



# Inquiry into family, domestic and sexual violence

Submission to the House Standing  
Committee on Social Policy and Legal  
Affairs'

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Women  
With  
Disabilities  
Australia  
(WWDA)

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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

#### Certificate of Merit

Australian Crime & Violence Prevention Awards 2008

#### Nominee

National Disability Awards 2017

## ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)

Women With Disabilities Australia (WWDA) is the award winning, national Disabled People's Organisation (DPO) for women and girls with all types of disability in Australia. The key purpose of WWDA is to promote and advance the human rights and freedoms of women and girls with disability. Our goal is to be a national voice for the rights of women and girls with disability and a national force to improve the lives and life chances of women and girls with disability.

WWDA represents more than two million disabled women and girls in Australia, has affiliate organisations and networks of women with disability in most States and Territories of Australia, and is internationally recognised for our global leadership in advancing the human rights of women and girls with disability. As a DPO, WWDA is managed and run by women with disability, for women and girls with disability.

WWDA is a founding member of Disabled People's Organisations Australia (DPO Australia) along with First People's Disability Network Australia, National Ethnic Disability Alliance, and People with Disability Australia. DPO Australia is an alliance of four national disabled people's organisations in Australia. The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interest, purpose and strategic priority.

### For more information about Women With Disabilities Australia (WWDA):

- [www.wwda.org.au](http://www.wwda.org.au)
- [www.facebook.com/WWDA.Australia](https://www.facebook.com/WWDA.Australia)
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# 1. ABOUT OUR SUBMISSION

WWDA welcomes the opportunity to contribute to the House Standing Committee on Social Policy and Legal Affairs Inquiry into Family, Domestic and Sexual Violence. It is now well known that compared to our peers, women and girls with disability experience significantly higher levels of all forms of violence, more intensely and frequently. Our experiences of violence last longer<sup>1</sup>; more severe injuries result; we are far less likely to receive service support to address violence<sup>2</sup>; we are often not believed when reporting sexual assault and other forms of violence<sup>3</sup>; we are often denied the right to legal capacity<sup>4</sup> and effective access to justice<sup>5</sup>; and we have considerably fewer pathways to safety.<sup>6</sup>

This submission has been developed to provide the Commonwealth with key areas for consideration in the development of a new National Plan to Reduce Violence Against Women and their Children, post 2022. WWDA has worked closely with successive governments to forward the goals of the current *National Plan to Reduce Violence Against Women and their Children 2010-2022* (National Plan). We have consistently harnessed and amplified the voices of the 2 million Australian women and girls who live with disability in our advice to the Commonwealth on the development and implementation of the Plan's four action plans.

For the last decade, we have provided extensive evidence and recommendations regarding the National plan via systemic advocacy as well as programmatic interventions. We would like to draw the Committee's attention in particular to the [detailed recommendations](#) we have made in regards to violence to the 2015 Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings, which subsequently led to the current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Notwithstanding the importance of this inquiry, WWDA would like to strongly advise that this inquiry should not replace focused, targeted and co-designed stakeholder engagement to develop any new National Plan. This submission is structured around five key areas of concerns WWDA has in relation to the current national approach towards responding to and preventing violence against women and four thematic recommendations (including 26 specific recommendations) for the Commonwealth, on issues it has carriage of, to inform future policy and programmatic initiatives.

WWDA welcomes the opportunity to provide further evidence to the Committee in relation to any of the matters raised in this submission and would particularly welcome the opportunity to discuss these in person with the Committee.





## KEY AREAS OF CONCERN

## 2. KEY AREAS OF CONCERN

Evidence demonstrates that national frameworks, underpinned by obligations under international conventions and treaties, that take a holistic, multisectoral and multi-system approach to violence response, intervention and prevention are most effective and efficient for governments. This is vital to achieving a consistent vision and coordinated approach towards responding to and preventing this egregious violation of women and girl's human rights and inherent freedoms.

In this section of our submission, we highlight five key areas of concerns with the current national approach to responding to and preventing violence against women. We consider these challenges as impediments to a truly inclusive and non-discriminatory framework that responds to, and addresses, all forms of violence against all women, regardless of the setting/place in which it occurs, and regardless of who perpetrates it.

### 2.1 LIMITATIONS IN THE EVIDENCE BASE

It is now well established that violence against women and girls with disability globally and in Australia is more extensive, frequent and significantly more diverse in nature than violence amongst either their male counterparts or women without disability.<sup>7</sup> Nevertheless, there is a significant lack of disaggregated data and targeted research across all life domains that prevents the development of a comprehensive evidence base on the specificity of violence experienced by women and girls with disability in Australia. This results in women and girls with disability being largely excluded from policies, programs, services and measures to progress gender equality.<sup>8</sup> Furthermore, there are little to no data/research that interrogate the experience of violence, abuse, neglect and exploitation by specific groups of women and girls with disability, such as those who are Indigenous, those from culturally and linguistically diverse backgrounds, those who are migrants, refugees or asylum seekers, those who are lesbian, bisexual, non-binary, transgender or intersex, or those living in rural and remote communities.<sup>9</sup> These issues have **consistently** been raised by WWDA over many decades. WWDA has had to source and analyse a range of data assets, technical reports and information to compile information on the violence experienced by women and girls with disability in Australia so that we are able to comprehensively advocate for the rights and freedoms of our cohort.<sup>10</sup>

While Australia has a rich and continually evolving national data landscape on violence against women, national datasets (surveys, longitudinal datasets and administrative data) have limitations with reference to violence against women and girls with disability. These limitations include: issues of dataset scope, challenges in extrapolating prevalence and perpetration rates for our cohort; 'challenges with how data is collected, what is collected, how surveys are methodologically designed and administered and; how existing data is leveraged for the creation of new data assets'.<sup>11</sup>

For example, the Australian Bureau of Statistics' (ABS) Personal Safety Survey (PSS) is the key Australian data asset that collects information on the nature and extent of violence experienced by men and women aged 18 years and over.<sup>12</sup> The 2016 PSS found that women with disability were more likely to have experienced violence in the preceding 12 months than women without disability.<sup>13</sup> However, the PSS's sampling frame includes only people living in private dwellings and excludes residential care and institutional facilities, such as group homes. WWDA is not aware of **any** statistical collections (where the Commonwealth is a data custodian), which specifically collects data on experiences of violence for women and girls living in non-private dwellings and/or congregate care settings, or those working in segregated environments or settings such as Australian Disability Enterprises (colloquially known as 'sheltered workshops').

Furthermore, while the PSS collects data on all socio demographic characteristics, including disability status (at the time of interview), it is not possible to extrapolate from the PSS survey data if the person disclosing an incident of violence had a disability at the time of experiencing the violence as an individual's socio demographic characteristics can change over time – i.e. they can acquire a disability or long-term health condition. While we appreciate that the PSS collects data on a large range of violent experiences during a respondent's lifetime and agree methodologically that it is not possible (and indeed burdensome) to ask for socio demographic information for each incident of violence, currently the data collected within in cannot give us an authoritative picture of the prevalence and impact of violence for women and girls with disability. Even with the welcome addition of a suite of methodological innovations by the ABS to the PSS (such as proxy use, the short disability module, questions on long term health conditions, etc.), **the only source** of Australian population level estimates of different types of violence perpetrated against women with disability can only give us so much.

While we welcome the Commonwealth and jurisdictions working together to develop a National Disability Data Asset which will improve outcomes for women and girls with disability by sharing de-identified data to better understand their life experiences, this project is currently in a pilot phase. We also remain concerned that there is no publicly available information on the potential of augmenting, linking or integrating existing Commonwealth data assets to improve the evidence base around the prevalence and impact of violence for women and girls with disability. WWDA agrees that we 'need to cut through the 'white noise' of unanalysed data and work out how we can harness its power. This will require a people-centred approach that recognises data only has value when it is used to solve problems'.<sup>14</sup> As Mitra-Kahn et al. (2016) note:

*...anecdotally [it has] been known in Australia for some time; that women from diverse backgrounds are disproportionately affected by violence. [this paper] ...also affirms the more complex message that, while we know there is disproportionate impact, the exact nature and scale of this difference is extremely difficult to quantify. Despite not knowing the exact quantum of the violence, we have significant evidence that expressions of violence in these communities are distinct, and that these differences require considered and specific service and policy responses. To provide these effective responses, we need data that is coherent, accessible, relevant and accurate.<sup>15</sup>*



Further, given accessibility, inclusivity, interpretation and communication needs, we are also concerned about the lack of consideration given by the Commonwealth to funding a body of rich qualitative reseato improve the evidence base for women and girls with disability. It is possible for a program of research based on smaller qualitative studies to provide deep, rich insights into the severity and characteristics of all forms of violence for our cohort.



## 2.2 LIMITATIONS IN THE CONCEPTUAL UNDERSTANDING OF WHAT CONSTITUTES VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITY

Although the Australian Government has articulated its commitment that the National Plan ‘demonstrates Australia’s commitment to upholding the human rights of all Australian women to live free from violence’,<sup>16</sup> nearly ten years on from its commencement, the Plan and its four action plans have focused largely on narrow conceptual understandings of ‘domestic/family violence’ (i.e. intimate partner/spousal violence) and sexual assault within both policy and programmatic initiatives.<sup>17</sup>

This narrow definition of violence against women within the National Plan is inherently limiting, problematic and outdated. It does not reflect contemporary understandings of what constitutes violence against women nor the complexity of the myriad of forms it takes, and the settings in which it occurs. For example:

*In 2009 a severely disabled teenage girl had her nose almost bitten off in a sickening attack at a government funded group home. The young girl was unable to fend off her 22-year-old male attacker who was a co-resident. The man climbed into her bed during the night and tore into her face and chest with his teeth, leaving her with severe bites, black eyes, bruisers and scratchers all over her body. No charges were laid.*<sup>18</sup>

Cases such as this are not characterised nor treated as ‘domestic violence’. Instead, they are typically reframed as ‘challenging behaviour’, ‘abuse’ or ‘service incidents’, and the response tends to be one of ‘adopting behaviour management strategies’ rather than involving police and domestic violence services and supports.<sup>19</sup> Research shows that it is partly because women and girls with disability’s experiences of violence may not fit contemporary definitions and understandings, that violence perpetrated against them often goes unidentified, unreported, un-investigated, inadequately investigated, or results in poor outcomes for the person concerned.<sup>20</sup>

Furthermore, such a conceptual focus within the current National Plan risks seeing other forms of violence against women and girls with disability become further obscured.<sup>21</sup> This conceptualisation also conceals (and renders invisible), structural and institutional forms of violence against women related to law, the state and culture that women and girls with disability (and other marginalised groups of women) not only experience, but are more at risk of <sup>22</sup> – such as forced sterilisation, forced abortion, forced contraception, denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, indefinite detention, and forced and coerced marriage.<sup>23</sup> It also excludes many of the settings and spaces in which women and girls with disability (and others) experience, and are at risk of violence (including for e.g. prisons, segregated settings, detention centres, and other forms of institutional settings). We are appreciative of the inclusion of specific manifestations of violence against women within the Fourth Action Plan of the National plan as we have consistently advocated for the need for tailored responses to addressing specific manifestations of violence against diverse groups of women. However, WWDA believes that all forms of violence against women have a level of complexity and we are extremely concerned

about this '*otherising*'<sup>24</sup> of specific manifestations of violence against diverse groups of women in the Fourth Action Plan.

For women and girls with disability, while domestic and family violence and sexual assault in non-private dwellings and/or congregate care settings are critical issues, the experience of violence, abuse, neglect and exploitation of women and girls with disability cannot be confined to this. There also needs to be recognition of the subtler and more ambiguous, yet harmful daily prejudice and bias, commonly called microaggressions, that affect the well-being of women and girls with disability, and which reinforce societal norms.<sup>25</sup> Microaggressions are covert forms of violence that can be unintentionally conveyed by individuals, processes and systems, including by disability and mental health support workers, carers, medical and disability professionals, policy makers and service provider policies and practices.

Microaggressions experienced by women and girls with disability reinforce disability and gender stereotypes, inequalities and intersectional discrimination. For example, during a Disability Royal Commission Public Hearing, a witness outlined the situation of her daughter, who was not provided with support to shave her legs because the group home policy deemed it as a risk, although support workers assisted men to shave their faces.<sup>26</sup> The imposition of the group home policy denied the daughter the ability to freely exercise her autonomy about her personal care and grooming preferences. While this situation may be viewed as a 'minor restriction', it exemplifies how the priorities of the service provider overrode the woman's choices and autonomy to freely express her personality. This 'minor restriction' is indicative of the gendered rules that often govern the lives of women with disability in many living arrangements, including group homes and that prevent free personal development, individual choice and personal expression. This violates article 19 of the Convention on the Rights of Persons with Disabilities 2006 [2008, ATS 12] (CRPD) and constitutes a form of gender-based violence.

Furthermore, violations of sexual and reproductive rights of women and girls with disability are rarely understood as violence against women in Australia. WWDA has consistently raised the fact that practices such as forced contraception are widespread for women and girls with disability, particularly in non-private dwellings and/or congregate care settings and that this practice is rarely subject to oversight, monitoring or review.<sup>27</sup> Forced contraception is a practice used to suppress menstruation or sexual expression, often to reduce the care 'burden' on staff in supporting women with menstrual care, and to prevent pregnancy, including pregnancy that results from rape and sexual assault.<sup>28</sup> This issue was raised by the Australian Civil Society CRPD Shadow Report Working Group for the September 2019 review of Australia by the CRPD Committee.<sup>29</sup> The CRPD Committee recommended that Australia end the forced "administration of contraception and the imposition of abortion procedures on women and girls with disabilities".<sup>30</sup> The significant lack of transparency, oversight and monitoring of these practices requires urgent interrogation by the Royal Commission within a broader examination of violations of sexual and reproductive rights of women and girls with disability.

For more than 15 years, United Nations treaty monitoring bodies, the UN General Assembly, UN Special Procedures and international medical bodies<sup>31</sup> have **categorically confirmed** that forced sterilisation of children (and of

adult women with disability without their prior, full and informed consent) is a clear breach of some of the most fundamental human rights – including the right to freedom from violence. To date, Australia's response<sup>32</sup> to these recommendations has retained the focus on regulation and non-binding guidelines rather than prohibition. Australian Governments remain of the view that it is an acceptable practice to sterilise girls and women with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest', as determined by a third party.<sup>33</sup> Substitute decision-making and 'best interest' approaches have been thoroughly criticised as fundamentally contravening the CRPD and as intrinsically value-laden.<sup>34</sup> In practice, the 'best interest' approach most often serves the interests of guardians, families, carers and service providers.<sup>35</sup>

In addition, the treaty monitoring bodies have continued to express concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.<sup>36</sup>

The United Nations treaty monitoring bodies have clearly articulated the need for Australia to substantially improve its efforts to address **all** forms of violence against women, including particularly egregious forms of gender-based violence that are recognised to disproportionately affect marginalised cohorts of women and girls.<sup>37</sup> In its 2017 List of Issues<sup>38</sup> prior to the submission of the combined second and third periodic reports of Australia, the CRPD specifically requested that the Australian Government:

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

Reducing and addressing violence against women should **never** be dependent on where a woman lives, where she works, or the space/s she occupies, nor the type of violence she experiences, or is at risk of experiencing. To place a 'hierarchy' on what 'types' of violence and settings are included in a country's major policy framework to respond to and prevent violence against women and girls, is out of step with contemporary and global understandings of what is meant by 'violence against women' and/or 'gender-based violence'. It is therefore important that any new National Plan **preserve** the language of 'violence against women' and better articulate its conceptual and definitional nuances in order to respond holistically to different manifestations of this violence. The language of 'violence against women' allows also for the inclusion of both the diversity of victims/survivors and settings in which violence is perpetrated.





## 2.3 LIMITATIONS IN THE LEGAL CONTEXT TO RESPOND TO AND PREVENT VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITY

In Australia, the legal definition of ‘domestic violence’ varies across jurisdictions and most do not contain definitions which do justice to, nor encompass, the range of domestic/family settings in which women and girls with disability may live. Nor do they contain definitions which capture the range of relationships and various dimensions and experiences of domestic and family violence as experienced by people with disability, (particularly women and girls with disability):<sup>39</sup> There is also no overarching, national legislation to prevent and address violence against women, including for family/domestic violence. No existing Commonwealth or jurisdictional domestic/family violence legislation is framed within a truly comprehensive human rights framework setting it in the context of Australia’s obligations to all the international human rights treaties to which it is a party.

The differences in domestic/family violence legislation mean that jurisdictional definitions of what constitutes such violence and what constitutes a ‘domestic relationship’ provide varying levels of protection. For example, domestic/family violence legislation in some jurisdictions recognises violence between persons who live together in the same household (that is, without being in a relationship) as family violence. Other jurisdictions recognise meaningful personal relationships between people outside conventional definitions. Some legislation protects persons in carer relationships, including paid carers; some cover relationships with paid and unpaid carers as long as the relationship is ‘family like’; whilst others cover unpaid carers only. Other legislation, however (such as in Tasmania and Western Australia) do not address relationships with carers at all.

The Commonwealth Family Law Act 1975, amended in 2011 through the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, contains no over-arching objects or principles, and is not set in a human rights framework. It provides non-exhaustive examples of what constitutes ‘family violence’; however, the examples provided in the Act are still relatively limiting for addressing the dimensions of domestic and family violence as experienced by women and girls with disability. The definition of ‘family member’ and ‘relative’ in the amended Family Law Act 1975 do not appear to be broad enough to encompass the range of ‘domestic relationships’ that many people with disability may be in, such those living in institutional, segregated and residential settings. The limiting definition does not cover paid and/or unpaid carers, which makes it problematic in providing protection and or redress for people with disability who experience domestic/family violence at the hands of carers. It is clear that most domestic/family violence legislation in Australia is piecemeal and inconsistent in definitions and scope and focuses largely on protection from intimate partner violence. For women with disability, this means, in effect, that their experiences of domestic/family violence are not properly recognised across the legal system.

For many women with disability, their domestic setting **is** the institutional arrangement they live in, including non-private dwellings and congregate settings. However, violence perpetrated in these living arrangements is rarely understood as domestic and family violence and the responses to this violence rarely include justice based domestic violence interventions.<sup>40</sup> Even in the jurisdictions where domestic and family violence law does cover such settings and domestic relationships with support workers, co-residents and carers,<sup>41</sup> this has not been well understood or acted upon by first responders or specialists from domestic violence support services. The few studies that have looked at the application of legislation in jurisdictions where domestic and family violence law does cover such settings, have found that it is rarely used to address domestic violence in non-private dwellings and congregate settings, with police reporting that a common barrier was the risk of homelessness for victims and perpetrators with disability who rely on specific living arrangements for their accommodation and support.<sup>42</sup>

From an international law perspective, while the Fourth Action Plan does mention how Australia meets its international commitments through its initiatives, the current National Plan is essentially framed by Australia's obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) ([1983] ATS 9) with some reference to the *United Nations Convention on the Rights of the Child* 989 ([1991] ATS 4 (CRC)). Yet, addressing violence against women and girls in Australia is equally a key obligation under the five other international human rights treaties to which Australia is a party,<sup>43</sup> as well as the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which Australia formally endorsed in 2009. To date, WWDA is unaware of how the National Plan has been operationalised in a comprehensive human rights framework, to ensure that all women and girls are fully included in public policy and programs on responses to and the prevention of gender-based violence, and are ensured equal access to an effective, integrated response system.<sup>44</sup>

Without appropriate, fit-for-purpose legislation, and a common shared understanding of what constitutes violence against women across jurisdictions, there are limited legal means to address violence against women and girls with disability. Legislation has the potential to demonstrate that violence against women and girls with disability is a public issue, not a private concern. Conceptual similarities and a shared understanding in jurisdictional domestic/family violence legislation are critical, because they set the scope for who is covered and under what circumstances. Causes, interventions and prevention strategies are contingent upon the validity of the definitions available.<sup>45</sup> They also provide the benchmark for translation into relevant policy frameworks, policies and service responses. The lack of effective recognition across the legal system results in poorer protection for women and girls with disability and less likelihood of such women and girls benefiting from integrated and coordinated responses and prevention. WWDA believes that there is scope for the Commonwealth to lead work across jurisdictions on 'developing a shared understanding of what constitutes domestic and family violence within and across jurisdictions' as 'an important component for the development of integrated systems and response'.<sup>46</sup>

## 2.4 A DIVERSITY LENS IS NOT AN INTERSECTIONAL APPROACH

Despite the articulation of a commitment to an intersectional lens, and as the Australian Women Against Violence Alliance notes:

*“[T]he actions indicated the Fourth Action Plan can be described as taking a diversity approach... A diversity approach in the context of reducing violence against women involves the identification of diverse groups of women and their experiences of violence. However, this is only the first step to actualising an intersectional approach. A further step is required in analysing how status and identity categories interact with various systems (such as family law, social security and migration) to further compound an advantage or disadvantage, and in responding to the experiences of women subject to these compounding disadvantages so as to facilitate their equal access to justice and support. This has not yet been undertaken in an extensive way.”<sup>47</sup>*

WWDA has consistently raised concerns with successive governments, in the context of the current National Plan, that violence against women and girls with disability is more often examined **only in the context of the disability service system**, the imputed ‘vulnerability’ of people with disability, the failure of service system policies and procedures, the lack of qualified and accredited staff and the lack of rigorous oversight and protective mechanisms. As we have previously said, often, violence, abuse, neglect and exploitation, including gender-based violence are downplayed or sanitised as ‘service incidents’.<sup>48</sup> This issue has been illustrated during a Public Hearing at the Royal Commission when counsel for the Royal Commission questioned the CEO of a disability service about the choice of language used to describe criminal sexual acts committed by a former employee. It was noted that in describing criminal sexual acts as “disclosures of acts of a sexual nature”, that the CEO could be viewed as “downplaying” the seriousness of the criminal sexual offences that were perpetrated against a number of ... residents.<sup>49</sup> Commissioner Atkinson further questioned the CEO: “a rape of a woman in a closed environment by a man who is a personal carer offering the most intimate of circumstances, is an act of violence, is it not?”<sup>50</sup> The evidence provided by the disability service during the Public Hearing clearly demonstrates how the priorities of the service clearly overrides those of the survivors and their right to receive a trauma-informed response approach that would be expected for the care of a victim of sexual violence.<sup>51</sup> While the context (for e.g. a service, a group home etc.) of where violence against women and girls occurs is important to understand the manifestation of such violence, rarely is the underlying driver of this violence—**gendered disability inequality and discrimination** - identified or acknowledged, and consequently, there is little recognition of the need for social transformation, including community attitudinal and behavioural change, to address this situation.

In comparison, it is now well understood that gender inequality drives violence against women.<sup>52</sup> Gender inequality operates at many levels, ‘from social and cultural norms (the dominant ideas about men and women in society), to economic structures (such as the pay gap between men and women), to organisational, community, family and relationship practices’.<sup>53</sup> There is also



growing recognition that an intersectional approach is essential to prevent and respond to violence against women:

*“The gendered drivers, and reinforcing factors, of violence against women should always be considered together with other forms of social, political and economic discrimination and inequality (such as racism or ableism), as these influence and intersect with gender inequality.”<sup>54</sup>*



Ableism is the foundation of inequality and discrimination and this underpins the violence, abuse and exploitation experienced by women and girls with disability.<sup>55</sup> However, this is rarely addressed in current Australian violence against women policy and programmatic architecture, more so in primary prevention programs where a diversity lens (for e.g. so called targeted prevention programs that homogenise the specific experiences of disabled women) has been used as opposed to a truly intersectional approach. A truly intersectional lens would 'ensure that prevention activities include positive obligations – beyond awareness-raising, education, training and sensitisation of the media – to include government policy and legislative reforms across all sectors and jurisdictions to promote gender

equality and address intersectional discrimination'.<sup>56</sup> For women and girls with disability, gender inequality, disability inequality and intersectional discrimination are interlinked and inseparable. This means that the prevention of violence, abuse, neglect and exploitation requires explicit recognition and comprehensive dismantling of all forms of intersecting inequality and discrimination experienced by women and girls with disability.

This lack of intersectional understanding means that there are few truly comprehensive programs focused on preventing and responding to the manifestations of violence that are targeted at women and girls with disability. Gender-specific respectful relationships programs designed and delivered by women and girls with disability are invaluable and aim to develop a sense of worth and bodily integrity and an understanding of what constitutes violence, abuse, neglect and exploitation, however they are extremely limited and rarely provided to residents within institutional settings.<sup>57</sup> Resources aimed at disability service providers and support workers remain not gender-specific, do not understand gender-based violence and are rarely link to gender-specific, trauma-informed supports.<sup>58</sup> There are other valuable resources and projects that aim to build knowledge and enhance support for women with disability,<sup>59</sup> enhance accessibility of specialist domestic/family violence services<sup>60</sup> and support women and girls with disability experiencing domestic/family violence, such as WWDA's and 1800RESPECT's Sunny app.<sup>61</sup> However, these are not part of a coordinated, comprehensive plan to prevent and respond to violence experienced by women and girls with disability in Australia and do not necessarily reach women with disability in non-private dwellings or congregate settings.

An intersectional approach to violence against women and girls with disability recognises that women and girls with disability do not experience violence as members of a homogenous group but rather, as individuals within a broad community with multidimensional layers of identities, statuses, experiences and life circumstances. Conceptualising intersectional violence in the context of disabled women and girls, means acknowledging the lived realities and experiences of the disadvantage that women and girls with disability experience, not because of inherent vulnerability, but because of, and imposed by, multiple and intersecting forms of discrimination. A truly intersectional approach requires **targeted measures** - disaggregated data collection, genuine consultation, authentic participation, co-designed evidence building and policymaking, enforceability of non-discrimination, and provision of effective remedies.<sup>62</sup>

## 2.5 CHALLENGES WITHIN NATIONAL POLICY ENVIRONMENTS

WWDA has consistently raised concerns about policy fragmentation and the lack of coordination (both between Commonwealth and jurisdictions, and within Commonwealth agencies) that a truly joined-up approach towards responding to and preventing violence against women simply cannot afford.

While the Commonwealth Department of Social Services (DSS) is the lead agency with carriage of the National plan, individual national programs under the National Plan tend to be owned by or sit within different agencies to give effect to the National Plan's whole-of-government approach to the issue. A whole-of-government approach is best practice for coherent policy development, an understanding of shared outcomes, program management and service delivery. However, our experience is that there has at times, in the implementation of the current National Plan, been a lack of coordination, information vacuums, governance issues and horizontal tension between agencies. As such, WWDA's experience is that Commonwealth Agencies have unfortunately tended to operate in 'silos' rather than sharing information and working toward measurable, outcomes-focused, shared goals and outcomes. For example, the current National Disability Strategy (NDS) acknowledges the range of evidence that demonstrates that people with disability are at greater risk of violence, abuse, neglect and exploitation, that violence is more common in institutional contexts and that women with disability face greater risks.<sup>63</sup> However, over the ten-year life of the NDS, the only actions outlined to address this situation have focused on the implementation of the current National Plan and consideration of the recommendations from the 2015 Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings - with no actions or cross-agency work having ever been clearly articulated. And yet, as previously noted, the National Plan is mostly focused on intimate partner violence and as such does not speak to the other forms of gender-based violence experienced by women and girls with disability within the variety of settings where they live and work. The Commonwealth's response to the recommendations from the Senate Inquiry was the establishment of the NDIS Quality and Safeguards Commission, and the referral of the majority of recommendations to the States and Territories. However, the coverage of the NDIS Quality and Safeguards Commission is limited to NDIS service providers and participants (less than 10% of the population of people with disability in Australia) and does not have a clear focus on the gendered dimensions of violence, abuse, neglect and exploitation. The report from the Senate Inquiry recommended that the NDS should be amended to ensure linkages with domestic violence frameworks and implementation of specific actions to address violence, abuse and neglect of people with disability; and that the National Plan should be amended to cover institutional accommodation settings.<sup>64</sup> This appears not to have been progressed by the Commonwealth.

Furthermore, the National Disability Insurance Scheme (NDIS) does not have a risk assessment process for identifying and responding to violence against people with disability, including identifying and responding to gender-based violence. Although the NDIS provides information on safeguards for NDIS

participants to prevent the “risk of harm, abuse, neglect or exploitation”,<sup>65</sup> and to identify individualised strategies within the planning process, these strategies are focused on the provision of advocates, guardians, nominees, service system protocols and external monitoring and complaints mechanisms. This belies the National Plan’s vision of ‘all systems need to work together to make a major difference to the prevalence and impact of violence against women’.<sup>66</sup> This type of policy ‘siloing’, domestically and in relation to the international treaties, and lack of understanding of the intersectional and gendered nature of violence against women with disability, contributes to women with disability who experience, and who are at risk of experiencing violence, falling through violence prevention legislation, policy, program and service delivery gaps.<sup>67</sup> As such, 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 across Australia.

WWDA has previously also echoed ongoing concerns ‘regarding the National Plan’s ability to ensure regular, equal and meaningful consultation and engagement with civil society’.<sup>68</sup> The dissolution of the National Plan Implementation Panel (NPIP), which was designed to provide advice on the implementation of the National Plan and included a number of non-government (NGO) representatives as part of the overall approach to engaging the community on the National Plan, has genuinely limited the NGO sector’s ability to provide ongoing expertise and advice. WWDA is also concerned that existing mechanisms for monitoring and evaluating initiatives under the current National Plan are largely insufficient to measure against outcomes and ‘performance monitoring, evaluation and reporting is not sufficient to provide assurance that governments are on track to achieve the National Plan’s overarching target and outcomes’.<sup>69</sup> There is thus a vital need to develop a robust performance monitoring and evaluation framework (including measures of success) which amplifies and harnesses the expertise of the NGO sector and involves the sector in meaningful ways for any new National Plan.

WWDA is also concerned that from an international treaties’ perspective, neither the National Plan nor the NDS are embedded in a comprehensive human rights framework. As previously stated, the National Plan is only linked to the CEDAW (with a mention of the CRC) and so is primarily focused on meeting human rights obligations in relation to gender discrimination. The NDS is only linked to CRPD and so is primarily focused on meeting human rights obligations in relation to disability discrimination. A human rights approach to responding to and preventing violence against women, including women with disability, requires policy frameworks to be developed and operationalised in a comprehensive human rights framework. This means recognising, responding to and preventing 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.

WWDA believes that responding to challenges in national policy environments requires a reassessment of some of the traditional ways of working and solving problems in the Australian Public Service.<sup>70</sup> Linear and traditional approaches to policy formulation and service delivery on issues that cut across portfolios



and jurisdictions are inadequate to tackle the issue of violence against women, including violence against women and girls with disability. WWDA does not agree that violence against women is a wicked problem- i.e. 'an issue highly resistant to resolution'.<sup>71</sup> Violence against women is an issue with complexity, specificity, and nuance and yet, much can be done within national policy environments to demonstrate leadership and land socially transformative and sustainable outcomes. This needs a whole-of-government approach with genuine collaboration across jurisdictional and agency boundaries, underpinned by integrated, adaptive, flexible approaches to ensure successful information and program management and service delivery. This also needs a 'higher stakeholder commitment' <sup>72</sup> from the Commonwealth including responsiveness to, and robust engagement with, a comprehensive range of stakeholder expertise and views so that there is the courage for policy change or adjustment and Australia has a truly fit-for-purpose national policy and programmatic environment to respond to and prevent violence against women.





## RECOMMENDATIONS



## 3. RECOMMENDATIONS

### 3.1 ENHANCEMENTS TO THE EVIDENCE AND CONCEPTUAL BASE

1. WWDA recommends that any new National Plan **preserve** the language of 'violence against women' and utilise the definition of 'gender-based violence' as articulated in CEDAW General Recommendation 35 'Gender-based Violence Against Women' (2017).<sup>73</sup> WWDA recommends that an inclusive definition of 'violence against women' is one that is consistent with, and reflects Australia's international human rights obligations and acknowledges that violence against women occurs on a continuum that spans interpersonal and structural violence; acknowledges the structural aspects and factors of discrimination, including structural and institutional inequalities; and analyses social and economic hierarchies between women and men (inter-gender inequalities) and among women (intra-gender inequalities).
2. Notwithstanding the current pilot phase of the National Disability Data Asset, WWDA recommends that the Commonwealth should commission a comprehensive assessment, using intersectional research methodologies, on the situation and rights of women and girls with disability in Australia, in order to establish a baseline of disaggregated data and intersectional evidence to measure progress toward implementation of CEDAW and CRPD.<sup>74</sup>
3. WWDA recommends that to support lay audiences to access existing data, 'specialist data agencies... review the accessibility and presentation of domestic and family violence and sexual assault data on their websites. Where data are sufficient to allow such analysis and reporting, this should involve disaggregation of data for diverse groups, as well as by gender, and state and territory. Some possible additions could include data visualisation, explanatory information and summaries of findings with no technical language'.<sup>75</sup>
4. Notwithstanding the current pilot phase of the National Disability Data Asset, WWDA recommends that the Commonwealth:
  - Publicly identify national data assets that may help fill key violence knowledge gaps through further investigation and analysis.
  - Publicly identify national data assets that are amendable to linkage and/or integration and harness the expertise of Accredited Integrating Agencies within the Commonwealth to lead this work.
  - Augment the Survey of Disability, Ageing and Carers (SDAC) to include specific questions on violence, abuse and neglect.
  - Investigate the feasibility of augmenting the National Community Attitudes Survey towards Violence Against Women, to capture attitudes towards violence, abuse and neglect of women and girls with disability.
5. WWDA recommends that as a targeted contribution to the evidence base, the Commonwealth commission a program of mixed-methods research,

from a '*what works*' perspective, on the specificity of violence against women and girls with disability. This should involve identifying research priorities and developing research projects through a co-designed process with women and girls with disability. Crucial current research gaps include:

- Prevalence, nature and impact of sexual violence against women and girls with intellectual disability and cognitive impairments;
- Prevalence, nature and impact of sexual, domestic and other forms of violence perpetrated against women and girls with disability who live and/or work in segregated settings (including congregate care settings and Australian Disability Enterprises- ADEs);
- Reproductive violence (including coercion) against women and girls with disability;

### 3.2 RESPONDING TO THE CHALLENGES WITHIN LEGAL ENVIRONMENTS AND ENSURING A HUMAN RIGHTS BASED APPROACH

6. WWDA recommends that Commonwealth, through the Council of Attorneys General and the new National Cabinet, work with jurisdictions to reform and harmonise domestic and family violence legislation by including a broad definition of domestic relationships; ensure this legislation is integrated into domestic and family violence response training for police, the judiciary as well as domestic and family violence services.
7. Recognising the gendered nature of violence, the disproportionate, multiple and intersecting forms of violence experienced by women and girls with disability, and the lack of legislative, policy and service responses to prevent and address violence against women and girls with disability, WWDA recommends that the Commonwealth should scope the feasibility of developing national, overarching violence against women legislation. Such legislation could be modelled on the *Istanbul Convention*.<sup>76</sup>
8. WWDA recommends that the Commonwealth work with the jurisdictions to review, amend or repeal laws that do not comply with the CRPD and that give rise to violence, abuse, neglect and exploitation of women and girls with disability.
9. WWDA recommends that the Commonwealth (as per Rec 6 of the Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings) work with jurisdictions on the implementation of initiatives to improve access to justice for women and girls with disability contained in the reports by the Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, the Human Rights Commission, *Equal Before the Law and Productivity Commission*, *Access to Justice Arrangements*.
10. WWDA recommends any new National Plan should reflect Australia's obligations **under all 7** international treaties and conventions it is party to. The development of a new National Plan must be framed by, and



operationalised within, a comprehensive human rights framework consistent with Australia's obligations under the international human rights treaties to which Australia is a party, as well as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), formally endorsed by Australia in 2009.

11. WWDA recommends that the Commonwealth, through the Council of Attorneys General and the new National Cabinet, work with jurisdictions to amend their respective Domestic and Family Violence Acts to ensure the full inclusion of people with disability, by including, that perpetrators may include paid and unpaid support workers and co-residents.
12. WWDA recommends, in line with treaty monitoring bodies, that the Commonwealth enact national legislation banning the forced sterilisation of women and girls with disability. Treaty monitoring bodies have continued to express concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.<sup>77</sup>
13. WWDA recommends that the Commonwealth implement, in full, the forthcoming recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
14. Consistent with and reflecting Australia's international human obligations regarding the requirement for available, effective, independent and impartial remedies to be available to those whose rights have been violated under the various treaties,<sup>78</sup> and reflecting recent recommendations to Australia by the Committee on the Rights of Persons with Disabilities,<sup>79</sup> WWDA recommends that the Commonwealth should ensure that a Redress Scheme is established for the Royal Commission.
15. Consistent with recommendations made to successive Australian Government's by the United Nations treaty monitoring bodies and by civil society organisations, including Disabled People's Organisations, WWDA recommends that the Commonwealth should as a matter of urgency, withdraw its Interpretative Declarations on CRPD Article 12 [*Equal recognition before the law*], Article 17 [*Protecting the integrity of the person*] and Article 18 [*Liberty of movement and nationality*]. These Interpretative Declarations, which include allowing for substituted decision-making and compulsory medical treatment, have been found to be hindering Australia's ability to comply with the CRPD and are being used as a justification to deny people with disability their human rights.
16. Acknowledging that segregated settings enable violence, abuse, neglect, and exploitation against women and girls with disability to flourish, WWDA recommends that the Commonwealth should develop and implement a national, time bound strategy and framework for the closure of all residential institutions and other segregated settings for people with disability, including those operated by non-government and private sectors.

### 3.3 OPERATIONALISING AN INTERSECTIONAL APPROACH AND HOLISTIC PROGRAMS FOR WOMEN AND GIRLS WITH DISABILITY

17. WWDA recommends that Commonwealth's approach to primary prevention explicitly identify ableism as **a driver**, and not simply a reinforcing factor, of violence against women and girls with disability.
18. WWDA recommends that the Commonwealth design, implement and adequately resource a comprehensive suite of violence prevention programs, co-designed with women with disability for women and girls with disability, and delivered across the life span and in institutional and other segregated settings with the aim of:
  - Challenging ableism and intersecting forms of inequality and discrimination, including for women and girls with disability;
  - Building knowledge, skills and strengths in recognising rights to bodily integrity, to be free from violence, abuse, neglect and exploitation, and to be free from torture and ill-treatment;
  - Increasing opportunities and participation in decision-making and in speaking up about rights.
19. WWDA recommends the development of a national strategy, in consultation with people with disability and their representative organisations, to improve access to, and implementation of comprehensive, equitable, accessible, and disability-inclusive sexual and reproductive health education and information, with a particular focus on improving the access to such information for women and girls with disability, regardless of the setting in which they work, live or study.

### 3.4 A FIT-FOR-PURPOSE, SECTOR EXPERTISE DRIVEN, POLICY ENVIRONMENT

20. WWDA recommends that any new National Plan must include a clear, unambiguous outcomes framework as a mechanism to hold governments and service providers to account. To do this, the framework must articulate outcomes, indicators and measures to track change over time.
21. WWDA recommends that the National Disability Insurance Agency (NDIA) develop, in close consultation with women with disability and their representative organisations, an NDIS Gender Strategy which should include measures to ensure that all forms of violence, including gender-based violence are identified and addressed through the NDIS planning process, that crisis response procedures are established for urgent plan reviews, and that pathways and protocols are established with domestic violence services and supports.

22. WWDA recommends that the Commonwealth commit to resourcing and establishing an independent body, including victim/survivors, the NGO sector and those from academia, to advise on and monitor performance and implementation and evaluate progress against any new National Plan.
23. WWDA recommends that the new National Disability Strategy explicitly recognise **safety from violence** as a new outcome area.
24. WWDA recommends that the Commonwealth ensure that both the new National Plan and the new National Disability Strategy have a strong focus on primary prevention and on fostering change in social norms, behaviours and community attitudes, and that policy language in both frameworks is consistent, overlapping and mutually reinforcing.
25. WWDA recommends that the Commonwealth ensure that any new National Plan clearly outlines the roles and responsibilities of all levels of government, articulates the relationship between the Commonwealth and jurisdictions, and amplifies the important role of the NGO sector in improving outcomes for women and girls with disability who experience, or are at risk of experiencing, violence.
26. Acknowledging that the remit of the National Disability Insurance Scheme (NDIS) Quality & Safeguards Commission covers only NDIS participants, who make up less than 10% of the Australian population of people with disability, WWDA recommends that the Commonwealth should, consistent with Rec 2 of the Senate Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings, establish an independent, statutory, national protection mechanism under specific purpose legislation, and with broad functions and powers to protect, investigate and enforce findings in relation to **all** forms of violence, abuse, exploitation and neglect against people with disability, regardless of the setting in which it occurs and regardless of who perpetrates it.
- This national protection mechanism should explicitly operate within a human rights framework, and include as a minimum, the following core functions:
- a 'no wrong door' complaint handling function – the ability to receive, investigate, determine, and make recommendations in relation to complaints raised;
  - the ability to initiate 'own motion' complaints and to undertake own motion enquiries into systemic issues;
  - the power to make recommendations to relevant respondents, including Commonwealth and State and territory governments, for remedial action;
  - the ability to conduct policy and programme reviews and 'audits';
  - the ability to publicly report on the outcomes of systemic enquiries and group, policy and programme reviews, or audits, including through the tabling of an Annual Report to Parliament;
  - the ability to develop and publish policy recommendations, guidelines, and standards to promote service quality improvement;
  - the ability to collect, develop and publish information, and conduct professional and public educational programs;
  - the power to enable enforcement of its recommendations, including for redress and reparation for harms perpetrated.





ENDNOTES



## ENDNOTES

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