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**Submission to the Justice and Community Safety Directorate:
Sexual Assault Guidelines - Restorative Justice Referrals**

16 February 2018

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 to 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.

strong women, strong voices

wwdact@wchm.org.au [02] 6290 2166 PO Box 385 Mawson ACT 2607
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www.wchm.org.au/WWDACT/wwdact



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Introduction

Women with Disabilities ACT (WWDACT) is a systemic advocacy and peer support organisation for women and girls with disabilities in the ACT. WWDACT follows a human rights philosophy, based on the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of Discrimination against Women (CEDAW). In the ACT, there are 32,600 women with a disability, making up 52.5% of the population of people with disabilities, and 8.5% of the total population of the ACT (Australian Bureau of Statistics, Survey of Disability, Ageing and Carers Australia, 2015).

WWDACT welcomes the opportunity to provide a response to the Justice and Community Safety Directorate development of Guidelines for referral of Sexual Assault to the Restorative Justice process in accordance with the Crimes (Restorative Justice) Act 2004 [CRJ Act].

Human Rights

There is a human rights imperative that we take all necessary steps to enable women with disabilities to participate in and benefit from Restorative Justice. The CRPD has a general principle that people with disabilities must be supported for full and effective participation and inclusion in society (Article 3.3), and that States Parties shall take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise (Article 4 .e.). More specifically, Article 12. (Equal Recognition before the Law) requires recognition that people with disabilities enjoy legal capacity on an equal basis with others, and further requires that people with disabilities must be afforded adequate supports in order to exercise their legal capacity, including safeguards against abuse. Finally, Article 13 (Access to Justice) outlines the requirement for the provision of appropriate accommodations to enable women with disabilities to participate in all legal proceedings.

Combined, these articles make clear that we need to take all reasonable steps to ensure that women with disabilities are able to participate in a Restorative Justice process

General Principles

In general the Guidelines for Sexual Offences Restorative Justice (SORJ) have outlined a comprehensive set of checks and balances to ensure that the safety of the victim is paramount, and that the outcomes are negotiated to address their need for reparation. However WWDACT contends that a greater number of support organisations will need to be drawn in to the process in order for a woman with disabilities to be adequately supported.

In this submission WWDACT primarily addresses the case of women with cognitive impairment and/or communication impairment, with the reasoning that developing Guidelines which enable them to participate in Restorative Justice will mean that processes will function better for all women with disabilities. For the sake of this submission, WWDACT considers the principles and guidelines in the case where there is no family-like relationship between the victim and offender, and that the Personal Violence Act 2016 would be applicable rather than the Family Violence Act 2016.

WWDACT agrees with the Principles set out in the SORJ Guideline. Although acknowledging the challenges, WWDACT confirms the right of women with disabilities victims to participate, and that difficulty of the Restorative Justice process is no excuse not to undertake it.

Meeting the Objects of the Crimes (Restorative Justice) Act 2004 (CRJ Act)

WWDACT applauds the objects of the CRJ Act. Unfortunately there is a high prevalence of sexual assault against women with disabilities. Ninety percent of women with intellectual disabilities have been subjected to some form of sexual assault¹ in their lifetime. For the majority of these women, this violence first occurred before the age of 18 years². Overall, women with disabilities experience 4 – 10 times the rate of sexual abuse compared to non-disabled women³. Fifty percent of people with disabilities report that they are subjected to some form of image based abuse⁴.

It is therefore imperative that we enhance the rights of women with disabilities who are victims of sexual assault offences to experience the empowerment that the Restorative Justice process gives in enabling some degree of reparation for the harm done by these offences. Recognition of abuse and reparation has been denied for too long.

However WWDACT acknowledge that setting up a system of Restorative Justice that will create an environment which can appropriately support women with disabilities to engage in the process will require more resources and a longer timeframe than may have been envisaged in developing the Sexual Offence Restorative Justice (SORJ) Guidelines.

To date, access to the criminal justice system has been denied. On the whole, disclosures of sexual assault are not believed, or if believed are belittled and regarded as not being important or of any significance to the individual. In addition, women victims are treated as unreliable witnesses. Combined, these factors mean that disclosures do not proceed to the criminal justice system. WWDACT therefore acknowledges that it is important that an object of the CRJ Act is that Restorative Justice can occur at any stage in the process. This may help agencies to develop procedures for a women with disabilities to be supported from the time of an initial disclosure.

¹ Sexual Offences (as outlined in Part 3 of the CRJ Act) commonly committed against women with disabilities include sexual assault in the first, second and third degree, sexual intercourse without consent, acts of indecency in the first, second and third degree and without consent, and intimate observation or capturing of visual data (including its distribution without consent). Fifty percent of people with disabilities are subjected to a higher incidence of this latter type of assault, see Henry, D., Powell, D., & Flynn, D. (2017). *Not Just 'Revenge Pornography'. Australians' Experiences of Image Based Abuse*. Melbourne: RMIT University, https://www.rmit.edu.au/content/dam/rmit/documents/college-of-design-and-social-context/schools/global-urban-and-social-studies/revenge_porn_report_2017.pdf

² People With Disabilities Australia, Fact Sheet: Violence Against Women With Disabilities (prepared by Carolyn Frohmader, 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

³ Ibid.

⁴ Henry, D., Powell, D., & Flynn, D. (2017). *Not Just 'Revenge Pornography'. Australians' Experiences of Image Based Abuse*. Melbourne: RMIT University, https://www.rmit.edu.au/content/dam/rmit/documents/college-of-design-and-social-context/schools/global-urban-and-social-studies/revenge_porn_report_2017.pdf

Adequate training

All parties involved in the Restorative Justice process will need specialist disability awareness training in order to be able to assess the capacity and suitability of making a referral for a woman victim with disabilities. This includes the Director-General Restorative Justice, the Convenors, Restorative Justice Unit staff and all Referring Entities⁵. It will be equally important to train a range of organisations which have no direct interaction with the criminal justice system to understand the Restorative Justice process in order for them to be able to act as support people in the Restorative Justice process.

Arguably the first step of the referral process will be recognition that an offence has been committed. For women with disabilities, disclosures of sexual assault are unlikely to be at a point of contact with the Referring Entity. Therefore the first step is for first-disclosure recipients (i.e. the family member, personal care support worker, service provider staff, health/allied health professional, community activity staff, disability advocacy organisation) to recognise that a disclosure is being made, to respond with appropriate care and to have knowledge of the Restorative Justice process and of Referring Entities. At present such a first-disclosure recipient will most likely make a referral to a Sexual Assault (SA) service i.e. the Canberra Rape Crisis Centre (CRCC). The CRCC will therefore be involved much earlier in the process than is outlined in the Restorative Justice pathway (p.31 of SORJ Guidelines). Their involvement will be more intensive and of longer duration.

It is also important that the Restorative Justice Unit is able to contact a much wider range of support organisations which may need to be involved in order for a woman with disabilities to be supported through the Restorative Justice process. Such organisations include disability service provider organisations, Official Visitor for Disability Services and/or Public Advocate.

Assessment of Eligibility: The Guidelines state that access to the Restorative Justice process relies on an assessment of the suitability of people to participate. WWDACT does not want the consideration of a case to be rejected at the first contact stage because of the perceived challenges of working with a victim with cognitive impairment/communication impairment, or due to the unconscious bias of those involved in the assessment process. All potential referrals must be assessed objectively.

WWDACT would like assurance that a pro-arrest policy consistent with that applying under the Family Violence Intervention Program (FVIP) and Restorative Justice Domestic and Family Violence (DFV) process is applied to situations where the offender is known to the victim, i.e. a paid support worker who has had frequent access to the victim, over a prolonged period of time. Despite the clear-cut nature of the offence, there may be instances where the Restorative Justice process would be of benefit to the woman with disabilities involved.

Assigning Convenor to a case of a woman with disabilities: The Convenor assigned to the Restorative Justice process for a woman with disabilities will need awareness of the exacerbated power imbalance resulting from the intersection of gender and disability discrimination, the resultant marginalisation, and also have knowledge of the nature of violence against women with

⁵ Referring Entities under s22 of the CRJ Act: ACT Policing, Child and Youth Protection Services, the office of the Director of Public Prosecution, the ACT Children's/Magistrates/Galambany and Supreme Court, ACT Corrective Services, The Sentence Administration Board, and the Victims of Crime Commissioner

disabilities; the high incidence of Post-Traumatic Stress Disorder/Vicarious Trauma which affect their level of functioning independent of the impact of their disability.

In addition, those involved in the Restorative Justice process will need an ability to communicate appropriately, know how to use intermediaries for communication (e.g. AUSLAN interpreters) and have familiarity of conducting interviews with a woman who relies on use of communication aids.

Coordination of a much more comprehensive team of specialists will be needed. These could include a Disability Service Provider Organisation involved in the support of the individual, and an individual Advocacy Organisation (such as ADACAS or Advocacy for Inclusion).

WWDACT is also concerned that, without training, women with disabilities will have a tendency to withdraw from the process, because of low self-esteem, lack of confidence, and lack of experience in decision-making. Nevertheless, many women with disabilities deserve to have the impact of a sexual offence acknowledged and for Restorative Justice to be part of a process of reparation.

Suitability assessments: A strength of the SORJ Guidelines is that there is a range of ways the Restorative Justice conference can take place, an adequate cooling off period of 2 weeks, and close monitoring of safety plan. In addition, the principles (outlined on p.15) for assessing suitability of the additional support person/s as participants is useful, with the proviso that a greater number of support organisations may need to be involved.

Recommendations

1. It is important that the Guidelines make clear that:
 - i. The women victims with disabilities can use their preferred method and format of communication, and that there is flexibility in the requirement for written consent forms and other documents.
 - ii. That the Restorative Justice process is sufficiently flexible to meet the capacity and support needs of the victim.
 - iii. Principles outlined in the eligibility of a child to participate (p.10) should hold for all ages. In asking this WWDACT does not infantilise the women victims with disabilities, but realises that aspects of this section of the Guidelines become a good guide for dealing with a women with disabilities with cognitive and/or communication impairment. Assessing the suitability of the process rests with the Director-General. It is therefore important that she/he and her/his staff have skills appropriate.
 - iv. The principle of monitoring is essential and WWDACT is pleased that this is built into the Guidelines. WWDACT further requests that a compliance timeframe be developed for each Conference Agreement through close liaison between the Director-General and the Convenor, taking into account the need for additional people to be involved, e.g. a disability advocacy organisation, a disability service provider organisation and a Supported Decision Making assistant.
 - v. The Guidelines add a specific section dealing with the collection of data about the incidence and prevalence of Sexual Offences against women with disabilities, including content of reports to Referring Entities, nature of agreed outcome, achievement of agreed outcome; and that generalised, de-identified data be made publicly available. Consideration should be given to registering all abuse with the Disability Abuse and Neglect Hotline so as to contribute to national data collection.

2. Additional disability awareness training be undertaken by the Director-General, Convenors, Restorative Justice Unit staff and staff of Referring Entities. Reverse Training in the Restorative Justice process should be made available to disability sector organisations likely to be involved in supporting a women victims with disabilities.
3. Referring Entities should also notify the Official Visitor for Disability Services when a referral is made.
4. Restorative Justice Convenors with disability expertise should be recruited and trained to assist women victims with disabilities.
5. In recognition of more intense and longer timeframe for SA counselling, additional funds be allocated to the Canberra Rape Crisis Centre to enable them to support women victims with disabilities who are participating in a Restorative Justice process.

A Disability Justice Strategy will assist in addressing the above principles and enabling the awareness training which is contingent on its successful implementation for women victims with disabilities.