



WOMEN
WITH
DISABILITIES
AUSTRALIA
(WWDA)

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

**DRAFT GENERAL RECOMMENDATION NO. 19 (1992):
ACCELERATING ELIMINATION OF GENDER-BASED VIOLENCE
AGAINST WOMEN**

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WWDA acknowledges the traditional owners of the land on which this publication was produced. We acknowledge Aboriginal and Torres Strait Islander people's deep spiritual connection to this land. We extend our respects to community members and Elders past, present and becoming.

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AWARDS

-  **Winner**
National Human Rights Award 2001
-  **Winner**
National Violence Prevention Award 1999
-  **Winner**
Tasmanian Women's Safety Award 2008
-  **Nominee**
French Republic's Human Rights Prize 2003
-  **Nominee**
UN Millennium Peace Prize for Women 2000

DRAFT CEDAW GENERAL RECOMMENDATION NO. 19

- 1 Women With Disabilities Australia (WWDA) thanks the *Committee on the Elimination of Discrimination against Women* for the opportunity to contribute this brief submission to the Committee's Draft Update of General Recommendation No. 19: Violence against women.
- 2 Women With Disabilities Australia (WWDA) is the national cross-disability Disabled Person's Organisation (DPO) for women and girls with all types of disability in Australia. It operates as a transnational human rights organisation and is run by and for women with disability. WWDA's work is grounded in a human rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. WWDA represents more than 2 million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is internationally recognised for its global leadership in advancing the human rights of women and girls with disability.
- 3 WWDA congratulates the CEDAW Committee on its work to update the General Recommendation No. 19: Violence against women. Our organisation is firmly of the view that an updated General Recommendation No.19 has an urgency for women who experience multiple and intersecting forms of discrimination and who experience higher rates of all forms of violence - particularly women with disability; Indigenous women, and women from culturally and linguistically diverse backgrounds - who are recognised through evidence based research, to experience exclusion from mainstream services designed to respond to, and address violence against women.¹
- 4 International human rights law now recognises and upholds people with disability as equal and active subjects of their rights - as opposed to objects or burdens to be cared for or cured.² The prohibition of discrimination and the promotion of equality are fundamental human rights principles - enshrined in both international human rights law and in domestic legislative and policy and frameworks to advance the rights of people with disability, and to end all forms of discrimination against women. However, women and girls with disability in Australia – and arguably the world over - have failed to be afforded, or benefit from, these provisions in international human rights law and domestic frameworks. Instead, they represent one of the most excluded and marginalised groups of women, subject to widespread discrimination, systemic prejudice, paternalistic and ableist³ attitudes that denigrate, devalue, oppress, limit and deny their potential and their rights and freedoms.⁴ They are often not afforded dignity, recognition, respect, agency and/or autonomy.⁵
- 5 Women and girls with disability continue to be denied the right to participate in, and remain largely excluded from, decision-making, participation and advocacy processes, about issues that affect their lives and those of their families, communities and nations. Too often, they have their views ignored or disregarded in favour of 'experts', 'professionals', parents, guardians, and carers, as well as representatives of organisations not controlled and constituted by women with disability themselves.⁶
- 6 Through WWDA, run by and for disabled women and girls, women with disability in Australian have for the past two decades, consistently identified violence as the most urgent and unaddressed human rights issue they face.⁷ For decades, they have argued for national leadership and wide-ranging reforms in law, policy, programs and services to address the epidemic that is violence against them. Their calls for action have been echoed and affirmed by the international human rights treaty monitoring bodies and mechanisms

since 2005. A recent Senate Inquiry,⁸ investigating violence against people with disability in institutional and residential settings, found that violence against people with disability – particularly women and girls with disability – is so widespread and entrenched, that a Royal Commission is urgently warranted:

*The committee recommends that a Royal Commission into violence, abuse and neglect of people with disability be called, with terms of reference to be determined in consultation with people with disability, their families and supporters, and disability organisations.*⁹

- 7 Violence against women and girls with disability in Australia is far more extensive than violence amongst the general population and is significantly more diverse in nature and more severe than for women in general.¹⁰ Compared to their peers, women with disability 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.¹¹ Their experiences of violence last over a longer period of time, and more severe injuries result from the violence.¹²
- 8 The gendered nature of violence against people with disability sees more than 70% of women with disability having been victims of violent sexual encounters at some time in their lives.¹³ A staggering 90% of 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.¹⁴ Twenty per cent of women with disability report a history of unwanted sex compared to 8.2% of women without disability,¹⁵ and the rates of sexual victimisation of women with disability range from four to 10 times higher than for other women.¹⁶ More than a quarter of rape cases reported by females in Australia are perpetrated against women with disability.¹⁷
- 9 Women with disability are 40% more likely to be the victims of domestic violence than women without disability.¹⁸ Evidence indicates that every week in Australia, three women are hospitalised with a brain injury as a direct result of family violence.¹⁹ Violence is present in the lives of one in four women with disability who accessed some form of service support in Australia between 2012-13.²⁰ Eighty-five (85%) of women with mental health impairment report feeling unsafe during hospitalisation, 67% per cent report experiencing sexual or other forms of harassment during hospitalisation and almost half (45%) report experiencing sexual assault during an in-patient admission.²¹ Women comprise 74% of all elder abuse victims,²² and are more likely to experience elder abuse than males, at a rate two and a half times higher.²³
- 10 Women and girls with disability experience, and are at particular risk of, forms of violence that are recognised worldwide as not only egregious forms of violence against women, but also as practices which violate the absolute prohibition of torture and ill treatment.²⁴ Women with disability are more likely than men with disability and other women to face medical interventions to control their fertility, and experience significantly more restrictions, negative treatment,²⁵ and particularly egregious violations of their sexual and reproductive rights. They experience, and are more exposed to practices which qualify as torture or inhuman or degrading treatment, including state sanctioned practices such as forced sterilisation, forced abortion, and forced contraception.²⁶ They are more likely to be isolated and segregated within the range of settings in which they reside, are incarcerated, or receive support services;²⁷ are subjected to multiple forms and varying degrees of 'deprivation of liberty' and are more likely to be subjected to unregulated or under-regulated restrictive interventions and practices,²⁸ often imposed as a means of coercion, discipline, convenience, or retaliation by others.²⁹
- 11 For example, forced contraception through the use of menstrual suppressant drugs is a widespread, current practice in Australia, particularly affecting girls and women with intellectual and/or cognitive impairment.

It is a practice widely used in group homes and other forms of institutional settings, and is often justified as a way of reducing the 'burden' on staff/carers who have to 'deal with' managing menstruation of disabled women and girls.³⁰ Furthermore, women and girls with disability in Australia continue to experience, and be at risk of, other gross violations of their reproductive rights, such as forced sterilisation and forced abortion (often wrongfully justified by theories of incapacity and therapeutic necessity).³¹ Electroconvulsive therapy (ECT) performed on involuntary persons (ie: without that persons consent) indicates that in Australia *three* times more women than men are subject to the practice, across all age cohorts.³²

- 12 Women with disability represent more than 50% of the female prison population in Australia. More than half of all women incarcerated in Australian prisons have a diagnosed psychosocial disability and a history of sexual victimisation.³³ The rate of incarceration of Indigenous women with disability is higher than equivalent figures for men.³⁴ Indigenous women with disability are at risk of being detained indefinitely, often without conviction, in prisons and in forensic psychiatric units throughout Australia enduring periods of indefinite detention that in some cases exceed years.³⁵ Women with psychosocial disability and intellectual or learning disability are disproportionately classified as high security prisoners and are more likely to be in high security facilities, than other prisoners.³⁶
- 13 Regardless of setting or context, violence against women and girls with disability in Australia continues to be conceptualised, downplayed and 'detoxified' as 'abuse' or 'neglect' or 'service incidents,' or 'administrative infringements' or a 'workplace issue to be addressed'³⁷ - rather than viewed as 'violence' or crimes.³⁸ This is particularly the case in institutional and residential settings - including group homes, boarding houses, respite services, day support services, mental health facilities, and prisons - where violence perpetrated against women and girls with disability is rarely recognised or understood as 'violence', and more often than not, is deliberately minimised, trivialised, ignored, dismissed, excused, covered up, or normalised. The downplaying of violence against women and girls with disability is also a common response to women with disability experiencing violence perpetrated by a partner or carer - where the violence is often re-framed as an 'incident' and is then 'excused' or minimised because the woman has a disability, and she therefore must be to 'blame'.³⁹
- 14 Reframing crimes of violence as 'incidents' or as 'abuse' creates a greater potential for such 'incidents' to go undetected, unreported, and not investigated or prosecuted. For example, research suggests that disability service providers have wide discretion in determining whether an alleged 'incident' of sexual assault against women with disability justifies reporting the 'incident' to the police, even if there is a requirement of mandatory reporting.⁴⁰
- 15 Women and girls with disability are regularly deprived of the information, education, skills and supports required 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 and no action is taken against perpetrators. Many women and girls with disability do not recognise the violence perpetrated against them as a crime, are unaware of how to seek help and support; are actively prevented from seeking help and support; and/or are unlikely to find a pathway to safety even if they seek support. There is a dearth of accessible information and education resources about violence against women and girls with disability - for the women themselves, the service sector, and the broader community.⁴¹

- 16 Violence perpetrated against women and girls with disability 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.⁴² At the practical level, the norm is to use silo models and approaches of service delivery that address a narrowly defined set (or sub-set) of issues, and operate alongside other institutions which deliver services to another narrowly defined issue.⁴³
- 17 The lack of a clear definition and conceptual understanding of violence against women with disability at all levels 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 disability, and the likelihood of them benefiting from integrated and coordinated responses, including prevention, is substantially compromised.⁴⁴
- 18 Inclusive, consistent, and comprehensive definitions and conceptual understandings of 'violence' - which include the full variety of violent acts experienced by women and girls with disability, in the full range of settings and relationships experienced by them - are critical to ensure that women who have experienced violence, or are at risk of violence, have equal access to, and receive the support and assistance they require.
- 19 The multiple forms and complex nature of violence perpetrated against women and girls with disability currently sit in a legislative, policy and service response vacuum. What this means in practice, is that many women and girls with disability are not afforded the same protections and responses as others, and violence against women and girls with disability – in all its forms – is allowed to flourish with impunity. Despite overwhelming, indisputable and mounting evidence of the epidemic that is violence against women and girls with disability our governments at all levels consistently fail to act. In their apathy, indifference and inaction, they are subsequently complicit in, and provide de facto permission for, the commission of acts impermissible under the international human rights treaties to which Australia is a party.⁴⁵
- 20 **In the context of the epidemic that is violence against women and girls with disability, WWDA strongly recommends that the CEDAW Draft General Recommendation No.19 [accelerating elimination of gender-based violence against women] make *explicit* that States are obliged to address *all* forms of violence against *all* women - regardless of the setting/place in which it occurs, and regardless of who perpetrates it.**
- 21 One of the reasons that violence against women with disability goes unidentified and unaddressed is the limited understanding of its nature, which is not encompassed in either historic or contemporary definitions and understandings of gender-based violence. For example, in the Australian context, there remains a significant lack of awareness and understanding of the extent, nature, incidence and impact of violence against women with disability at the individual, community, service provider and criminal justice system levels, along with the violence prevention public policy environment.⁴⁶ Current gendered violence prevention policies and discourse are predominantly focused on addressing and preventing 'domestic' and 'family' violence – typically understood as intimate partner and/or spousal violence that occurs within the family setting between former or current spouses or partners.⁴⁷

- 22 Unless it is made explicit that States are obliged to address *all* forms of violence against *all* women, what emerges, as is the case in the Australian violence prevention public policy environment, is an apparent underlying assumption that ‘violence against women’ means ‘domestic and family violence and/or sexual assault’ and vice-versa. The focus on narrow conceptual understandings of ‘domestic and family violence as spousal and/or intimate partner violence has resulted in other forms of violence against women, (such as those identified with violence against women with disability), become further obscured, resulting in their omission or marginalisation in policies and service responses designed to address and prevent violence against women.⁴⁸ Importantly, conceptualising ‘violence against women’ principally as ‘domestic/family violence’ and sexual assault, hides the structural and institutional forms of violence related to law, the state and culture that women and girls with disability not only experience, but are more at risk of⁴⁹ – such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, restraint, and indefinite detention.⁵⁰
- 23 WWDA therefore strongly recommends that the CEDAW Draft General Recommendation No.19, make explicit that ‘violence against women’ must be conceptualised as a continuum that spans interpersonal and structural violence; acknowledges the structural aspects and factors of discrimination, including structural and institutional inequalities; and analyses social and economic hierarchies between women and men and *among* women.⁵¹
- 24 Conceptualising gender-based violence in a framework of equality and non-discrimination against women versus men (i.e. an *inter-gender* focus), leaves challenges in analysing *intra-gender* differences among women. Even though all women are at risk of experiencing violence, not all women are equally susceptible to acts and structures of violence.⁵² As the UN Special Rapporteur on Violence against women (its causes and consequences) has recently clarified:

the lack of recognition of intra-gender inequality and discrimination has led to the privileging of experiences of urban middle-class women, despite the importance of social location for women’s vulnerability to and experiences with violence. This leads to the experiences of all other women and also the impact of social location on women’s vulnerability to violence being obscured. The consequence is that programme designs and goals advanced in the interest of women may only reach the rights violations experienced by some women. More often than not, the women whose rights are protected are not the women whose social location renders them especially vulnerable to gender-based violence.⁵³

ENDNOTES

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- 20 The main types of violence experienced by the women included domestic violence (80%); emotional abuse (68%); sexual violence and abuse (63%); financial abuse (58%); the withholding of care (23%), and the withholding of medication (14%). Importantly, findings from the national ‘Stop the Violence Project (STVP) study provided data only on women and girls with disability who had accessed services. However, as highlighted by the STVP, it is highly likely that significant numbers of women and girls with disability who are experiencing or at risk of violence do not access any type of service. This suggests that the prevalence of violence against women and girls with disability is likely to be substantially higher. See: Dowse, L. et al (2013) OpCit.
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