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## Violence against women with disabilities: is Australia meeting its human rights obligations?

*Aminath Didi, Karen Soldatic, Carolyn Frohmader and Leanne Dowse\**

*Australia has developed a National Disability Strategy and a National Plan of Action on Violence Against Women in response to its international human rights commitments. Neither the Strategy nor the Plan, however, appears to adequately address violence against women with disabilities. Violence disproportionately affects women with disabilities as they are uniquely vulnerable to forms of violence due to their specific living circumstances. By drawing upon feedback from the UN convention committees, this article looks at Australia's progress in meeting its international human rights obligations — especially under the Convention on the Rights of Persons with Disabilities — and discusses the shortcomings in Australian domestic legislation and emerging policies in addressing issues of violence against women with disabilities.*

**Keywords:** women with disabilities, violence against women, human rights, National Disability Strategy, National Plan of Action on Violence Against Women

### Introduction

Violence against women with disabilities had not been an issue of significant concern in Australia until recently. There is a dearth of literature related to violence against women with disabilities, and it is generally considered a 'hidden' problem, confined to the private sphere, further compounding the 'invisibility' around the issue (Dowse et al 2013, 17). In this article, we focus on the issue of violence against women with disabilities from a government policy to practice perspective, drawing on grey literature from grassroots advocacy organisations as well as more traditional

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academic literature. As disability scholars, rather than from a legal perspective, we review key national policies in the light of progress made towards meeting the human rights obligations set out in the international human rights treaties to which Australia is a state party. We argue that a lack of definitional clarity, problems with data collection and ill-targeted policy interventions hide the types, incidence and prevalence of violence against women with disabilities. The article also highlights the intersectionality of the issue, where discrimination experienced due to the intersection of disability and gender results in many women with disabilities being unable to participate as full and equal citizens in society, thereby resulting in Australia failing to fully meet its international human rights obligations when it comes to the issue of violence against women with disabilities.

### **Types of violence against women with disabilities**

Violence against women with disabilities includes all forms of violence and abuse against women that are gender-based, such as domestic violence, intimate partner violence and family violence, and it can be physical, sexual, emotional, social or economic (Frawley et al 2015, 3). In addition to these types of violence, and due largely to their disabilities, women with disabilities also experience institutional or residential violence; forced or coerced contraception and sterilisation; forced or coerced psychiatric interventions; withholding of, or forced, medication and medical exploitation; violations of privacy; deprivation of liberty; and denial of provision of essential care (Dowse et al 2013, 27). Linda Steele (2015, 4) describes these as 'disability-specific lawful violence'. More recently, disability hate crimes and stalking have been recognised as other forms of violence that are perpetrated against women with disabilities (Roulstone and Sadique 2013; Frawley et al 2015). Experiences of violence by women with disabilities can be further compounded due to the multiple intersecting forms of discrimination they experience based on their gender and disability, as well as their diversity. In the Australian context, women with sensory, physical or cognitive impairments and/or mental ill health; women who are Indigenous or from immigrant, refugee or asylum-seeker backgrounds; women who are lesbian, transgender or intersex; and women who live in poverty or in rural or remote communities experience different processes of discrimination and violence due to the nature of the ensuing power differentials when multiple axes of differentiation intersect (Healey 2013, 27). As Stubbs and Tawake (2009, 15) explain, these broader structural processes of rights being denied in other areas of social and economic life increase the susceptibility of women with disabilities to greater forms of violence over longer periods of time, making it more difficult to escape the cycle of violence.

## **Prevalence of violence against women with disabilities**

Although there is limited research and no national systemic disaggregated data on the prevalence and incidence of violence against women with disabilities, a review of the literature suggests that women with disabilities are at a much greater risk of violence compared to women without disabilities or even men with disabilities (Dowse et al 2013). It is estimated that 20% of the population of Australian women are women with disabilities, which equate to approximately two million women (Broderick 2012). While women with disabilities experience the same kinds of violence as women without disabilities, the violence is more extensive and diverse in nature (Healey 2013). They are 40% more likely to be the victims of domestic violence than women without disabilities, and more than 70% of women with disabilities have been victims of violent sexual encounters at some time in their lives (Frohman and Sands 2014, 1). Estimates suggest that 20% of women with disabilities report a history of unwanted sex, compared to 8.2% of women without disabilities, and the rates of sexual victimisation of women with disabilities range from four to 10 times higher than for other women (Dowse et al 2013, 28). Experiences of violence (particularly sexual violence) in residential and institutional settings are more frequent among women with disabilities, with these women often experiencing sustained and multiple episodes (Attard and Price-Kelly 2010). It is estimated that more than a quarter of rape cases reported in Australia are against women with disabilities, and that people who live in institutional settings are many times more likely to be raped or assaulted than others (Frohman 2011). Estimates also suggest that 90% of Australian women with an intellectual disability have been subjected to sexual abuse, with 68% having been sexually abused before they turn 18 years of age (ALRC 2010).

Like other women, women with disabilities are likely to know the perpetrators as partners or family members (Nosek 2002), but the presence of disability means that they also face an increased risk of violence and abuse from other people on whom they may rely for support, such as healthcare providers or paid caregivers. Indeed, the need for support for their disability in itself results in greater contact on a daily basis with potential perpetrators (Dowse et al 2013). Given the relational nature of disability support, women with disabilities who live in residential and institutional settings — such as disability care, aged care and correctional settings — are more susceptible to the violence of others. Within the literature on violence against women, there is not a succinct definition to adequately capture such enhanced socio-relational vulnerabilities. In turn, as the literature describes, this not only increases the vulnerability of women with disabilities to such relational violence, but may also help to perpetuate it, as there is no formal, legal or policy recognition of violence enacted in this setting. The nature of violence and abuse faced in many disability settings can include the use of coercive control, such as controlling access to medication, mobility and external supports (Brownridge 2006).

In Australia, violence against women with disabilities, particularly women with intellectual disabilities, is considered widespread (Frohman 2011, 7). It is also believed that women with disabilities face significant barriers in accessing support and services to prevent and address issues of violence due largely to systemic failure in the availability and accessibility of services, policies and administrative procedures, and legislation and regulatory frameworks (Frohman 2011, 6). Availability and accessibility of services is especially significant for women with disabilities living in rural and remote communities, who are disadvantaged by the lack of services, information, education and awareness — which, in turn, makes them more susceptible to violence, exploitation and abuse with few supports available to seek redress (Dowse et al 2013, 26). In the Australian context, rural and remote communities have high proportions of Indigenous women with disabilities, thus placing this group at higher risk (Dowse et al 2013, 26). Although disability support and violence support services are much needed in such communities, they are often seen as secondary to the provision of more basic needs, such as nutritious food, shelter and security; it is often difficult to get outsiders to move to remote communities to provide these services (Commonwealth of Australia 2011).

The 2008 study by Healey et al in Victoria identified that the majority of women with disabilities living with violence did not have adequate independent income, information, housing, employment, services (such as lawyers, general practitioners or counsellors) and transport. Many family violence and family support services were not equipped to meet the needs of women with diverse disabilities. The facilities were not physically accessible, the programs were inappropriate, and the staff lacked the required expertise (Healey et al 2008, 37). Similarly, disability services did not adequately understand family violence and lacked the capacity to identify or respond to it (Healey et al 2008, 37). Studies have also found that service workers and/or agencies lack the necessary skills, resulting in difficulty providing appropriate care and support to ensure the safety and empowerment of women with disabilities (Dowse et al 2013, 55; Healey et al 2008, 39). Furthermore, in terms of accessing justice for women with disabilities who are victims of violent crimes, the lack of specialist support, accommodation and programs is a significant barrier to seeking redress (AHRC 2013; Healey et al 2008).

There is very limited data, research and information about violence against women with disabilities in Australia (Frohman 2011). Most services do not routinely collect data on disability and violence, and potential sources of data, such as the National Disability Abuse and Neglect Hotline, are not available for analysis (Frohman 2011). Data, research and information-gathering are essential for informing policy development and to direct the planning and implementation of effective services for women with disabilities. Dowse et al, in looking at structural issues for the

improvement of service responses for women with disabilities experiencing violence, identified the need for increased inter-agency and cross-sector collaboration; improved capacity of service providers through increased resources, regulatory frameworks, staff training and skills sharing; better capture and use of data; and increased participation of women with disabilities in the design, implementation, monitoring and evaluation of targeted measures to address violence against them (Dowse et al 2013, 88–89). These measures are necessary to overcome the cultural, social, structural and practical issues and barriers that women with disabilities currently face in becoming full and equal citizens of Australian society.

While Australian research indicates high rates of violence against women with disabilities, Frawley et al (2015, 6) explain that this remains mostly anecdotal, as national data collection by the Australian Bureau of Statistics (ABS) does not include information to determine if respondents have a disability. For example, the *ABS Gender Indicators, Australia* does not provide disaggregated data on violence against women with disabilities (Broderick 2012). Cox's (2015, 1) additional analysis of the data gathered through the Personal Safety Survey (PSS) conducted by the ABS showed that the examination of data for subpopulations such as women with disabilities became unreliable. The ABS had difficulty in accessing and surveying a statistically valid and significant sample, as most ABS surveys collected data from individual households rather than from institutional settings where the majority of women with disabilities resided. Cox's analysis, however, showed that women with disabilities were more likely to experience multiple incidents of violence by a male perpetrator (Cox 2015, 5). Violence against women with disabilities is also known to often go unreported and, even when it is reported, it is dismissed, ignored, normalised or covered up (Frohman et al 2015).

Given this background, it appears that there is much to be done in order to secure the human rights of women with disabilities who experience violence. In order to assess Australia's performance in meeting its human rights obligations towards women with disabilities experiencing violence, abuse and neglect, we look at both the international and domestic legal and regulatory frameworks before evaluating the existing policies and practices in Australia. Finally, we discuss the impact of these on the rights of women with disabilities affected by violence.

## **The human rights framework**

Australia is a signatory to seven core international human rights treaties that are of relevance to the issue of violence against women with disabilities. These treaties enshrine the state's obligations to promote protection from discrimination, exploitation, violence and abuse, and to prohibit torture and cruel, inhuman or

degrading treatment or punishment. They include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of Persons with Disabilities (CRPD). Of these, the CRPD was the first UN treaty to be negotiated in the 21st century. It is widely seen as a landmark treaty to holistically reframe the needs and concerns of people with disabilities in terms of their human rights under a single convention (Kayess and French 2008, 2).

In this article, we look at the CRPD, which reflected a paradigm shift in the way people with disabilities were viewed by moving away from a medical and social welfare response to disability and towards a rights-based approach (Chan 2015; Kayess and French 2008). The traditional 'medical' and 'charity' approaches to disability viewed people with disabilities as recipients of the goodwill of society and not as rights holders. This often resulted in the isolation of people with disabilities in hospitals, institutions and homes, leading to their exclusion from, rather than inclusion in, society (Corker and Shakespeare 2002; Oliver 1996). Over time, however, disability was perceived as a social construct, which viewed society as being responsible for creating barriers to the full and equal participation and valuable contributions of people with disabilities (Corker and Shakespeare 2002; Oliver 1996). Australia ratified the CRPD on 17 July 2008 and it entered into force for Australia on 16 August 2008. Until the development of the CRPD, the UN system attempted to deal with the problem of visibility of people with disabilities either by applying existing core human rights instruments to persons with disabilities, or by developing lesser policy and programmatic documents that were focused on the needs and rights of persons with disabilities (Kayess and French 2008, 11). While Australia is party to these international human rights treaties, the treaties are not self-executing and require legislative implementation to be effective in domestic legislation.

A more detailed examination of the CRPD indicates that Art 6 recognises the multiple discriminations that women with disabilities are subjected to and suggests that states parties should take appropriate measures to ensure that they enjoy full and equal human rights and fundamental freedoms. As we have discussed above, in the Australian context, types of disability, ethnicity, sexuality, geographical location, socio-economic status and other factors can heighten discrimination and violence against some women with disabilities (Healey 2013; Stubbs and Tawake 2009). Articles 5 and 12 suggest that all people with disabilities are equal before the law and that they are entitled to non-discrimination and equal protection, as well as

effective safeguards for prevention against abuse, conflict of interest, and undue influence. Different states and territories in Australia provide different levels of protection under the current domestic and family violence legislation. Given that many incidents of violence against women with disabilities are perpetrated within institutional and residential settings and are therefore not characterised as domestic or family violence, there is a high risk for their exclusion from these protections (Frohman and Sands 2014).

While effective access to justice is another right that states parties are expected to guarantee under Art 13 of the CRPD, women with disabilities experiencing violence and women who are victims of a crime, accused of a crime, or witnesses to a crime are generally at increased risk of being disrespected and disbelieved and not enjoying equality before the law (AHRC 2014, 8). State and territory laws govern this area, and women with disabilities experiencing violence — especially those who need communication supports or who have complex support needs — are not treated equally in the criminal justice system (AHRC 2013; Dowse et al 2013). While there is not much reliable data on the extent of the problem, available research shows that women with mental health problems and cognitive impairments are significantly over-represented in the criminal justice system, especially those from an Indigenous background (AHRC 2013, 4). This is also true for those living in rural and remote locations where reasonable accommodation is not available for women who have complex support needs. The right to liberty and security of the person for people with disabilities is enshrined in Art 14 of the CRPD.

Articles 15, 16 and 17 of the CRPD enshrine the right to freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from exploitation, violence and abuse; and respect for the person's physical and mental integrity. Article 15 also categorically states that no one shall be subjected without his or her free consent to medical or scientific experimentation. However, research shows that many women with disabilities — especially those with intellectual disabilities and those who exhibit challenging behaviours — are subjected to the geographical isolation of being accommodated in closed environments and being subjected to restrictive practices, which pose barriers to the full realisation of their rights (Chan 2015, 2). The use of coercive practices such as forced sterilisation and abortion, forced psychiatric interventions and restrictive practices — or what Steele suggests is 'disability-specific lawful violence' — is one of the most critical areas of human rights violations for women with disabilities (Steele 2015; Kayess and French 2008).

The obligation to respect, protect and fulfil the rights of women with disabilities and to ensure their right to freedom from violence, exploitation, abuse, torture and other cruel, inhuman or degrading treatment or punishment clearly requires Australian

governments to take positive actions to reduce the existing structural disadvantages that they face (Frohman 2011, 5–6). In the next section of this article, we provide a brief overview of domestic legislation and policies and how they effect the implementation of the rights granted under the CRPD in Australia.

## Evaluation of domestic legislation and policies

In Australia, there is no specific legal, administrative or policy framework for the protection, investigation and prosecution of violence against people with disabilities (Civil Society CRPD Parallel Report Group 2012). However, the United Nations treaty monitoring bodies have made strong recommendations to address all forms of violence against people with disabilities, especially women with disabilities. In October 2013, the UN Committee on the Rights of Persons with Disabilities at its 10th session, in its Concluding Observations on the initial report of Australia, expressed its concern at the high incidence of violence and sexual abuse perpetrated against women with disabilities (United Nations 2013a, 2). The Committee recommended that Australia should include more comprehensive consideration of women with disabilities in its policies and programs on the prevention of gender-based violence in order to ensure access for women with disabilities to an effective, integrated response system (United Nations 2013a, 3).

Since becoming party to CEDAW, Australia has developed many mechanisms for implementing the rights enshrined within this treaty. At the federal level, the *Sex Discrimination Act 1984* (Cth) (SDA) makes sex discrimination against the law, while all states and territories have anti-discrimination laws that also prohibit sex discrimination (Commonwealth of Australia and HREOC 2008). The lack of a uniform definition across all jurisdictions makes violence against women a challenging issue in the Australian context. States and territories have adopted different terms to describe violence against women in policy and the law, making it difficult to ascertain the different forms of violence that Australian women experience, along with its prevalence, incidence and frequency nationally. The differences in state and territory legislations have been identified as a principle area of concern in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women at its 46th session (United Nations 2010, 3). Definitions of violence can be historically and culturally specific, as outlined by Walsh, Spangaro and Soldatie (forthcoming), who argue that the operationalisation of such definitions within policy and the law results in particular understandings and, in turn, interventions.

While the SDA addresses issues of sexual harassment, the *Family Law Act 1975* (Cth) (FLA) provides for the protection of children who are exposed or subjected to family violence (Dowse et al 2013, 24). The SDA was revised in 2012 to take into account

family violence and the need to protect women and children in line with Australia's commitments to CEDAW and the CRC. The original FLA did not expressly mention family violence and did not provide for the protection of women affected by violence. However, the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), which came into effect in July 2012, clearly references a human rights framework and recognises that family violence has a particular impact on marginalised and vulnerable groups, including women with disabilities (Dowse et al 2013, 30). While the 2011 amendment to the FLA introduced a new definition of domestic and family violence that is consistent across all Commonwealth legislation, it did not cover non-familial relationships, such as dating and carer relationships (AHRC 2012a, 11). As Dowse et al (2013, 30) explain, a comprehensive legislative approach based on a human rights framework is required. This would criminalise all forms of violence against women, providing effective prosecution and punishment of perpetrators while empowering, supporting and protecting survivors.

Similarly, the *Disability Discrimination Act 1992* (Cth) (DDA) makes disability discrimination unlawful and promotes equal rights, equal opportunity and equal access for people with disabilities, protecting them from unfair treatment in many areas of public life (AHRC 1993). The DDA applies to the Australian and state and territory governments and private sector bodies, and the Australian Human Rights Commission has the ability to investigate and conciliate complaints of disability discrimination under the DDA (Commonwealth of Australia 2010, 5). Traditionally, disability as an issue of law has been addressed as an aspect of social security and welfare legislation, health law or guardianship law (Kayess and French 2008, 14). In 1986, the *Disability Services Act 1986* (Cth) (DSA) was passed to assist people with disabilities to receive the services necessary to enable them to fully participate in the community and to achieve positive outcomes, such as increased independence and employment opportunities (AHRC 2016). The DSA provides a legislative and funding framework for a range of disability services and sets guiding standards for the delivery of quality services (WWDA 2016). The standards, however, do not contain qualifications relating to gender and focus on 'abuse and neglect', rather than 'violence', making them a limited mechanism to address violence against women with disabilities (Dowse et al 2013, 31).

The primary response to addressing violence against women with disabilities in Australia is through the National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan) launched in February 2011. The National Plan, now in its second action plan, adopts a holistic view to addressing domestic violence and sexual assault and has a strong focus on the prevention of violence (Broderick 2012). While including priority action to address violence against women with disabilities, the National Plan has significant limitations because of its focus

on traditional notions of domestic and family violence in the context of intimate partner relationships only (Frohmaster and Sands 2014, 2). This results in a failure to address the many other forms of violence that are perpetrated within institutional and residential settings, leaving these forms of violence against women with disabilities falling outside the scope of the National Plan (Frohmaster and Sands 2014, 2). Additionally, in February 2011, a 10-year National Disability Strategy 2010–2020 (NDS) was developed as the national policy framework to guide Australian governments to meet their obligations under the CRPD. However, while the NDS recognised that people with disabilities are more vulnerable to violence, exploitation and neglect, it failed to provide gendered strategies for addressing violence against people with disabilities in institutional and residential settings (Frohmaster and Sands 2014, 2).

A key outcome of the delivery of the NDS is the development and launching of a National Disability Insurance Scheme (NDIS). The NDIS is supported by the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act), which sets out the objects and principles of the scheme to provide reasonable and necessary supports to people with disabilities, including early intervention supports for those deemed eligible. While the NDIS Act acknowledges people's right to dignity and to live free from abuse, neglect and exploitation, it falls short of acknowledging the gendered nature of these issues and fails to identify any specific focus on women with disabilities (Frohmaster, Dowse and Didi 2015). The NDIS, on the other hand, gives choice and control over the care and support received by people with disabilities, and was widely hailed as an innovative welfare scheme that would give effect to a number of obligations under the CRPD (WWDA 2016). While the development of the NDS and the NDIS is welcome in meeting the rights of people with disabilities, in general, their lack of a gendered focus is a significant weakness in meeting the specific human rights obligations of those women with disabilities who are affected by violence (Dowse et al 2013, 31). The failure to explicitly mention women with disabilities in policy strategies, and the failure to identify the types of violence and discriminatory vulnerabilities specific to their experience, are recurring themes, with mainstream support organisations and services not being well equipped to help women with disabilities to escape family or domestic violence (Commonwealth of Australia 2010; Dowse et al 2013).

### **Policy gaps in addressing violence against women with disabilities**

Both the NDS and the National Plan provide a valuable opportunity for Australia to meet its international human rights obligations domestically for women with disabilities who are affected by violence. However, failure to specifically address

certain types of violence experienced by women with disabilities — such as sterilisation, exploitation, neglect or violence in institutional settings — prevents specific actions directed to prevent and reduce such violence (AHRC 2013, 5). The NDS is linked to the CRPD and, because the CRPD draws heavily from other international human rights treaties such as the ICCPR and the ICESCR, the NDS appears to be the more grounded approach to protecting the rights of women with disabilities. The National Plan, on the other hand, is linked only to CEDAW, which primarily focuses on meeting human rights obligations in relation to gender discrimination. Therefore, if the National Plan is to meet Australia's obligations to prevent violence against women with disabilities, future action plans should take into account Australia's obligations relating to civil and political rights; economic, social and cultural rights; disability rights; children's rights; and the rights to be free from torture and other cruel, inhuman or degrading treatment or punishment, and from racial discrimination (Dowse et al 2013, 25).

A review of the various Concluding Observations from the United Nations to Australia on its presentations to the different UN treaty bodies highlights Australia's successes and failures in meeting its obligations to prevent violence against women with disabilities domestically. One of the recurrent themes in the recommendations from the treaty committees is the failure of current Australian legislation to protect women with disabilities from unauthorised, non-therapeutic and forced sterilisation. The Committee on the Rights of the Child and the CEDAW Committee have expressed concern and have urged the Australian government to enact national legislation prohibiting the practice, except where there is a serious threat to life or health (United Nations 2013b, 12). A Senate Inquiry into Involuntary or Coerced Sterilisation of People with Disabilities in Australia was conducted, and an Inquiry Report released on 17 July 2013. The inquiry noted that coerced or involuntary sterilisation was a gendered practice to which women and girls with disabilities, especially those with intellectual disabilities, were subjected. The Australian Human Rights Commission (AHRC) welcomed the recommendations by the inquiry to develop and implement 'best protection of rights test' and the banning of sterilisation without consent for women with disabilities who have the capacity to consent, and those who have the capacity to consent when provided with appropriate decision-making support. The AHRC also emphasised the importance of education and awareness raising for people with disabilities, their families and carers, medical practitioners and legal practitioners (AHRC 2013, 7).

Equality and non-discrimination in the DDA was an area of concern raised by the CRPD Committee, which recommended strengthening anti-discrimination laws to address intersectional discrimination to provide the same level of legal protection to all people with disabilities and to ensure the provision of a wide range of measures

that respect a person's autonomy, will and preference with respect to his or her own capacity to give and withdraw consent for medical treatment, access justice, vote, marry or work (United Nations 2013a, 2–4). Access to justice for women with disabilities who have experienced violence — especially those with cognitive disabilities and Indigenous women with disabilities, who are significantly over-represented in the criminal justice system in Australia — was another area requiring special support, especially in remote locations (AHRC 2013, 4).

Other areas of concern were in the provision of appropriate ongoing accommodation and integrated support for women who are victims of violence within familial relationships and for their children. The CEDAW Committee has recommended that Australia develop strategies to prevent homelessness and take appropriate measures to improve the rates of charging, prosecuting, sentencing and accountability for men who perpetrate violence against women (for example, in areas of partner rape and non-physical violence, such as economic, emotional and psychological abuse), such as amending existing Commonwealth and state and territory legislation, and providing appropriate training for police, the judiciary and magistrates (AWAVA and NATSIWA 2012, 10; United Nations 2010, 5). Noting that Australia had endorsed the Declaration on the Rights of Indigenous Peoples (in April 2009), the CEDAW committee also recommended that Australia should adopt and implement targeted and special measures to address violence against Indigenous women, paying particular attention to ensuring their access to education, vocational training, adequate health and social services, legal literacy and justice (United Nations 2010, 8).

Several issues concerning violence against women with disabilities in institutional settings — such as group homes, aged-care facilities and prisons — were raised during the 2012 study tour in Australia of the UN Special Rapporteur on Violence against Women. These issues included the vulnerability of women in such settings, their inability to report violence, the perceived impunity for the actions of staff and other residents where violence occurs, and the need for appropriate support services (AHRC 2012b, 23–24).

## **Conclusions**

The Australian government stated in its presentation to the Working Group on the Universal Periodic Review on 27 January 2011 that it places great importance on its commitments to a fairer and more inclusive Australia (United Nations 2011, 3). Efforts by the AHRC to promote a greater understanding of human rights across the community and the government's investment in education and training for public-sector employees on human rights principles are also important measures to embed these principles into practice (United Nations 2013b). However, recent trends within

key government institutions that monitor disability rights — such as the abolition of the Disability Discrimination Commissioner from June 2014 — pose significant risks for women with disabilities facing greater forms of violence than women without disabilities. While we welcome the new developments within the policy arena that give due recognition to the nuanced experienced of violence for women with disabilities, without strong oversight there is no guarantee that such initiatives will lead to significant improvements for women with disabilities.

Additionally, inadequate research and lack of national data on the prevalence and nature of violence against women with disabilities, including in institutions and supported accommodation, remain a central concern. As recent studies have identified (see Dowse et al 2013; Frawley et al 2015), this dearth of readily available data is one of the primary reasons why government policies and programs fail to adequately address the issue. The result is a lack of dedicated, sustainable resources and funding models, including inadequate preventative and response-based services targeted at the needs of women with disabilities experiencing varying forms of violence (AHRC 2012c, 17).

Substantive intervention on this issue requires greater coherence within the specific policy and legislative domain of violence against women, alongside strategies to further advance the status of women with disabilities. More effort should be made to increase the participation of women with disabilities in political and public life based on the CRPD principle of ‘nothing about us without us’, so that they are recognised within the community as valued participatory members. Relying on highly targeted violence interventions will always be constrained by the cultural normative evaluations that marginalise women with disabilities and thereby increase their susceptibility to social processes of de-evaluation. These discrete strategies therefore need to be coupled with a range of systematic strategies that seek to radically reposition the social status and political power of women with disabilities. Such a broader focus would go a long way in implementing Australia’s obligations under the CRPD and in achieving the rights of women with disabilities who are affected by violence.

Given the significant disadvantages that women with disabilities — especially those with challenging behaviours and complex support needs — experience, it is important to ensure that they have access to justice and the required support and accommodation, and are allowed to defend themselves and not be detained in jails and institutions without a trial (United Nations 2013a). The over-representation of women, children and Aboriginal and Torres Strait Islander peoples with disabilities in prison and juvenile justice systems requires establishing legislative, administrative and support frameworks that comply with the CRPD (United Nations 2013a).

Furthermore, as many national peak organisations representing women with disabilities have called for, there is an urgent need for the Australian government to commission a national public inquiry into violence perpetrated against people with disabilities in institutional and residential settings, with a specific focus on the multiple forms of violence perpetrated and the gendered nature of such violence (Frohman and Sands 2014; United Nations 2013a). ●

## References

### **Australian legislation**

*Disability Discrimination Act 1992* (Cth)

*Disability Services Act 1986* (Cth)

*Family Law Act 1975* (Cth)

*Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth)

*National Disability Insurance Scheme Act 2013* (Cth)

*Sex Discrimination Act 1984* (Cth)

### **International legal materials**

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

*Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

*Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008)

*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

*International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

*International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

*International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

### **Other references**

Attard M and Price-Kelly S (2010) *Accommodating Violence: The Experience of Domestic Violence of People with Disability Living in Licensed Boarding Houses People with Disability Australia* (PWDA), Sydney

Attorney General's Department (2014) *Human Rights and Anti-discrimination* [Online] Available: [www.ag.gov.au/RightsAndProtections/HumanRights/Pages/default.aspx](http://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/default.aspx) [2016, February 22]

Australian Human Rights Commission (AHRC) (1993) *Issues Paper: Disability Standards under the Disability Discrimination Act* [Online] Available: <https://www.humanrights.gov.au/1993-issues-paper-disability-standards> [2016, February 22]

Australian Human Rights Commission (AHRC) (2012a) *Consolidation of Commonwealth Discrimination Law: Supplementary Submission to the Attorney-General's Department* 23 January [Online] Available: <https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20Submissions%20-%2020021%20-%20Australian%20Human%20Rights%20Commission%20-%202023%20January%202012.PDF> [2016, February 25]

Australian Human Rights Commission (AHRC) (2012b) *Australian Study Tour Report: Visit of the UN Special Rapporteur on Violence against Women 10–12 April 2012* [Online] Available: <https://www.humanrights.gov.au/publications/australian-study-tour-report-visit-un-special-rapporteur-violence-against-women> [2016, February 25]

Australian Human Rights Commission (AHRC) (2012c) *Independent Interim Report, Australian Human Rights Commission Report to the Committee on the Elimination of All Forms of Discrimination against Women* 31 August [Online] Available: <https://www.humanrights.gov.au/sites/default/files/content/pdf/legal/submission/CEDAW%20Interim%20Report%20FINAL.pdf> [2016, February 25]

Australian Human Rights Commission (AHRC) (2013) *Information Concerning Australia and the CRPD – Briefing Papers* 22 August [Online] Available: <https://www.humanrights.gov.au/publications/information-concerning-australia-and-the-crdp-briefing-papers>

humanrights.gov.au/sites/default/files/20130822\_CRPD\_BriefingPapers.pdf [2016, February 21]

Australian Human Rights Commission (AHRC) (2014) *Equal before the Law: Towards Disability Justice Strategies* [Online] Available: [https://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf) [2016, February 24]

Australian Human Rights Commission (AHRC) (2016) *Legislation* [Online] Available: <https://www.humanrights.gov.au/our-work/legal/legislation> [2016, February 24]

Australian Law Reform Commission (ALRC) (2010) *Family Violence — A National Legal Response* ALRC Final Report 114 [Online] Available: [www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114](http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114) [2016, February 19]

Australian Women Against Violence Alliance (AWAVA) and National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) (2012) *Australia: Non-Government Organisations Follow-up Report to the United Nations Committee on the Elimination of Discrimination against Women* [Online] Available: <http://awava.org.au/resources-2/convention-on-the-elimination-of-discrimination-against-women-cedaw/ngos-follow-up-report-to-cedaw> [2016, February 25]

Broderick E (2012) 'Violence against women with a disability in rural Australia' speech at the side event of the Commission on the Status of Women, 56th Session, New York, 28 February [Online] Available: <https://www.humanrights.gov.au/news/speeches/violence-against-women-disability-rural-australia> [2016, February 25]

Brownridge D A (2006) 'Partner violence against women with disabilities: prevalence, risks and explanations' 12(9) *Violence Against Women* 805–22

Chan J (2015) 'Challenges to realizing the Convention on the Rights of Persons with Disabilities (CRPD) in Australia for people with intellectual disability and behaviours of concern' *Psychiatry, Psychology and Law* [Online] Available: <http://dx.doi.org/10.1080/13218719.2015.1039952>

Civil Society CRPD Parallel Report Group (2012) *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* Civil Society CRPD Parallel Report Group, Sydney

Commonwealth of Australia (2010) *Australia's Initial Report under the Convention on the Rights of Persons with Disabilities* 3 December [Online] Available: [www.ag.gov.au/](http://www.ag.gov.au/)

RightsAndProtections/HumanRights/TreatyBodyReporting/Documents/AustralianinitialreportundertheConventionontheRightsofPersonswithDisabilities.pdf [2016, February 22]

Commonwealth of Australia (2011) *Disability Care and Support: Productivity Commission Inquiry Report Overview and Recommendations* Report No 54, Productivity Commission, Canberra

Commonwealth of Australia and Human Rights and Equal Opportunity Commission (HREOC) (2008) *Women's Human Rights* [Online] Available: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/women-s-human-rights-united-nations-convention-elimination> [2016, February 22]

Corker M and Shakespeare T (eds) (2002) *Mapping the Terrain in Disability/Postmodernity: Embodying Disability Theory* Continuum, London

Cox P (2015) 'Violence against women in Australia: additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012: Key findings and future directions' *Compass: Research to Policy and Practice* Issue 02/2015, ANROWS, Sydney

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* Women With Disabilities Australia, Hobart

Frawley P, Dyson S, Robinson S and Dixon J (2015) 'What does it take? Developing informed and effective tertiary responses to violence and abuse of women and girls with disabilities in Australia' *Landscapes: State of Knowledge* Issue 03/2015, ANROWS, Sydney

Frohmader C (2011) *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities A/HRC/RES/17/11*, prepared for Women With Disabilities Australia (WWDA) [Online] Available: <http://wwda.org.au/issues/viol/viol2011/> [2016, February 19]

Frohmader C, Dowse L and Didi A (2015) 'Preventing violence against women and girls with disabilities: integrating a human rights perspective' 24(1) *Human Rights Defender* [Online] Available: <http://search.informit.com.au/documentSummary;dn=216817383976146;res=IELHSS> [2016, February 19]

Frohmader C and Sands T (2014) *Fact Sheet: Violence against People with Disabilities in Institutions and Residential Settings* prepared by WWDA and PWDA [Online]

Available: [www.pwd.org.au/documents/orgdocs/FS-Violence-PWD2014.doc](http://www.pwd.org.au/documents/orgdocs/FS-Violence-PWD2014.doc) [2016, February 21]

Healey L (2013) *Voices against Violence — Paper 2: Current Issues in Understanding and Responding to Violence against Women with Disabilities* Women With Disabilities Victoria, Melbourne

Healey L, Howe K, Humphreys C, Jennings C and Julian F (2008) *Building the Evidence: A Report on the Status of Policy and Practice in Responding to Violence against Women with Disabilities in Victoria* Women's Health Victoria and Victorian Women With Disabilities Network, Melbourne

Kayess R and French P (2008) 'Out of darkness and into light? Introducing the Convention on the Rights of Persons with Disabilities' 8(1) *Human Rights Law Review* 1–34

Nosek M A (2002) *Violence against Women with Physical Disabilities: Final Report Submitted to the Centers for Disease Control and Prevention* Center for Research on Women with Disabilities (CROWD), Baylor College of Medicine, Houston [Online] Available: <https://www.bcm.edu/research/centers/research-on-women-with-disabilities/topics/violence/final-report> [2016, February 25]

Oliver M (1996) *Understanding Disability: From Theory to Practice* Macmillan, Basingstoke

Roulstone A and Sadique K (2013) 'Vulnerable to misinterpretation: disabled people, "vulnerability", hate crime and the fight for legal recognition' in A Roulstone and H Mason-Bish (eds) *Disability, Hate Crime and Violence* Routledge, New York pp 25–39

Steele L (2015) *Submission to the Senate Community Affairs References Committee Inquiry into 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* Research Online, University of Wollongong [Online] Available: <http://ro.uow.edu.au/lhapapers/2050/> [2016, February 21]

Stubbs D and Tawake S (2009) *Pacific Sisters with Disabilities: At the Intersection of Discrimination* UNDP Pacific Centre, Suva

UN Committee on the Elimination of Discrimination against Women (CEDAW) (1989) *General Recommendation No 12 on Violence against Women* CEDAW Committee, eighth session

UN Committee on the Elimination of Discrimination against Women (CEDAW) (1991) *General Recommendation No 18 on Disabled Women* CEDAW Committee, 10th session

UN Committee on the Elimination of Discrimination against Women (CEDAW) (1992) *General Recommendation No 19 on Violence against Women* CEDAW Committee, 11th session

UN Women (2009) *Convention on the Elimination of All Forms of Discrimination against Women: General recommendations made by the Committee on the Elimination of Discrimination against Women* [Online] Available: [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm) [2016, February 22]

United Nations (2010) *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Australia, adopted by the Committee at its forty-sixth session 12–30 July 2010* CEDAW/C/AUS/CO/7

United Nations (2011) *Report of the Working Group on the Universal Periodic Review: Australia 24 March 2011* A/HRC/17/10

United Nations (2013a) *Concluding Observations on the Initial Report of Australia, adopted by the Committee at its tenth session 2–13 September 2013* CRPD/C/AUS/CO/1

United Nations (2013b) *Information presented by the Australian Human Rights Commission, Note by the Secretariat* A/HRC/22/NI/6

Walsh J, Spangaro J and Soldatic K (2015) 'Global understandings of domestic violence' 17(1) *Nursing & Health Sciences* [Online] Available: <http://dx.doi.org/10.1111/nhs.12197>

Women With Disabilities Australia (WWDA) (2016) *Legislation and Policy* [Online] Available: [wwda.org.au/govtdis/govtdisoverview/](http://wwda.org.au/govtdis/govtdisoverview/) [2016, February 25]