

# Preventing Violence against Women and Girls with Disabilities: Integrating A Human Rights Perspective



# Think Piece Document for the Development of the National Framework to Prevent Violence Against Women



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## About Women With Disabilities Australia

Women With Disabilities Australia (WWDA) is the peak non-government organisation (NGO) for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities, and represents more than 2 million disabled women in 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. Promoting the reproductive rights of women and girls with disabilities, along with promoting their rights to freedom from violence and exploitation, and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA.

WWDA's human rights based approach recognises that the international human rights normative framework, including the international human rights treaties and their optional protocols, and the general comments and recommendations adopted by the bodies monitoring their implementation, provide the framework to delineate the respective obligations and responsibilities of governments and other duty-bearers in relation to the human rights of women and girls with disabilities. It is this framework that WWDA utilises to promote and indeed demand, accountability from Governments and other duty bearers in relation to recognising and addressing the violations of human rights and fundamental freedoms experienced by women and girls with disabilities.

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# 1 Summary

Current policies and discourses around addressing and preventing violence against women in Australia have locked us into a particular way of conceptualising violence against women, which falls short in encompassing the key experiences of many women and girls with disabilities. These experiences have been recognised internationally as a central concern, where attention to the nature and scope of gendered disability violence has been integral to the violence prevention agenda (Manjoo 2011, Council of Europe 2013). Current efforts in Australia have less successfully tackled this key intersectional issue, where the agenda is characterised by inadequate conceptualisation and recognition of, and response to, the needs and rights of women and girls with disabilities who have experienced or are at risk of experiencing violence (Dowse et al 2013).

The strength of international approaches to gendered violence prevention is that, in adopting a comprehensive human rights perspective, intersectional experiences of gendered violence are a central concern in recognition that multiple identity positions (including disability, race, ethnicity, sexual orientation, refugee status and so on) increase the likelihood, nature and impact of violence. This is not the case in the Australian context, where legislation, policy and service responses tend to view women with disabilities as an ‘additional group’ whose needs are exceptional or additional to the central prevention agenda. Compounding this in the Australian context is the [largely mistaken] belief that frameworks of disability policy and service provision have given attention to gendered violence. The reality is however, that disability policy frameworks are currently inadequate in encompassing either gender or violence issues, let alone the intersection of the two. In practice, this means that efforts and approaches to prevent violence against women in Australia are not comprehensive, are piecemeal and inconsistent in definitions and scope, continue to focus predominately on protection from traditional forms of domestic/family violence and therefore fail to provide a coordinated and integrated approach to combating all forms of violence perpetrated against women and girls (Frohman & Cadwallader 2014).

This paper examines these issues in the context of the agenda to prevent violence against women and their children. It examines conceptual understandings of violence against women, and argues that we need to broaden the current way of thinking about how we frame what violence against women encompasses. It highlights the critical need to understand and respect the complexity and specificity of gendered disability violence. In positioning violence against women as a form of discrimination, this paper recognises the multiple and intersecting forms of discrimination that combine to significantly heighten the risk and likelihood of women and girls with disabilities experiencing gendered disability violence. In so doing, it reflects an understanding that violence against women, as a form of discrimination, is not just a matter of ‘inter-gender inequality’ between women and men, but also a matter of ‘intra-gender inequality’ among women.

The paper articulates the imperative of a comprehensive human rights perspective and approach to the prevention of violence against women. This approach recognises and demonstrates that responses to violence against women cannot be considered in isolation from the context of individuals, households, settings, communities or States. It recognises that discrimination affects women in different ways depending on how they are positioned within the social, economic and cultural hierarchies that prohibit or further compromise certain women’s ability to enjoy universal human rights (Manjoo 2011).

This paper argues that without a grounding in a comprehensive human rights frame, current approaches to violence prevention run the risk of reinscribing the marginalisation of gendered disability violence, resulting in the inadvertent perpetuation of the systemic violence and abuse experienced by women with disabilities in a wide range of settings.





## 2 Introduction and Context

Violence against women is considered as one of the most widespread violations of human rights worldwide (UNGA 2012) and is now firmly at the forefront of the international development agenda as an urgent human rights issue requiring national government and international action (Dowse et al 2013). In Australia, violence against women is being described in our communities as ‘a national human rights disaster’ (Phillips 2014), an ‘epidemic’ (DVNSW 2014) and a ‘national emergency’ (Jacques 2014). As shocking as the current statistics are – showing that one in three women in Australia has experienced physical violence and almost one in five has experienced sexual violence – the picture is substantially worse for some groups of women – particularly women and girls with disabilities, Indigenous women, and women from culturally and linguistically diverse backgrounds and communities (DSS 2014, Dowse et al 2013).

It is now well established that violence against women and girls with disabilities in Australia is far more extensive than violence amongst the general population (Dowse et al 2013). Violence perpetrated against women and girls with disabilities is significantly more diverse in nature and more severe than for women in general (Dowse et al 2013). Compared to their peers, women with disabilities experience significantly higher levels of all forms of violence more intensely and frequently and are subjected to such violence by a greater number of perpetrators (WWDA 2007). Their experiences of violence last over a longer period of time, and more severe injuries result from the violence (Dowse et al 2013).

However, there remains a significant lack of awareness and understanding of the extent, nature, incidence, and impact of gendered disability violence at the individual, community, service provider, and criminal justice system levels, along with the violence prevention public policy environment (Dowse et al 2013, WWDA et al 2013).

Violence perpetrated against women and girls with disabilities falls through a number of legislative, policy and service delivery ‘gaps’ as a result of the failure to understand the intersectional nature of the violence that they experience, the vast circumstances and spaces in which such violence occurs, and the multiple and intersecting forms of discrimination which make them more likely to experience, and be at risk of, violence.

Current policies and discourses in Australia are predominantly focused on addressing and preventing ‘domestic/family violence’. Recent events, (such as the Victorian Government announcement of a Royal Commission into Family Violence; the Senate Inquiry into Domestic Violence; the profile and media coverage of family violence campaigner Rosie Batty, and so on) have been successful in placing ‘domestic/family violence’ firmly onto the national agenda and into the consciousness of the public. Whilst this is welcomed and arguably long overdue, it presents both risks and challenges, in that the focus on narrow conceptual understandings of ‘domestic/family violence’ as spousal and/or intimate partner violence, risks seeing other forms of violence against women (such as those identified with gendered disability violence) become further obscured, resulting in their marginalisation in policies and service responses designed to address and prevent violence against women.

The current work to develop a National Framework to Prevent Violence Against Women is a critical element in addressing violence against women. It provides a valuable opportunity to remedy the past discriminations by developing and implementing a Framework from a human rights model and approach to ensure equality of outcomes for **all** women.





## 3 Understanding violence against women and girls with disabilities

In order to prevent violence against women and girls with disabilities, and to accomplish any appreciable reduction of such violence, it is critical to understand and respect its complexity and specificity. One of the reasons that violence against women and girls with disabilities too often goes unidentified and unaddressed is the limited understanding of the nature of gendered disability violence, which is not encompassed in either historic or contemporary definitions and understandings of gendered violence. In addition, legislation, policy and service responses in Australia that aim to address and prevent violence against women (including women with disabilities) have shown limited capacity to fully operationalise a comprehensive human rights frame. The interrelationship between these two issues has wide ranging consequences for the legislative, policy and service landscape, which continues to be fragmented, partial and circumscribed in its capacity to fully address all forms of violence perpetrated against women and girls, including those with disabilities. Most significantly this results in ongoing high levels of vulnerability to harm for many women, constituting a failure to protect their human rights to live free from violence, abuse, exploitation and neglect.

This section of the paper provides a brief overview of violence against women and girls with disabilities, including the key factors that contribute to this violence.

### 3.1 Who are women and girls with disabilities?

Women and girls with disabilities make up approximately 20% of the population of Australian women, equating to about two million people. Women and girls with disabilities come from a diverse range of backgrounds, lifestyles and beliefs including from Aboriginal and Torres Strait Islander backgrounds and from culturally and linguistically diverse communities. Some are in heterosexual relationships; some in lesbian relationships; some identify as bisexual, transgender, queer or intersex, and some are single. Many are mothers, some are in paid work, and many have no paid work. They experience a range of impairments that impact on their lives in different ways. These may include medical and/or health conditions, and/or sensory, physical, cognitive and psychosocial impairments, singly or in combination (Dowse et al 2013).

The ways in which disability is understood has implications for responses to women and girls with disabilities at risk of, or experiencing, violence. In recent decades focus has moved beyond simply considering an individual's body, intellect or behaviour to examine the experience of disability in the context of a more complex set of social, political, material and cultural relationships (Meekosha & Dowse 2007) and to recognise the human rights of people with disabilities. In understanding violence against women and girls with disabilities, it is therefore critical to consider the specific intersections that some women and girls with disabilities face due to the place and space they occupy in society. Poverty, race, ethnicity, religion, language and other identity status or life experiences can further increase the risk of group or individual violence against women and girls with disabilities (Ortoleva & Lewis 2012).

## 3.2 What is violence against women and girls with disabilities?

Across Australia, there is no uniform definition or consensus as to what constitutes violence against women. It is generally conceptualised in the context of ‘domestic’, ‘spousal’, ‘intimate partner’ or ‘family’ violence, which frequently excludes the violence that women with disabilities experience in the many settings they live, occupy and experience (Commonwealth of Australia 2010).<sup>5</sup> The legal definition of ‘domestic violence’ in Australia varies across jurisdictions. Some definitions are more inclusive than others. However, despite the many and varied definitions within the various laws and policy frameworks of what constitutes ‘domestic violence’, ‘family violence’, and ‘domestic relationships’, most do not contain definitions which do justice to, nor encompass, the range of settings in which women and girls with disabilities live, occupy or experience, such as institutions or service settings. Nor do they contain definitions which capture the range of relationships and various dimensions and experiences of violence as experienced by women and girls with disabilities, which may include the relationships they have with support workers, co-residents with disabilities and so on (Frohman 2011, Frohman & Swift 2012).

Although women and girls with disabilities experience many of the same forms of violence that all women and girls experience, including domestic/family violence and sexual assault, when gender and disability intersect, violence has unique causes, takes on unique forms and results in unique consequences (Manjoo 2012, Dowse et al 2013, Frohman 2014). Women and girls with disabilities also experience forms of violence that are particular to their situation of social disadvantage, cultural devaluation and increased dependency on others (Swift 2013).

Violence against women and girls with disabilities includes physical, sexual, psychological, and economic violence and abuse as well as institutional violence, chemical restraint, forced or coerced sterilisation, forced contraception, forced or coerced psychiatric interventions, medical exploitation, withholding of or forced medication, violations of privacy, forced isolation, seclusion and restraint, deprivation of liberty, denial of provision of essential care, humiliation, and harassment (WWDA 2010, WWDA 2004, Chenoweth 1997, Dowse et al 2013). In addition to physical, sexual, psychological, and economic violence and abuse, women and girls with disabilities also face unnecessary institutionalisation, denial of control over their bodies, lack of financial control, denial of social contact, employment and community participation, and denial of the right to decision-making (INWWD 2011, WWDA 2010, Cattalini 1993). Importantly, a human rights approach to preventing violence against women and girls with disabilities does not ‘exclude’ particular forms of violence experienced by them, although it does recognise those forms of violence that affect them disproportionately (such as forced sterilisation and forced abortion).

Understanding the vast array of ‘settings’ and ‘places’ in which women with disabilities reside and/or receive services, is a fundamental element in conceptualising gendered disability violence. For example, as well as those women and girls with disabilities in Australia who live in traditional domestic settings including private and family dwellings, large numbers of women with disabilities still reside in and receive support in a range of ‘institutional’ and/or ‘service’ settings, such as group homes, supported residential facilities, licenced and un-licenced boarding houses, psychiatric/mental health community care facilities, residential aged care facilities, hostels, hospitals, prisons, foster care, respite facilities, cluster housing, congregate care, special schools and out-of-home care services. Women and girls with disabilities who experience these types of settings are at particular and significant risk of violence, abuse, neglect and exploitation. Yet violence perpetrated against them in these settings remains outside the current legislative and policy frameworks and responses to preventing and addressing violence against women in Australia. Instead, such violence is typically detoxified through service setting responses that identify the violence as a workplace issue to be addressed (French et al 2010), rather than a human rights violation and potential criminal act.

<sup>5</sup> The National Plan to Reduce Violence Against Women and their Children 2010-2022 [The National Plan], Australia’s primary response to addressing violence against women in Australia, conceptualises ‘domestic violence’ as acts of violence that occur between people who have, or have had, an intimate relationship, with the central element of domestic violence being an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. The National Plan refers to ‘family violence’ as violence between family members, as well as violence between intimate partners. It involves the same sorts of behaviours as domestic violence, and as with domestic violence, only some aspects of family violence are criminal offences.



For women and girls with disabilities, this means, in effect, that their experiences of violence are not properly recognised across the legal and service systems, they are given less protection than their counterparts who do not have disabilities, and the likelihood of them benefiting from integrated and coordinated responses, including prevention, is compromised (Frohman & Cadwallader 2014).

### 3.2.1 A human rights approach to conceptualising violence against women

Discrimination against women provides a breeding ground for tolerance of violence against them. A human rights approach to conceptualising violence against women recognises that violence is a form of discrimination. ‘Discrimination’ in this context is understood as having multiple forms that combine to significantly heighten the risk of some women and girls to violence. Critically, this reflects an understanding that discrimination and violence against women is not just a matter of ‘inter-gender inequality’ between women and men, but also a matter of ‘intra-gender inequality’ among women (Manjoo 2011). To date, conceptual understandings of the causes of violence against women have “failed to provide a comprehensive understanding of how various forms of discrimination, beyond a male/female gender binary, contextualize, exacerbate, and correlate to high levels of violence in given societies. The lack of an intersectional approach can lead to the reinforcing of one form of discrimination in attempts to alleviate another” (Manjoo 2011).

A human rights approach to conceptualising violence against women underscores the interdependence and indivisibility of civil, political, economic, social and cultural rights. It situates violence against women on a continuum that spans interpersonal and structural violence; acknowledges the structural aspects and factors of discrimination, which includes structural and institutional inequalities; and analyses social and/or economic hierarchies between women and men and also among women. In so doing, it explicitly interrogates the places where violence against women coincides with multiple and intersecting forms of discrimination and their attendant inequalities (Manjoo 2011). A human rights approach therefore, specifically acknowledges that women and girls with disabilities experience multiple and intersecting forms of discrimination and this is no different when they become victims of gender-based violence (Council of Europe 2013). These multiple

and intersecting forms of discrimination cannot be ‘disconnected’ from each other when endeavouring to prevent and address violence against women and girls with disabilities.

Embedding a human rights perspective into conceptualising violence against women and girls with disabilities is therefore critical in any and all efforts to preventing and addressing such violence. This requires broadening the current way of thinking about how we frame what violence against women encompasses. It also requires understanding that gender-based violence is not only violence directed against a woman because she is a woman, but is also violence **that affects women, including ‘sub-groups’ of women, disproportionately** (Council of Europe 2013). Embedding a human rights perspective into conceptualising violence against women and girls with disabilities means recognising that women and girls with disabilities experience, and are at greater risk of experiencing violence, injury, abuse, neglect or negligent treatment, maltreatment or exploitation. It means recognising that, irrespective of a disabled woman’s place of residence, or setting in which they live, occupy or experience, they experience and are at greater risk of violence directed against them **because they are women**, and also experience and are at greater risk of forms of violence **that affect them disproportionately**.

Therefore, before we can ‘prevent’ and or ‘address’ violence against women and girls with disabilities, we must be clear about what it is. Violence against women and girls with disabilities is:

- ▶ a gross violation of human rights;
- ▶ a form of disability discrimination, and a form of gender-based discrimination;
- ▶ gendered disability violence, which is violence directed against a woman because she is a woman and which is shaped by the disability context. This violence affects women with disabilities disproportionately as individuals and as a group;
- ▶ all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

- ▶ all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit/setting or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim; and/or irrespective of the nature of the relationship between victim and perpetrator;
- ▶ inclusive of those acts of violence and abuse which are more unique to women and girls with disabilities and that often occur in the context of, or as a result of, the settings in which they live, occupy, and/or experience and/or the relationships they experience within these settings.

### 3.3 Prevalence and incidence

There is currently no comprehensive strategy or mechanism in place at the national level that captures the prevalence, extent, nature, causes and impact of violence against women and girls with disabilities in the range of settings in which they reside or receive support services. These major gaps in the evidence base stem from the fact that there are multiple and conflicting understandings of disability and violence within the policy arena. The Personal Safety Survey (PSS), the key national data collection instrument aimed at capturing prevalence and type of violence, excludes women who reside in settings other than private dwellings and those who have communication impairments which would require the presence of a third party to participate in the survey. These methodological restrictions mean that the PSS misses a very significant proportion of those women with disabilities who are known to be at the highest risk of experiencing violence. Despite this lack of statistically verified evidence, it is now well established that violence against women and girls with disabilities in Australia is far more widespread than violence amongst the general population. It is significantly more diverse in nature and more severe than for women in general. (Dowse et al 2013, WWDA et al 2013, Victorian Equal Opportunity and Human Rights Commission 2014).

Compared to their peers, women with disability experience substantially higher levels of all forms of violence and are subjected to such violence by a greater number of perpetrators (WWDA 2007). Women with disability are 40% more likely to be the victims of domestic violence than women without disability (Brownridge 2006), and more than 70% of women with disability have been victims of violent sexual encounters at some time in their lives (Frohman 2014). Women with disabilities in residential, institutional and service settings frequently experience sustained and multiple episodes of violence (particularly sexual violence) (Attard & Price-Kelly 2010). Twenty per cent of women with disability report a history of unwanted sex compared to 8.2% of women without disability (Dowse et al 2013), and the rates of sexual victimisation of women with disability range from four to 10 times higher than for other women (Dowse et al 2013). More than a quarter of rape cases reported by females in Australia are perpetrated against women with disabilities (Heenan & Murray 2006). Ninety per cent of Australian women with an intellectual disability have been subjected to sexual abuse, with more than two-thirds (68%) having been sexually abused before they turn 18 years of age (Australian Law Reform Commission 2010).

A national survey undertaken in 2013, 6 found that violence is present in the lives of approximately twenty-two per cent of women and girls with disabilities who had accessed service support<sup>7</sup> in the preceding 12 months. Given that many women and girls with disabilities do not and/or cannot and/or are prevented from using and/or accessing services, the prevalence of violence against women and girls with disabilities is acknowledged to be substantially higher than the already alarming 22 per cent suggested by the national survey findings (Dowse et al 2013).

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6 The 'Stop the Violence Project' (STVP) emerged from WWDA's long standing commitment to addressing one of the most pressing issues for its membership: violence against women and girls with disabilities in Australia. Managed and implemented by WWDA, in conjunction with the University of New South Wales (UNSW) and People with Disabilities Australia (PWDA), the project was national in scope and its intent was 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 disabilities.

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7 Services included those in the disability, family violence and sexual assault sectors, housing/ homelessness sector, the youth services sector, child welfare, employment and training, health, aged care and the justice sector.



It is widely recognised that any available data relating to incidence and prevalence of violence against women with disabilities, does not give the true picture of the level of risk and prevalence of violence and abuse, due to many factors, including the barriers experienced by women with disabilities to reporting violence (SafePlace Institute 2000). Importantly, the vast array of ‘settings’ and ‘places’ in which women with disabilities live, occupy, and/or experience, also impedes the possibility of capturing the true prevalence and incidence of violence perpetrated against them.

### 3.4 The factors contributing to violence against women and girls with disabilities

For women and girls with disabilities, structural inequality and disability discrimination are significant determinants of violence. It is important to note that structural inequality is intersectional, meaning that the various elements of the discrimination or inequality they may face – as women, as people with disability, as Aboriginal or Torres Strait Islander people – intersect and interact to produce very different experiences of violence for different women. Understanding the interactions between gender, ability, race and other elements of structural inequality is essential to an adequate response (Frohman & Cadwallader 2014).

Research (VicHealth 2007, Action Aid UK 2014, UN Women 2014) shows that the most significant determinants of violence against women are:

- ▶ the unequal distribution of power and resources between men and women, and institutional, cultural and individual support for (or weak sanctions against) gender inequality; and,
- ▶ an adherence to rigidly defined gender roles expressed institutionally, culturally, organisationally and individually.

These factors are frequently exacerbated and altered for women and girls with disabilities due to the structural inequality and multiple and intersecting forms of discrimination they face. Women and girls with disabilities have fewer opportunities, lower status

and less power and influence than men and boys with disabilities (WWDA 2010). Gender-based assumptions and expectations place women with disability at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions (Frohman & Cadwallader 2014, Frohman 2014).

A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. However as noted by the 2013 national ‘*Stop the Violence Project*’ (STVP), women and girls with disabilities are at high risk of gendered disability violence based on social stereotypes and biases that attempt to dehumanise or infantilise them, exclude or isolate them, target them for sexual and other forms of violence, and put them at greater risk of institutionalised violence (Dowse et al 2013, WWDA et al 2013). A combination of factors at the societal and individual level – such as exclusion from participation in community life due to prejudices, stigma and discrimination, lack of access to quality education, employment and livelihood, as well as access to healthcare and other support services and resources – result in marginalisation, disempowerment, dehumanisation and the systemic denial of the rights of women and girls with disability (Dowse et al 2013).

Research has found that there remains a significant lack of awareness and understanding of the extent, nature, incidence, and impact of gendered disability violence at the individual, community, service provider, and criminal justice system levels (Dowse et al 2013, WWDA et al 2013). Women and girls with disabilities are regularly deprived of the information, education and skills to recognise and address violence. Those who live, occupy, and/or experience institutional, residential and service settings are often taught and ‘rewarded’ for, unquestioning compliance. In such settings, criminal behaviours are often normalised. Many women and girls with disabilities do not recognise the violence perpetrated against them as a crime, are unaware of how to seek help and support; or are actively prevented from seeking help and support. There is a dearth of accessible information and education resources about violence against women and girls with disabilities – for the women themselves, the service sector, and the broader community (Frohman & Cadwallader 2014).

The empowerment of women is vital in any framework to tackle violence against women and girls, and this is even more potent for women with disabilities, who have made it clear that empowerment for them comes from speaking and/or acting in their own interests; the presence of a collectivity and a basis in self-determination; and a discourse of human rights (Frohman 2011). 'Empowerment' in the context of women and girls with disabilities, means empowerment in **all** aspects of life, including political and economic empowerment. This reflects the greater aim of achieving gender equality by increasing women's agency and reducing their vulnerability to violence (Council of Europe 2013). Organisations, groups and networks of women with disabilities play an essential role in efforts to promote the rights of women and girls with disability to freedom from **all** forms of violence.

Women with disabilities have identified a raft of factors that contribute to the pervasive and extensive violence perpetrated against them. It is outside the scope of this paper to examine all these factors in detail, however, some of the key factors include:

- ▶ Poverty and lack of economic independence
- ▶ Place of residence/Service Setting
- ▶ Exclusion from the labour market
- ▶ Dependence on others
- ▶ Credibility and fear of disclosure
- ▶ Lack of access to the criminal justice system
- ▶ Lack of awareness and knowledge
- ▶ Lack of access to crisis accommodation and support
- ▶ Service system issues
- ▶ Lack of participation, access to decision-making, and representation

## 3.5 The impact

Like most women who experience violence, the impact and effects for women and girls with disability are profound, long-term and wide-ranging – with the impact over time of different types of violence and of multiple episodes found to be cumulative (WWDA 2007). Of significance is the fact that the consequences of violence against women and girls with disability are pervasive, due to the length of time that they endure such violence, the severity of the violence, the fact there are often multiple perpetrators of the violence, and that many women and girls with disabilities are unable to ever disclose the violence or seek help to stop it. Even when they do disclose, women and girls with disabilities have far less chance of being believed when reporting sexual assault, domestic violence, and other forms of violence, than other women and girls (Frohman 2011). Research has also found that discriminatory attitudes and negative police culture, including the tendency to blame the victim; refusal to investigate allegations of violence; treating crimes of violence as a 'service incidents'; failing to make reasonable adjustments; assuming that a prosecution will not succeed because the court may think the person lacks credibility; along with negative or paternalistic stereotypes of people with disability – contributes to the pervasive and extensive violence perpetrated against women and girls with disabilities (Frohman & Cadwallader 2014, Victorian Equal Opportunity and Human Rights Commission 2014).

Crimes of violence committed against women and girls with disability therefore often go unreported, and when they are, they are either dismissed, ignored, covered up by service staff and/or management, inadequately investigated, remain unsolved or result in minimal sentences (Frohman 2014, Frohman & Cadwallader 2014, French et al 2010).



## 4 Implications for policy and practice: the legislative, policy and service response vacuum

Violence perpetrated against women and girls with disabilities continues to fall through legislative, policy and service response ‘gaps’ as a result of the failure to understand the intersectional nature of the violence that they experience, and the multiple and intersecting forms of discrimination which make them more likely to experience, and be at risk of, violence.

In Australia, there is no national, coordinated legislation to prevent and address violence against women, including family/domestic violence (Australian Government 2012). No existing Commonwealth or State/Territory domestic/family violence legislation is framed in a human rights framework setting it in the context of Australia’s obligations to the core international human rights treaties to which it is a party. Domestic and family violence legislation and policy frameworks differ across States and Territories providing different levels of protection and definitions of what constitutes ‘family violence’, ‘domestic violence’ and what constitutes a ‘domestic relationship’.

The lack of agreed definitions and conceptual understandings of what constitutes ‘violence against women’, ‘family violence’, ‘domestic violence’, ‘domestic relationship’ and so on, has serious implications for women and girls with disabilities. Research has found that the lack of a clear definition and legal recognition of the violence against women and girls with disabilities in legislation and policy frameworks results in low priority being given to the issue within service environments, where the service sector is largely governed by a range of specific legislative and policy frameworks designed to ensure effective service delivery that addresses one area alone such as disability or gendered violence (Dowse et al 2013, WWDA et al 2013). The Australian Law Reform Commission (ALRC) in its 2012 *National Inquiry into Family Violence and Commonwealth Laws*, (Australian Law Reform Commission 2012) recommended that in relation to people with disability, the term ‘family violence’ should be inclusive of the types of family violence experienced by people with disabilities, including: domestic, sexual or physical assault; stealing and financial exploitation including misappropriation

of social security payments and other benefits and concessions; neglect and deprivation of things such as shelter, nutrition and essential medical treatment; and other specific types of violence and abuse such as withholding equipment, food and medication; and forced sterilisation and abortion (Australian Law Reform Commission 2012). Conceptualising ‘family violence’ in this way is critical for women and girls with disabilities, as it not only helps to ensure legal protection but importantly, helps to promote a culture where no form of violence against women with disabilities is tolerated.

The problem of narrow and non-inclusive conceptual understandings of what constitutes ‘violence against women’, and/or ‘gender-based violence’ and/or ‘a human rights approach to addressing violence against women’, is evident in current national policy frameworks to address violence against women, and to advance the rights of people with disabilities. For example, the *National Plan to Reduce violence against women and their Children 2010–2022* has significant limitations, in that it has little emphasis on girls with disabilities, it focuses on traditional notions of domestic/family violence (ie: intimate partner violence) and sexual assault, and fails to address the many other forms of violence perpetrated against women and girls with disabilities (such as violence in institutions and service settings; sexual and reproductive rights violations; restrictive practices; seclusion and restraint; deprivation of liberty). These forms of violence currently fall ‘outside’ the scope of the National Plan. Whilst the second three year action plan of the National Plan [*Moving Ahead 2013-2016*], does prioritise women with disabilities by providing the opportunity to ‘prioritise and implement key outcomes from the Stop the Violence Project’ (Department of Social Services 2014), the STVP was itself, limited in scope as its contracted focus was on building the evidence base to reform service provision for women with disabilities who are experiencing or at risk of violence. The Project was unable to ‘address the myriad issues and complexities inherent in the multiple forms of violence perpetrated against women with disabilities’ (Dowse et al 2013, WWDA et al 2013).

The *National Disability Strategy* (NDS) sets out the national policy framework for guiding Australian governments to meet their obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). The NDS is supported by three Implementation Plans developed over its ten-year life span. The NDS is not gendered, and contains limited measures to address violence against people with disabilities, identifying only that there is a need to ‘develop strategies to reduce violence, abuse and neglect of people with disabilities’. The first NDS Implementation Plan – *Laying the Groundwork: 2011–2014* – contains only **one** specific action to achieve this, which is to: ‘ensure that the *National Plan to Reduce violence against women and their Children 2010–2022* and the *National Framework for Protecting Australia’s Children* have priority action to improve the safety and wellbeing of women and children with disability’ (Department of Families, Housing, Community Services and Indigenous Affairs 2013).

Neither the *National Plan* or the NDS are embedded in a comprehensive human rights framework. For example, The *National Plan* is only linked to *Convention on the Elimination of Discrimination against Women* (CEDAW), and so is primarily focused on meeting human rights obligations in relation to gender discrimination. The *National Disability Strategy* (NDS) is only linked to the *Convention on the Rights of Persons with Disabilities* (CRPD), and so is primarily focused on meeting human rights obligations in relation to disability discrimination. A human rights approach to the prevention of violence against women, including women with disabilities, requires such policy frameworks to be developed **and** operationalised in a comprehensive human rights framework (UN Committee on Economic, Social and Cultural Rights 2009). This means recognising that prevention of violence against women is an obligation in relation to gender rights, civil and political rights; economic, social and cultural rights; disability rights; child rights; as well as rights to be free from torture (and other cruel, inhuman or degrading treatment or punishment); and racial discrimination.

This type of policy ‘siloeing’, and lack of understanding of the intersectional nature of violence against women and girls with disabilities, contributes to women with disabilities who experience, and who are at risk of experiencing violence, falling through violence prevention legislation, policy, program and service delivery gaps (Dowse et al 2013). The multiple forms and complex nature of violence perpetrated against women and girls with disabilities currently sit in a legislative, policy and service response vacuum.

Although Australia has clear obligations under international human rights law, to address and prevent violence against women, violence against women and girls with disabilities, in all its forms, remains widespread and largely unaddressed in Australia.

Several of the international human rights treaty monitoring bodies have repeatedly expressed their deep concern about the high levels of violence experienced by women and girls with disabilities in Australia. They have found that the inter-connection between violence against women and discrimination on the basis of gender and disability remains unaddressed (Manjoo 2012). They have raised serious concerns about the low rates of reporting, prosecutions and convictions, the lack of data, the lack of inclusive legislation, policies, services and support, and lack of targeted measures to prevent and address violence against disabled women and girls. The monitoring bodies have called on Australian Governments to take **urgent** measures to address violence and abuse experienced by women and girls with disabilities, particularly those living in institutional, residential and/or service settings. They have urged Australian Governments to ensure access for women with disabilities to an effective, integrated response system, and include a more **comprehensive** consideration of women with disabilities in policies on the prevention of gender-based violence. Importantly, the treaty monitoring bodies have recognised the multiple and intersecting forms of discrimination experienced by women and girls with disabilities, along with the multiple and severe forms of violence perpetrated against them, and have called on Australian Governments to take immediate steps to end such violence and discrimination (Frohman 2014, Frohman & Cadwallader 2014).



International approaches to gendered violence prevention adopt a comprehensive human rights perspective, where intersectional experiences of gendered violence are a central concern in recognition that multiple identity positions (including disability, race, ethnicity, sexual orientation, refugee status and so on) increase the likelihood, nature and impact of violence. This is not the case in the Australian context, where legislation, policy and service responses tend to view women with disabilities as an additional group whose needs are exceptional or additional to the central prevention agenda. Compounding this in the Australian context is the [largely mistaken] belief that frameworks of disability policy and provision have given attention to gendered violence. Recent events in Victoria (as depicted in ABC Four Corners episode *'In Our Care'* and which have resulted in an Ombudsman's inquiry into how abuse in the disability sector is reported and investigated) provide a stark reminder that disability policy frameworks are currently inadequate in encompassing either gender or violence issues, let alone the intersection of the two. In practice, this means that efforts and approaches to prevent violence against women in Australia are not comprehensive, are piecemeal and inconsistent in definitions and scope, continue to focus predominately on protection from traditional forms of domestic/family violence and therefore fail to provide a coordinated and integrated approach to combating all forms of violence perpetrated against women and girls (Frohman & Cadwallader 2014). Without a grounding in a comprehensive human rights frame, current approaches to violence prevention run the risk of reinscribing the marginalisation of gendered disability violence, resulting in the inadvertent perpetuation of the systemic violence and abuse experienced by women with disabilities in a wide range of settings.





## 5 Implications for the development of the Framework

International human rights law condemns violence against women in all its forms, whether it occurs in the home, schools, in institutions, the workplace, the community or in other public and private institutions, and regardless of who perpetrates it (United Nations General Assembly 2006). Australia is a party to a number of international and regional human rights instruments which clearly articulate the human rights context and imperative to preventing and addressing violence against women, including the structural causes of such violence, and the multiple and intersecting forms of discrimination which make particular groups of women more at risk of, and more likely to experience violence.

### 5.1 A Comprehensive Human Rights Framework and Approach

To ensure the *National Framework to Prevent Violence Against Women* is set in a comprehensive human rights framework that will prevent violence against women and girls with disabilities, the Framework should be developed to:

- a) be clearly linked to relevant international human rights standards, including the international human rights treaties to which Australia is a party (Manjoo 2011).
- b) underscore the universality, interdependence and indivisibility of civil, political, economic, social and cultural rights (Manjoo 2011).
- c) embed the core human rights principles of participation; accountability; transparency; non-discrimination; equality, and empowerment of women and girls (UN Women et al 2012).
- d) be universally responsive to the intersections of gender and disability, and also integrate specific, targeted measures to reach women and girls with disabilities in all settings (Council of Europe 2013).
- e) address the targeted, compounded and structural discrimination that combines to increase the vulnerability of women and girls with disabilities to violence (UN General Assembly 2011).
- f) have universal applicability for all women, whilst clearly recognising and targeting specific 'vulnerable' groups and addressing the most severe forms of gender-based violence (eg: forced sterilisation; forced abortion; forced marriage; female genital mutilation; sexual violence; domestic violence) (Council of Europe 2013).
- g) articulate the critical and central role of civil society organisations, women's organisations and groups and other relevant actors in the prevention of violence against women (UN Women et al 2012).
- h) ensure that women with disabilities are at the centre of efforts to hold governments accountable for implementing international standards guaranteeing the right to be free from violence and non-discrimination (UN General Assembly 2011).
- i) articulate the elements and measures of integration, coordination, monitoring, evaluation, and due diligence (Council of Europe 2013, UN General Assembly 2011).

## 5.2 Prevention Measures and Strategies

A human rights approach to the prevention of violence against women recognises and demonstrates that responses to violence against women cannot be considered in isolation from the context of individuals, households, settings, communities or States. Discrimination affects women in different ways depending on how they are positioned within the social, economic and cultural hierarchies that prohibit or further compromise certain women's ability to enjoy universal human rights (Manjoo 211). This approach embeds critical aspects of intra-gender discrimination and inequality into the violence prevention effort.

To ensure the *National Framework to Prevent Violence Against Women* embeds and integrates a human rights approach to measures to prevent gendered disability violence, the Framework should:

- a) Adopt a due diligence framework to operationalize violence against women as a human rights violation and a form of discrimination. This can be derived from the example provided by the Abul Aziz & Moussa (2014) "Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women" and the Council of Europe (2013) "Convention on preventing and combating violence against women and domestic violence: Explanatory report".
- b) Integrate and standardise definitions and conceptual understandings of gender-based violence which are inclusive of the experiences of **all** women and girls with disabilities, irrespective of their place of residence, or setting in which they live, occupy, experience and/or receive service support. This would require integration of national disability framework related policies (including the NDS and the NDIS Quality and Safeguarding Framework) as outlined in the Second Action Plan: Moving Ahead.
- c) All approaches recognise that gender-based violence is not only violence directed against a woman because she is a woman, but is also violence that affects some women disproportionately (Council of Europe 2013), and that key among those are women with disabilities who are disproportionately affected by specific forms of violence.
- d) Recognise what women and girls with disabilities are more likely to experience, and be at risk of, violence due to the multiple and intersecting forms of discrimination to which they are subject.
- e) Prevention measures must have at their centre both inter-gender and intra-gender inequality and discrimination (Manjoo 2011).
- f) Prevention measures connect the causes and consequences of violence against women with the multiple and intersecting forms of discrimination.
- g) Recognise that multifaceted prevention strategies and measures (UN Women et al 2012) are required in order to address the multiplicity of forms of violence against women as well as the fact that violence frequently occurs at the intersection of different types of discrimination.
- h) Ensure prevention activities include positive obligations – beyond awareness-raising, education, training and sensitisation of the media – to include Government policy and legislative reforms to promote gender equality across all sectors and jurisdictions.
- i) Include women with disabilities at the centre of the planning and development of prevention measures and activities that best address their particular needs and rights in relation to violence in their specific contexts and settings.
- j) Ensure that mechanisms include women with disabilities in the planning, implementation, evaluation and monitoring of all prevention efforts including at the governance level of the Framework itself and in localised and specific activities.
- k) Avoid re-victimisation by ensuring that prevention measures place the human rights of all victims at the centre of strategies to prevent violence against women (Council of Europe 2013).



## 5.3 Governance and Coordination

Effective prevention frameworks to address violence against women, clearly articulate that essential, strategic, coherent and co-ordinated multi-sectoral and interagency interventions are required to effectively prevent and address violence against women. They also have institutional mechanisms to monitor and assess implementation of such Frameworks, which includes monitoring and assessing the implementation and effectiveness of relevant laws, policies and other programs to address violence against women. International research has found that to date, most countries vest the responsibility for governance and coordination of violence prevention frameworks and plans, with one national mechanism, most typically Ministries and/or Government Departments for Women (Abdul Aziz & Moussa 2014). However, research has found that there is a risk in this approach, in that other agencies and sectors may not prioritise implementation of violence prevention measures and strategies, or allocate sufficient resources to the violence prevention task (Abdul Aziz & Moussa 2014).

To ensure the *National Framework to Prevent Violence Against Women* is a holistic, comprehensive, integrated framework, based on international human rights law; detailed enough to be rendered, effective and implementable; inclusive and reflective of all forms of violence against women in the context of individuals, households, settings, communities and States, and framed from the perspective of Australia's international human rights obligations to prevent all forms of violence against women, the Framework should:

- ▶ Be governed and monitored by an independent monitoring body made up of independent and qualified experts in the fields of human rights, gender equality, discrimination, violence against women, criminal law, and should include as a priority, representatives from relevant non-government and civil society organisations;
- ▶ Ensure that there is a mechanism within national and state/territory parliaments to monitor the Framework, including its implementation and evaluation. This will help to ensure that the issue of violence against women remains on the political agenda and that legislative and policy reforms are recognised as a critical element of the violence prevention agenda.



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