen some improvement in service response at the national level, through the 1800RESPECT Service. In 2012, the STVP had found that the 1800RESPECT service was inadequate to meet the specific needs of women and girls with disability experiencing or at risk of violence. These findings echoed the experiences of, and consistent feedback to WWDA and other peak disability organisations since the 1800RESPECT Service was first implemented in 2010, which indicated that many women with disability did not know of the service. For those women with disability who knew of the

1800RESPECT Service and had tried to access and use it, feedback indicated that they found it inherently difficult (and in some cases impossible) to even access the service, and/or receive an adequate service response.

Since 2015, WWDA has worked collaboratively with Medibank Health Solutions to develop the 1800RESPECT service to be more inclusive of, and accessible to, women with disability; to improve its engagement and content and provide better links to the service system.⁴⁶ The new operating model, implemented in mid 2016, has seen a marked improvement in equality of access for women and girls with disability experiencing or at risk of experiencing violence. The development of the 'Sunny' mobile App,⁴⁷ a collaboration between WWDA and 1800RESPECT, has been a good practice example of co-design and meaningful participation of women with disability in endeavours to improve service responses to the myriad forms of violence they experience.

Recommendations

- 8.1 WWDA recommends that Medibank Health Solutions (MHS) continue to be supported to deliver the 1800RESPECT service utilising its current operating model and framework, in order to provide a pathway to safety for women and girls with disability experiencing, or at risk of experiencing, gender-based violence.**
- 8.2 WWDA recommends that the recommendations stemming from the Stop the Violence Project (STVP) be implemented in their entirety.**
- 8.3 WWDA be commissioned to develop a model, national Accessibility and Inclusivity Guide for all services engaged in the provision of services to prevent, address and respond to gender-based violence.**

Endnotes

- ¹ WWDA works at regional, state/territory, national and international levels; services a direct and fast growing individual membership; undertakes substantial evidence-based research; implements projects at national and international levels; undertakes systemic advocacy; and, provides extensive policy advice and expertise to a wide and growing range of stakeholders, including at all levels of government, non-government, researchers, industry groups, United Nations machinery, and more. For detailed information about WWDA, go to: <http://wwda.org.au/>
- ² Disabled People's Organisations (DPO's) are recognised around the world and in international human rights law as self-determining organisations led by, controlled by, and constituted of, people with disability. The 'will and preferences of people with disability' are at the top of the hierarchy in decision making of DPO's. Importantly, DPO's are organisations "of" people with disability, as opposed to organisations "for" people with disability. See for eg: United Nations General Assembly (12 January 2016) *Report of the Special Rapporteur on the rights of persons with disabilities*. Human Rights Council, Thirty-first session. UN Doc. No. A/HRC/31/62.
- ³ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (March 2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009 – 2021*. National Council to Reduce Violence against Women and their Children, Commonwealth of Australia.
- ⁴ The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia. The members of COAG are the Prime Minister, State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). The Prime Minister chairs COAG. The role of COAG is to promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments. COAG meets as needed, usually once or twice a year, though at times it has met up to four times in a year. COAG may also settle issues out-of-session by correspondence. The outcomes of COAG meetings are contained in communiqués released at the end of each meeting. Where formal agreements are reached, these may be embodied in intergovernmental agreements, including National Agreements and National Partnership Agreements. See: www.coag.gov.au
- ⁵ Commonwealth of Australia (2010) *National Plan to Reduce Violence against Women and their Children 2010-2022*. Council of Australian Governments.
- ⁶ Committee on the Elimination of Discrimination against Women (CEDAW) (2012) UN Doc. No. CEDAW/C/AUL/CO/7/Add.1:22,
- ⁷ Attorney General's Department (March 2016) *International Covenant on Civil and Political Rights: Australia's Sixth Report to the United Nations Human Rights Committee*. Accessed on line July 2016 at: <https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Pages/Treaty-Body-Reporting.aspx>
- ⁸ Frohmader, C., Dowse, L., and Didi, A. (2015) *Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective*. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-4-5.
- ⁹ Convention on the Rights of Persons with Disabilities ([2008] ATS 12); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([1989] ATS 21); International Covenant on Civil and Political Rights ([1980] ATS 23); International Covenant on Economic, Social and Cultural Rights ([1976] ATS 5); Convention on the Rights of the Child ([1991] ATS 4); International Convention on the Elimination of All Forms of Racial Discrimination ([1975] ATS 40).
- ¹⁰ Committee on Economic, Social and Cultural Rights (CESCR) (2009) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, 12 June 2009, UN Doc. E/C.12/AUS/CO/4. See also: Committee on the Rights of Persons with Disabilities (2013) *Concluding observations on the initial report of Australia*, adopted by the Committee at its tenth session, 2-13 September 2013; UN Doc. CRPD/C/AUS/CO/1.
- ¹¹ Australian Institute of Health and Welfare 2018. *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW.
- ¹² Frohmader, C. & Swift, K. (2012) *Opening minds & opening doors: Re- conceptualising 'domestic violence' to be inclusive of women with disabilities in institutions*. CDFVRe@der, Vol. 11, No. 2, pp. 7-8.
- ¹³ Women With Disabilities Australia (WWDA) (2007) *Forgotten Sisters: A Global Review of Violence against Women with Disabilities*. Rosny Park, Tasmania: Women With Disabilities Australia.
- ¹⁴ See for eg: CRPD/C/AUS/QPR/2-3; E/C.12/AUS/CO/5; A/C.3/72/L.18/Rev.1; A/HRC/38/47/Add.1; CCPR/C/AUS/CO/6; CEDAW/C/AUS/CO/8; CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*, available at: <http://wwda.org.au/wp-content/uploads/2013/12/FIGOGuidelines2011.pdf> See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilization: Press Release*, 5 September 2011, available at: <http://wwda.org.au/issues/sterilise/sterilise2011/sterilwma2011/>
- ¹⁵ 'Forced sterilization' refers to the performance of a procedure which results in sterilization in the absence of the prior, free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual's consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilization of a child, unless performed as a life-saving measure, is considered a forced sterilization. See for example: Center for Reproductive Rights (2010) *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis*; Center for Reproductive Rights, New York. Juan E. Mendez, Special Rapporteur, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 22nd sess, UN Doc A/HRC/22/53; Manjoo, Rashida (2012), OpCit; African Gender and Media Initiative (2012) *Robbed of Choice: Forced and Coerced Sterilization experiences of Women Living with HIV in Kenya*; Available at: <https://profiles.uonbi.ac.ke/kihara/files/report-on-robbed-of-choice-forced-and->

[coerced-sterilization-experiences-of-women-living-with-hiv-in-kenya.pdf](#); Nair, P. (2011) Litigating Against Forced Sterilization if HIV-Positive Women: Recent Developments in Chile and Namibia. *Harvard Human Rights Journal*, Vol.23, pp.223-231. See also: Frohmader, C. (2013) 'Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia'. WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia. Prepared for Women with Disabilities Australia (WWDA), Tasmania. ISBN: 978-0-9876035-0-0. See also: 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. Available at: http://wwda.org.au/wp-content/uploads/2013/12/ACDA_Sub_Sen_Inquiry_Violence_Institutions.pdf

- ¹⁶ See for eg: Committee on the Elimination of Discrimination against Women (1991) *General recommendation No. 18: Disabled women*. UN Doc. No. A/46/38
- ¹⁷ Australian Government, *Australian Government response to the Senate Community Affairs References Committee Reports* (May 2015), accessed online June 2015 at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Government_Response
- ¹⁸ Community Affairs References Committee, *Involuntary or coerced sterilization of people with disabilities in Australia*. July 2013, Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation
- ¹⁹ Women With Disabilities Australia (WWDA) 'WWDA Position Statement 4: Sexual and Reproductive Rights'. WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8. Available at: http://wwda.org.au/wp-content/uploads/2016/10/Position_Statement_4_-_Sexual_and_Reproductive_Rights_FINAL_WEB.pdf
- ²⁰ In the *National Plan to Reduce Violence Against Women and Their Children 2010-2022*, endorsed by the Council of Australian Governments (COAG) in 2010, and publicly released in February 2011, 'domestic' and 'family' violence was defined in the following way:
- Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening.....
- Family violence is a broader term that refers to violence between family members, as well as violence between intimate partners. It involves the same sorts of behaviours as described for domestic violence.....
- The National Plan defined 'sexual violence/sexual assault' in the following way:
- Sexual assault or sexual violence can include rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being made to have sex with friends of the perpetrator.
- ²¹ Frohmader, C., Dowse, L., and Didi, A. (2015) *Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective*. Women With Disabilities Australia (WWDA), Hobart, Tasmania. ISBN: 978-0-9585268-4-5.
- ²² Pease, B. (2015), *Critical gender theory, gender inequality and men's violence against women: An Our Watch think piece paper*. Paper prepared for Our Watch. Available in Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth (2015) *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch, Melbourne, Australia.
- ²³ 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. Available at: <http://wwda.org.au/papers/subs/subs2011/>
- ²⁴ 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.
- ²⁵ Ibid.
- ²⁶ Committee on the Rights of Persons with Disabilities, *General comment No. 3 (2016) Article 6: Women and girls with disabilities*. UN Doc. No. CRPD/C/GC/3.
- ²⁷ Commonwealth of Australia (November 2015) Senate Community Affairs References Committee *'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'*. Canberra.
- ²⁸ Ibid. See Recommendation 24.
- ²⁹ See for eg: CEDAW/C/AUS/CO/8; CRPD/C/AUS/CO/1
- ³⁰ See: UN Doc No: CRPD/C/AUS/QPR/2-3
- ³¹ Ibid.
- ³² Our Watch, VicHealth, ANROWS (2015) *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia*; Accessed online at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>
- ³³ Ibid.
- ³⁴ Council of Australian Governments (COAG) *COAG 2016 National Summit: Reducing violence against women and their children*. Brisbane, 27-28 October 2016, Accessed online at: <https://pmc.gov.au/sites/default/files/publications/COAG-summit-outcomes.pdf>

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- ³⁵ Australian Government's Draft *Sixth Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, September 2018.
- ³⁶ Committee on the Rights of Persons with Disabilities (October 2013) *Concluding observations on the initial report of Australia*, adopted by the Committee at its tenth session (2-13 September 2013); UN Doc. CRPD/C/AUS/CO/1. See also: Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7.
- ³⁷ Committee on the Rights of Persons with Disabilities (2016) *General comment No. 3. Article 6: Women and girls with disabilities*. 2nd September 2016, UN Doc. No. CRPD/C/GC/3
- ³⁸ See: UN Doc No: CRPD/C/AUS/QPR/2-3
- ³⁹ Australian Institute of Health and Welfare 2018. *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW.
- ⁴⁰ The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) also operates within these sampling parameters. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4714.0>
- ⁴¹ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Explanatory%20Notes12012?OpenDocument>
- ⁴² Dowse, L., Soldatic, K., Didi, A., Frohmader, C. & van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*, Background Paper, Women With Disabilities Australia, Hobart.
- ⁴³ Dowse, L. et al (2013) OpCit.
- ⁴⁴ The six key thematic areas plus two critical over-arching mechanisms to support the development of good policy and the provision of good practice in service provision to address and prevent violence against women and girls with disability were: 1) Information, Education and Capacity Building for Women and Girls with Disability; 2) Awareness Raising for the Broader Community; 3) Education and Training for Service Providers; 4) Service Sector Development and Reform; 5) Legislation, National Agreements and Policy Frameworks; 6) Evidence Gathering, Research and Development; 7) Establishment and Development of the 'Virtual Centre for the Prevention of Violence Against Women and Girls with Disability'; 8) Establishment of a National 'Women with Disabilities Expert Panel' on the Prevention of Violence Against Women and Girls with Disability.
- ⁴⁵ See: CCPR/C/AUS/CO/6
- ⁴⁶ Women With Disabilities Australia (WWDA) (2016) *'Improving Service Responses for Women with Disability Experiencing Violence'*; Final Report. Written by Carolyn Frohmader and Cristina Ricci on behalf of Women With Disabilities Australia; August 2016. ISBN: 978-0-9585268-5-2
- ⁴⁷ <http://wwda.org.au/sunny/>

