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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Inquiry into Domestic and Family Violence—Policy approaches and responses

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Advocacy for Inclusion

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advocacy for **inclusion**

Including People with Disabilities in current and new ACT legislation into domestic and family violence

Response to the Standing Committee on Justice and
Community Safety Discussion Paper: Domestic and Family
Violence – Policy Approaches and Responses

Advocacy for Inclusion

September 2017

**About Advocacy for Inclusion
Home of the Disability Rights Law Centre**

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion is a non-for-profit Disabled People's Organisation (DPO) community organisation in the Australian Capital Territory (ACT), Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and is signed onto the *ACT Human Rights Act*.

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Introduction

Advocacy for Inclusion is a not-for-profit non-government community organisation in the Australian Capital Territory. This submission centres on our direct practice experience with people with disabilities, including individual advocacy support, self-advocacy support, and consultations undertaken during previous projects, as well as draws from peer reviewed research literature. We highlight consumer insights into institutional settings, and their direct experiences of violence, including two in-depth personal stories of people with disabilities, shared with their permission. These are perspectives rarely heard by the broader community.

Advocacy for Inclusion acknowledges the broad term of Domestic and Family Violence (DFV):

“These terms can be defined with reference to various contextual elements such as relationships, location of offences, and/or domestic arrangements; and may be interpreted differently depending on the particular legal, policy, service provision, or research view being taken”.^{1 2}

The term ‘violence’ is used as a broad term in this submission to encompass abuse, neglect, and restrictive practices, because they all stem from misuse of power against people with disabilities, whether deliberate acts or otherwise. Violence against people with disabilities can manifest in unique ways compared to violence against non-disabled people, and for this reason it often goes unrecognised. This submission explores a wide range of violence against people with disabilities, from the use of generic institutional practices that deny real choice and control, to overt acts of violence that are recognised in criminal law.

In 2016, the ACT legislated and passed the *Family Violence Act 2016*.³ We find this new legislation continues to erode the options for people, particularly women, with disabilities escaping violence as it removes previous ambiguities about their domestic circumstances and excludes the types of domestic arrangements. People with disabilities live in congregate and institutional living, yet they are outside the provisions of the *Family Violence Act 2016*. This result in denial of coverage by domestic violence protection orders, leaving common assault provisions as the only alternative to seeking protections or redress, both are inadequate in responding to people with disabilities escaping violence in their home.

The new ACT Government 2016-17 ‘Safer Families’ Package fails to recognise that people with disabilities do not all live in ‘family-like’ arrangements. Relationships, consensual or not, are not recognised if the person with disability is experiencing violence in their home by support workers, co-residents with disabilities, or kinship carers and this impacts on how information sharing should consider the privacy of individuals in these settings.

The ACT *Domestic Violence and Protection Orders Act 2008* provide victims of violence in domestic relationships a “greater level of protective response”. Although people with disabilities experience high rates of violence, this Act does not recognise the relationships common among people with disabilities as “domestic”. For example, relationships in disability supported accommodation and informal arrangements such as home-sharing.¹ People with disabilities are excluded from the “greater level of protective response” afforded to other members of the community. Domestic violence legislation must extend protection to all people with disabilities regardless of their domestic settings.

Our key message is that institutional models for disability support are inherently flawed, violent by design, and must be phased out, particularly with the opportunities brought by the National Disability Insurance Scheme (NDIS). From a policy perspective, this is a challenge for the ACT Government to prevent and respond to DFV by recognising people with disabilities living in congregate, residential and institutional arrangements where choice and control is exercised and the option of escape is impossible without extensive supports and reasonable accommodations that meet individual needs of people with disabilities in such places.

¹ Australian Bureau of Statistics. (2009) (revised 2013) *Conceptual Framework for Family and Domestic Violence*.

² Standing Committee on Justice and Community Safety (2017) *Discussion Paper: Domestic and Family Violence – Policy Approaches and Responses*.

³ *Family Violence Act 2016*, 2016, Canberra: Attorney-General—Justice and Community Safety Directorate

The ACT government has aligned a great deal of ACT legislation with NSW, but for some reason it has failed to provide people with disabilities the right to be safe in their own homes. Instead it continues to actively support and promote models of living which stand outside domestic violence law and which are proven, despite the best intentions of everyone involved, to result in high levels of violence and abuse. Advocacy for Inclusion works consistently with people with disabilities who are experiencing violence and have found the contexts within institutional living are not recognised by the wider community as being forms of violence. For example, violence between residents in disability residential care facilities or perpetrated by caregivers.

Recommendation: The ACT Government to amend legislation to include people with disabilities the right to be safe in their own homes in alignment with NSW family and domestic violence legislation.

The need of data collection

Until the commitment of national data collection in 2022⁴, there remain no national studies on the prevalence of violence against people with disabilities in institutional settings, or in the general community. However, it is widely documented that people with disabilities experience higher rates of violence than the general population, and women with disabilities are at particular risk.^{5 6 7}

The UN Committee on the Rights of Persons with Disabilities (CRPD) recommends that Australia develops nationally consistent data collection and public reporting of disaggregated data across the full range of UN CRPD obligations, including the right to be safe from violence, and that all data be disaggregated by age, gender, disability status, place of residence and cultural background.⁸ This remains critical to gain a real understanding of the issue to support the development of policies and legislation that enable people with disabilities to access basic human rights that protect them from domestic violence.

Aside from comprehensive data collection needed in the ACT, the Official Visitors Scheme (OV) remains the current solution to people with disabilities reporting violence within Government-led service providers, institutional facilities and congregated living arrangements. The OV Scheme allows the Official Visitor to visit places at reasonable time following a complaint or on the OV's own initiative. The OV Scheme does not work in conjunction to current DFV legislation, meaning there is no consistent reporting mechanism that reports violence in these places.

The need for data collection remains essential in building an evidence base for DFV approaches and responses, particularly for people with disability to be included in such evidence in guiding future policy and legislation.

Recommendation: Recognising the need to address violence against people with disabilities, including domestic violence, in an intersectional way. The ACT Government work in collaboration with the Official Visitors Scheme to protect, investigate and enforce findings related to situations of exploitation, violence and abuse experienced by people with disabilities, and that addresses the multiple and aggravated forms of violence and abuse in institutional living.

⁴ Standing Committee on Justice and Community Safety (2017) *Discussion Paper: Domestic and Family Violence – Policy Approaches and Responses*, p.5 (2.12)

⁵ National Cross-Disability Alliance. (2014). *Senate Standing Committee on Finance and Public Administration: Inquiry into domestic violence in Australia: Joint submission from National Cross-Disability Disabled People's Organisations*.

⁶ Attard, M., & Price-Kelly, S. (2010) *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, PWDA, NSW.

⁷ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*. Background Paper. Hobart: Women with Disabilities Australia

⁸ UN Committee on the Rights of Persons with Disabilities. (2013). Concluding observations on the initial report of Australia. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en

'Family Violence' vs Domestic Violence in the ACT

Following the announcement of the ACT Government 2016-17 'Safer Families' Package, the new legislation does not include the range of settings in which people with disabilities live. The lack of definition which captures the range of relationships and various dimensions and experiences of violence experienced by people with disabilities living in group or congregate living arrangements is not included under the wide definition of 'family violence'. Relationships, consensual or not, are not recognised if the person with disability is experiencing violence in a 'home setting' by support workers, co-residents with disabilities, or kinship carers.

Not all relationships in which people with disabilities experience violence can be defined within a family-like context. Any definition of 'domestic violence' needs to be sufficiently broad to cover spousal relationships, intimate personal relationships (including dating relationships and same sex relationships), family relationships (with a broad definition of relative), and formal and informal care relationships.

Even within Commonwealth legislation⁹, there is no classification or consensus as to what constitutes violence against people with disabilities, particularly women with disabilities. The definitions used vary in the context of 'domestic', 'spousal', 'intimate partner' or 'family violence' which frequently excludes the violence that people, particularly women with disabilities experience in the many settings in which they live.^{10 11} The ACT *Glanfield Inquiry* noted the general community often refers to *domestic violence* as intimate partner violence and uses the term *family violence* as the broader term encompassing violence against a variety of family members including intimate partners.¹² Yet, for people with disabilities this is totally inappropriate and denies the violence experienced in their own homes as domestic violence.

Women with disabilities live in a diverse range of domestic settings including, a community based group home or residential institution, a boarding house, hospital, psychiatric ward, or nursing home. It is highly common that women with disabilities who have only experienced living in supported accommodation have no knowledge about alternatives and no readily accessible means to acquire that knowledge. It is under these living arrangements that many women with disabilities are particularly isolated, with limited ability to have relationships and confidants outside the 'family' where the abuse is taking place.

Male residents in residential care facilities are often cited in the literature as the most common perpetrators of sexual abuse against women with intellectual disability.^{13 14 15 16} In these facilities the behaviour may be diminished because it is seen to be an indication of the perpetrator's disability.^{17 18} Further, disability accommodation providers often do not respond to such incidents of violence or sexual assault appropriately. For example, in our experience, service providers seek to remove the victim from their home instead of the perpetrator. This is also discussed in a report from the Ombudsman Victoria shows that victims of sexual

⁹ Australian Government (2012) *Responses by Australia to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report of Australia on 20 July 2010*. Accessed February 2013 at: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.AUL.CO.7.Add.1.pdf>

¹⁰ Commonwealth of Australia, 2010

¹¹ WWDA, *Preventing Violence Against Women and Girls*, 2015

¹² *Glanfield Inquiry Report*, f.4, p. 22: http://www.cmd.act.gov.au/_data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf

¹³ Community Services Commission & Intellectual Disability Rights Service, 2001, *Crime prevention in residential services for people with disabilities, A discussion paper*, Sydney: Community Services Commission.

¹⁴ People with Disability, 2007, *SADA Action Strategy Project, Sexual assault in disability and aged care residential settings, NSW regional consultations findings and recommendations*, Sydney: Author.

¹⁵ Wilson, C., & N. Brewer, 1992, The incidence of criminal victimisation of individuals with an intellectual disability, *Australian Psychologist*, 27(2), 114-17.

¹⁶ Wilson, C., 1990, *The incidence of crime victimisation among intellectually disabled adults* (Report Series No. 92), Adelaide: Australasian Centre for Policing Research.

¹⁷ Attard, M., 2007, Senior Project Officer, Sexual Assault in Disability and Aged Care Action Strategy Project. Interviewed by A. Powell, 18 December 2008. Cited in Sullen, M., & Powell, A., Op. Cit.

¹⁸ Worth, C., 2008, Manager, South East Centre Against Sexual Assault (SECASA). Interviewed by A. Powell, 22 January 2008. Cited in Sullen, M., & Powell, A., Op. Cit.

assault in residential care facilities are often removed from the home instead of the perpetrator.¹⁹ This means that the victim cannot access justice as they feel punished for the incident when they wanted to remain in that home.

The Australian Law Reform Commission report *A National Legal Framework* recommended that all jurisdictions, including the ACT, provide a definition of family violence that is violence of threatening behaviour, or any form of behaviour that coerces or controls a family member.²⁰ It should be recognised that people with disabilities living in congregate living or kinship arrangements do not fall into the definition of family violence, nor do they all live in a family-living context – yet they experience violence as legally described.

The types of violence experienced by women with disabilities include physical violence, sexual assault, verbal abuse, and living in fear of the threat of harm. Many live with intimidation, financial exploitation, and suffer retribution for decisions, choices or complaints they have made²¹. Women with disabilities face different forms of violence than women without disabilities. For example, forced sterilisation and abortion,²² chemical restraint, withholding of aids and equipment, having services or activities withheld, continual belittling and demeaning treatment based on the disability, and threats to remove children.

Any person experiencing DFV should be able to make a choice to leave or remain, regardless of whether they live in a disability specific arrangement. As in all other cases brought to court, the court is responsible for determining whether the user of violence should be held criminally responsible, and how the user of violence should be appropriately relocated and supported, including paid support staff and carers who use violence.

The broad definition

Advocacy for Inclusion acknowledges that a range of terminology has been developed over 30 years in regards to defining domestic and family violence, particularly what constitutes as a form of violence.

In various settings where women with disabilities reside violence may be perpetrated by a number of people who come into contact with the woman in her domestic life. These may include other residents, co-patients, a relative and/or a caregiver, whether family member or paid service provider.²³ For women who have made the choice to leave an abusive situation, accessible, appropriate and reliable service provisions and transport on short notice is almost impossible to find, particularly for women with disabilities who have high support and mobility needs. This issue can become more profound in situations where the perpetrator may be the sole source of transport, heightening the isolation and social exclusion and creating a large barrier to escape.

Due to broadness of definitions of what constitutes as violence, in the development of contemporary legislation and policy frameworks it has increasingly necessary to begin framing definitions of where abuse can occur in a location-sense. Such definitions can be useful regarding evaluation of policy initiatives and building an evidence of where abuse has occurred, particularly when high levels of abuse against people with disabilities occur in institutional and residential settings.

The legal framework in NSW has promoted greater recognition of domestic violence in disability specific settings. This has led to better responses by service providers and by government, including the funding of

¹⁹ Ombudsman Victoria, 2006, *Improving responses to allegations involving sexual assault*. Melbourne: Government of Victoria.

²⁰ Australian Law Reform Commission (2010) *Family Violence – A National Legal Response*. ALRC Report 114. *The Intersections of Child Protection and Family Laws*. <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>. P. 36.

²¹ Advocacy for Inclusion, 2015, Submission to the Senate Inquiry into Violence against PwD in Institutions, see Senate Inquiry into violence against PwD in institutions 2015\Submission to Senate Inquiry into institutional violence against FINAL.pdf

²² Women with Disabilities Australia, 2011, *Sterilisation of Women and Girls with Disabilities – An update on the issue in Australia*, www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/WomenwithDisabilitiesAustralia.pdf

²³ KPMG Consulting, 2000, 'Information resources on domestic violence for women with disabilities': Issues Paper; Prepared for the Commonwealth Office of the Status of Women; Canberra

programs and resources. It holds authorities accountable to take action when necessary. It will force the system to support people with disabilities to be housed safely and help prevent violence from occurring in the first place. People with disabilities in the ACT need the community to recognise that just because their living arrangements look a little different, they too feel the full impact of domestic violence and need to be safe in their homes.

Recommendation: The legal framework in NSW should be adopted in the ACT to afford people with disabilities the same safeguards against domestic violence as everyone else.

Services for people with disabilities escaping violence

The released Gap Analysis report states that only 9% of services provided were 'well equipped' to deal with women with disabilities; the lowest score recorded across the range of issues listed in the survey.²⁴ In Australia, 18.3% of people reported having disability in 2015.²⁵ ²⁶ With women with disabilities potentially being a large majority of the consumer base in the ACT²⁷, problems of definition emerge with much of the limited data that is available through the information sharing method unable to distinguish what is considered to be 'family abuse'.²⁸ People with disabilities living in congregate living arrangements, residential shared accommodation or living in a 'kinship' arrangement are not covered by the new 'Safer Families' package to be included in the data collection. For these individuals, data collection is non-existent when finding out who is doing what to whom and their lack of privacy becomes further eroded because the safeguards in place for "family violence" victims will not be applied to them.

In our individual advocacy work, we note a level of complacency towards violence by disability service providers when we raise issues of violence in their facilities with them. It seems to be systemically accepted. Disability support staff seem inured to it after years of having no alternative to offer, or perhaps having succumbed to a "culture of violence". It seems that workers and managers in the disability service system are also not trained to recognise and respond appropriately to these incidents. This means that women with disabilities can be subjected to violence and abuse in their home for years.

Isolation is a primary factor contributing to the difficulties faced by people, particularly women with disabilities understanding DFV legislation, services available and the means of accessing them safely. Isolation, both social and physical, can heighten vulnerability by the absence of family, social support and the lack of means to report abuse, particularly if the perpetrator is a carer or family member. The combination of lack of resources, isolation, social marginalisation and the potential requirement of reporting the violence to police is a deterrent for women with disabilities experiencing violence.

In our experience, domestic violence services are not catered to support the various levels of needs of women with disabilities. Several programs in the ACT provide women with funding to remove themselves from a violent situation but women still have to organise their own supports with the funding. This creates a large barrier particularly for a woman whose disability had been aggravated by the violence and stress of rebuilding her supports after escaping. This is an added stress upon the woman when support and services are not available and ready for her escape. Our experience shows that many women are unable to overcome this initial barrier to safety.

²⁴ *Ibid*

²⁵ WWDACT (2012) *Strong Women, Great City: A snapshot of findings from a survey of ACT women with disabilities*, Canberra <http://www.wchm.org.au/wp-content/uploads/2015/02/Strong-Women-Great-City-A-snapshot-of-findings-from-a-survey-of-ACTs-women-with-disabilities.pdf>

²⁶ Australian Bureau of Statistics (2016) *Disability, Ageing and Carers Australia: Summary of finding 2015*, Cat no: 4430.02015, Commonwealth of Australia, Canberra

²⁷ ACT Disability and Community Services Commissioner. (2014). *Developing an ACT crisis response to women with disabilities who experience domestic violence and/or sexual assault*. <http://www.hrc.act.gov.au/res/Final%20Report%20%20Crisis%20Services.pdf>

²⁸ NSW Information and Privacy Commission (2004), Guide: Privacy and People with Decision Making Disabilities, p.50

Facilities without ramps and lifts, communication equipment; attendant care via support workers; interpreter services for Deaf/Hard of Hearing; information in alternative formats such as Easy English; suitably trained staff in disability and so on, are not ready for women with disabilities seeking shelter. In addition, women with disabilities with children who flee violent situations run the risk of losing custody of their children because child protection authorities may question their ability to care for them alone on top of their own support needs.^{29 30}

The issue of disability specific supports being readily unavailable, and women with disabilities being expected to respond to escaping violence while simultaneously reorganising entire support arrangements from scratch, is prevalent. The consequence of support services not being readily available is that women with disabilities remain in the relationship for ease of retaining disability supports, particularly if the perpetrator is the primary caregiver.

Despite the heightened vulnerability and instances of violence experienced by women with disabilities; there is little in the way of legislative protections, programs and resources in response. For example, crisis accommodation appropriate to the needs of women with disabilities scarcely exists in Australia. Some women with disabilities have specific and significant support needs that would never be catered for in a women's domestic violence shelter.

A coordinated approach to ensuring services and reasonable adjustment is immediately provided is urgently required, as misinformation and ignorance about disabled people that is common among the general public, health and human service professionals makes it difficult for agencies to provide the same quality services to their disabled clients.

Recommendation: Additional funding for domestic and family violence services and shelters to include staff training on the prevalence of disability, domestic violence and their direct consequences.

Recommendation: Shelters and services to coordinate vital disability supports rather than expecting women with disabilities escaping violence to do this and manage their own supports.

Conclusion

People with disabilities are some of the most vulnerable members of the Australian community to all forms of violence and abuse. However, women with disabilities experience more barriers than the rest of the community in accessing shelter and services when escaping domestic violence. Advocacy for Inclusion believes that not enough is being done in the ACT to promote people with disabilities' right to be free and safe from violence.

The ACT changes to legislations surrounding DFV policy need to consider that contrary to the obligations under CRPD article 19,³¹ many people with disabilities are still living in situations, or with people, not of their choosing. "Many people with disability are effectively forced to live in institutions or residential care facilities in order to receive social and personal care supports"³² This result in conflict between house mates and often escalates to violence. Others are unable to get the level of support or care they need and are forced to rely on people who are physically or sexually abusive.

²⁹ McConnell, D., & Bjög Sigurjónsdóttir, H. (2010). see

http://www.washhouse.org.au//index.php?option=com_content&task=view&id=11&Itemid=18

³⁰ Advocacy for Inclusion, 2013, Counting them in: Parents with disabilities and the ACT Child Protection System, Submission to the ACT Out of Home Care Strategy 2015-2020, see

http://www.advocacyforinclusion.org/Site%20Data/Publications/Submissions/2014/Submission_to_Proposed_OOHCS_4June2014FINAL.pdf

³¹ UN Convention for the Rights of Persons with Disabilities, 2006, *Article 19*. "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."

³² CRPD Civil Society, 2012, Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities.