



23 March 2018

The Office of Caroline Le Couteur MLA
ACT Legislative Assembly
196 London Circuit, Canberra ACT
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Dear Caroline,

Thank you for the discussion paper and draft legislation on **Consent in Sexual Violence Laws, A proposal to reform the ACT's Criminal Law to adopt a new definition of consent in the Crimes Act 1900 (ACT)**.

WWDACT welcomes this initiative because we believe it will lead to dispelling the myths which prevail in the ACT judicial system assessment of and attitude to sexual violence and assault of women with disabilities. Women with disabilities are disproportionately affected by these stereotypes, such that their reporting of rape and sexual assault is minimal compared to the reporting rates of non-disabled women. Reporting of incidents is extremely low because of fear of not being believed, fear of having support removed, feeling guilty and at fault, fear of retaliation, feelings of shame and embarrassment, and of being used to abuse¹.

Yet research shows that the incidence of sexual assault of women with disabilities is 4-10 times that of non-disabled women with 90% of women with intellectual disabilities having been subjected to abuse. The incidence of unwanted sex is also at a disproportionately high rate². Therefore we support any proposal which would improve the ability of the justice system to address the high rates of sexual violence against women with disabilities.

¹ Plummer, S., & Findley, P. (2011). Women With Disabilities' Experience With Physical and Sexual Abuse. *Trauma, Violence, & Abuse*, 13(1), 15-29. <http://dx.doi.org/10.1177/1524838011426014>

² Fact Sheet: Violence against Women with Disabilities (prepared by Carolyn Frohmader, Women With Disabilities Australia (WWDA), Australian Civil Society Delegation to the 53rd Session of the Committee Against Torture, Geneva, November 2014, http://www.pwd.org.au/documents/temp/FS_Violence_WWD's.pdf

The very nature of disability means that women with disabilities will always experience a power imbalance in relation to the perpetrator, and we contend that this power imbalance extends into the justice system itself if they make a disclosure. Currently, the focus in trials is on competing evidence, and this immediately entrenches the disadvantage that a woman with disabilities experiences.

From a human rights perspective, these characteristics of the obliteration of the rights of women with disabilities in cases of sexual abuse, are acknowledged in the Convention on the Rights of Persons with Disabilities (CRPD) Article 16, ***Freedom from Violence, Exploitation and Abuse***. Implementing this article requires States Parties to take *all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home from all forms of exploitation, violence and abuse, including their gender-based aspects*. We believe that this is an argument for making changes to legislation which will address the power imbalance and take the emphasis away from the ‘competing evidence’ model currently in the courts. WWDACT believes your discussion paper mirrors all of these aspects of what is required for the legal protection of women with disabilities as outlined in Article 16. WWDACT believes that the changes to the law proposed would lead to better outcomes for women with disabilities in protecting them from sexual exploitation and abuse.

WWDACT further believes that the implementation of Article 12 (***Equal Recognition before the Law***) of the CRPD also underpins this proposed change to legislation. Article 12 relies on the premise that people with disabilities must be assumed to have full legal capacity, and that this further requires a change of attitude and eradication of the myths towards women with disabilities and sexual violence which prevails. Development of court systems which enable Supported Decision Making Volunteers (SDMV) to work with women with disabilities in the justice system will address the fear that there will be an increase in false allegations being made in the knowledge that the woman is being supported by a trained SDM volunteer.

In the matter of community education about any changes, this would involve reinforcement in sex education and education relating to consent to contraception for women and girls with disabilities. This sort of education is already available through SHFPACT. Education of parents, families and support service provider organisations, is ongoing and would be unchanged by the introduction of this type of legislation. Education of judiciary to dispel the myths surrounding women with disabilities will be necessary but this should be part of the Disability Justice Strategy currently being developed in the Justice and Community Safety Directorate.

WWDACT believes that a statutory definition of consent based on the concept of free and voluntary agreement, phrased in Easy English wording, is needed as a basis for change to the law.

WWDACT also resubmits our contribution to the 2017 ACT Greens Discussion paper on Invasions of Privacy and Technology-Facilitated Abuse and draws your attention again to the high incidence of image based abuse with 50% of people with disabilities reporting such incidents compared to 20% of non-disabled people. Changes to the laws surrounding consent accompanied by education appropriate for women with cognitive impairment is welcome.

In conclusion, WWDACT wholeheartedly supports the *proposal to reform the ACT's Criminal Law to adopt a new definition of consent in the Crimes Act 1900 (ACT) (Consent in Sexual Violence Laws)*. Your discussion paper addresses these issues through a sociological, criminological, and gendered lens. WWDACT asks that this perspective be enhanced with the addition of a disability lens, and that this further justifies the need for change.

Yours sincerely

A handwritten signature in black ink that reads "Sue Salthouse". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Sue Salthouse
Chair WWDACT

Women With Disabilities ACT acknowledges and pays respect to the Ngunnawal peoples, the traditional custodians of the ACT Region, on whose land our office is located. We pay our respects their Elders past, present and emerging. We acknowledge their spiritual, social, historical and ongoing connection to these lands and the contribution they make to the life of the Australian Capital Territory.