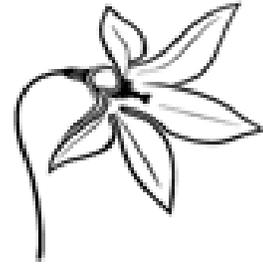


Submission to:

Australian Law Reform Commission
Inquiry on Family Violence –
Commonwealth Laws



**Submission to
Australian Law Reform
Commission Inquiry on Family
Violence – Commonwealth Laws**

**Women With Disabilities ACT
(WWDACT)**

<http://wwdct09.blogspot.com>

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Women With Disabilities ACT acknowledges the Ngunnawal people as the traditional owners and continuing custodians of the lands of the ACT and we pay our respects to the Elders, families and ancestors. We acknowledge that the effect of forced removal of Indigenous children from their families as well as past racist policies and actions continues today.

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Introduction

Women With Disabilities ACT (WWDACT) is an organisation for women with all types of disabilities in the Australian Capital Territory. WWDACT is an affiliate of the national peak organization Women With Disabilities Australia (WWDA) and is similarly run by women with disabilities, for women with disabilities. WWDACT draws strongly upon the work and writings of WWDA and aligns its goals and strategic direction with theirs. WWDACT represents the 25,500 women and girls with disabilities in the ACT¹ and is committed to promoting and advancing the human rights and fundamental freedoms of ACT women with disabilities.

WWDACT works from a rights based framework that links gender and disability issues to a full range of civil, political, economic, social and cultural rights. This rights based approach recognises that equal treatment, equal opportunity, and non-discrimination provide inclusive opportunities for women and girls with disabilities in society. It also seeks to create greater awareness among governments and other relevant institutions of their obligations to fulfill, respect, protect and promote human rights and to support and empower women with disabilities, both individually and collectively, to claim their rights.

Response to the *Australian Law Reform Commission Inquiry on Family Violence and Commonwealth Employment, Social Security, Child Support and Immigration Laws*

Women and girls with disabilities have a special interest in the issue of family violence in general, as well as its interaction with employment, social security, child support and immigration laws. Our interest is based on the intersection of gender and disability policies and politics. There is a wide range of domestic settings in which women and girls with disabilities experience violence including the family home, group homes, institutions, hospitals, respite care facilities, and day activity centres. Research indicates that violence against women and girls with disabilities is a problem, and that compared to non-disabled women and girls, women and girls with disabilities:

- experience violence at higher rates and more frequently²;
- are at a significantly higher risk of violence;

¹ ABS Survey of Disability, Ageing and Carers 2003.

² For example, a study by the National Police Research Unit and Flinders University of 174 people with intellectual disability indicated a prevalence rate of assault as three times more likely to be physically assaulted and ten times more likely to be sexually assaulted than non-disabled people (Cattalini, 1993, 12) cited in **Violence Against Women With Disabilities - An Overview of the Literature** A paper written by Keran Howe (2000) < <http://www.wwda.org.au/keran.htm> >

- have considerably fewer pathways to safety;
- tend to be subjected to violence for significantly longer periods of time;
- experience violence that is more diverse in nature; and,
- experience violence at the hands of a greater number of perpetrators.³

A commonwealth legal system that purports to embody the principles of equality and non-discrimination must embrace a wide definition of “family” and a wide definition of “violence” if it is to protect and promote the rights of women and girls with disabilities against family violence.

Guiding Principles

Physical, attitudinal and procedural barriers exacerbate issues and experiences of family and domestic violence of women and girls with disabilities. WWDACT wishes to highlight three guiding principles in response to the ALRC *Discussion Paper Family Violence – Commonwealth Laws*.

- (1) In all matters relating to women and girls with a disability we should have the opportunity to be actively involved in decision-making processes about legislative changes, policies and programmes, especially those directly concerning us.
- (2) Women and girls with disabilities are subject to multiple discrimination, and in this regard special measures are required to ensure we enjoy all human rights and fundamental freedoms in a full and equal manner - including our right to physical and mental integrity and safety. This may take the form of reasonable accommodation but is not limited to this.⁴
- (3) Mainstreaming the issues of women and girls with disabilities is an integral strategy towards sustainable social policy development, including freedom from violence for all women and girls.

³ women’s centre for health matters *Women With Disabilities Accessing Crisis Services A Project to assist domestic violence/crisis services in the ACT to better support women with disabilities who are escaping domestic and family violence* (2010) at page 5 at <http://www.wchm.org.au/Women-With-Disabilities-Publications>

⁴ See Articles 6 and 7 of the International Convention on the Rights of Persons with Disabilities (CRPD).

Freedom from exploitation, violence and abuse

Article 16 of the Convention on the Rights of persons with Disabilities (CRPD) states:

- 1. States Parties shall 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.*
- 2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.*
- 3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.*
- 4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.*
- 5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.*

WWDACT is concerned that the rights contained in CRPD Article 16 are fully embodied in all Australian Commonwealth laws including employment, social security and child support laws following Australia's ratification of the CRPD and its accession to the Optional Protocol to the CPRD.⁵ We view this current ALRC reference as an inquiry to discover how these international human rights obligations adopted by the Australian Government under the CRPD might be incorporated into our domestic law.

⁵ Australia ratified the *Convention on the Rights of Disabled Persons* (CRPD) on 17 July 2008; and acceded to the *Optional Protocol to the CRPD* on 21 August 2009.

Women With Disabilities in the ACT and Their Voices

WWDACT acknowledges that – particularly when issues of family and domestic violence concern girls with a disability – it may be in the best interests of the child to suppress the identity of alleged victims and perpetrators of family and domestic violence. We also acknowledge that allegations of family violence may damage the reputation of an alleged perpetrator of violence, particularly if those allegations are subsequently proven to be false (or at least not capable of being proven true). However, the overall experiences and views of our members is that perpetrators of family and domestic violence are often unnecessarily protected by privacy concerns. The following extract was sent to WWDACT by one of the members of our National Women With Disabilities (NWWD) group. It is a response to a request by WWDACT to include some personal experiences of women with disabilities in this submission to the ALRC reference into Family Violence and Commonwealth Laws.

Hi Sue,

i have no problem with you using anything i have written, to be used for the purposes you have outlined. I would prefer that at least my first name be included, if for 'legal' reasons my full name can't be, (i have come across this form of silencing before!!!) ...then this is ok too.

Why do i prefer my first name to be included?

Because, as a survivor of over 30 years of DV, 16 years of DV, SA and other abuses in family of origin, the rest in marriage, then de-facto relationships, i have finally come to understand, that i need have no shame, or reason to hide. That the only persons my silence and/or anonymity protects, is the perpetrators.

Also, I do not wish to be further dehumanised by remaining an unidentified, nameless victim. The only people this protects ...is the reader of my words!

It is not up to me, or other victims to protect those people, who are making decisions on behalf of victims, from the impacts of crimes committed against us!!!

When people, leaders, who make decisions on our behalf, do not know your name, and therefore your humanity, it is easier to distance themselves from the full impact of these crimes. Our society, by its very nature, aided by a lack of adequate and real protection, encourages victims to remain hidden.

Thereby protecting society and policy makers from knowing the truth. This is part of the problem, if you dont know 'who' these individuals are that you are supposed to be protecting, and providing adequate services for, how would you know where to begin?

As long as victims of crime remain kept at a 'managable' distance, as unidentifiable 'case numbers' without names and faces. We remain hidden, effectively silenced victims, without name nor face, therefore; without our dignity or our humanity.

thanks for asking to include my voice, i am happy to be heard!!

warm regards

Aquillion

A Separate Ground of Discrimination

The issue of multiple disadvantage constitutes the reality of the lives of women and girls with a disability. Multiple disadvantage cannot be cloaked over - no matter how inconvenient, messy or difficult the experience of multiple disadvantage might be to deal with in personal, legislative or administrative terms. In order to achieve the desired policy outcome of protecting women and girls with a disability from family violence it may be necessary to make family/domestic violence a separate ground upon which it is unlawful to discriminate against any person. Adding a ground 'experience of domestic violence' to the grounds listed under the current grounds for sex discrimination (such as potential pregnancy, and family responsibilities)⁶ for example might protect women and girls with disabilities from both direct and/or indirect discrimination. While, WWDACT realises that such a strategy falls outside the terms of reference of this current ALRC inquiry into family violence and Commonwealth laws, we believe that the more appropriate solution to this important question is to take a whole-of-government view⁷ rather than a more piecemeal solution.

How would such a ground of discrimination operate within the context of social security, employment, child support or immigration laws? Let's look at social security law. For example, when a decision maker is exercising his or her discretion under s24 of the *Social Security Act 1991* (SSA) (Cth) to determine whether a woman with a disability is or is not "in a relationship" for the purposes of social security law, the decision maker needs to understand the particular physical, emotional and financial inter-dependence between the woman with a disability and her partner and how this inter-dependence might force a woman with a disability to maintain an apparently on-going and close "relationship" with her violent partner. It is difficult for any women to leave a violent relationship. It is difficult for any person with a disability to leave a violent relationship. It is exponentially more difficult for a

⁶ Ss 7, 7A, 7AA *Sex Discrimination Act 1984* (Cth)

⁷ WWDACT is aware that the Commonwealth Government is also currently seeking views on the possible consolidation of Commonwealth anti-discrimination laws. Our comments on this matter will also be directed to that forum.

woman with a disability to leave a violent relationship - even in situations of extreme violence and abuse. WWDACT believes if family violence became a separate ground of discrimination under Commonwealth law⁸ any failure on the part of the decision-maker to take family/domestic violence into consideration in the course of their decision-making might give rise to a remedy under administrative law. It would also give rise to a separate anti-discrimination action. Currently, a woman or girl with a disability make be unfairly denied a social security benefit precisely at the time she needs it most: to help her to flee a violent relationship.

To take another example, an employer sacks a worker because of her repeated absenteeism. Domestic or family violence is not a ground of discrimination that is currently protected under the *Fair Work Act 2009* (FWA) (Cth), and so the employee would need to rely on existing grounds which proscribe unlawful discrimination under the FWA - such as sex, disability or family responsibilities - and show they are the reason she lost her job. Yet, family or domestic violence may be the real cause of the claimant's absenteeism and, in her circumstances, she may not be able to characterise the cause of her dismissal as falling under existing anti-discrimination laws. With no grounds of appeal, the woman loses her job and possibly the main way for her to find a way to leave her violent relationship. In general, it can be difficult for any women to complain about her conditions of work or her treatment at work. It is very difficult for any person with a disability to complaint about their conditions of work or their treatment at work. It is exponentially more difficult for a woman with a disability to complain about her conditions of work or her treatment at work. Women and girls with a disability generally live in fear of being judged incompetent or unreliable even in the best and most supportive of work environments. WWDACT believes that the work performance of a substantially greater proportion of women and girls with a disability is adversely affected by family violence to a greater degree than the rest of the comparative population. At present this belief largely anecdotal. A general ground of discrimination to proscribe discrimination in employment on the grounds of the experience of family/domestic violence would serve to educate employers to look for this particular issue. It would allow unjust dismissal to be challenged and, once again, give a woman or girl with a disability the financial means without which she cannot flee a violent relationship.

Conclusion

WWDACT is a small, voluntary non-government organisation. WWDACT does not have the resources to respond to the ALRC's [Discussion Paper 76 Family Violence – Commonwealth](#)

⁸ This suggestion was made by the Australian Human Rights Commission at Family Violence and Commonwealth Laws: Employment and Superannuation Australian Human Rights Commission Submission to the Australian Law Reform Commission
http://www.hreoc.gov.au/legal/submissions/2011/20110421_family_violence.html

Laws in any greater detail. We have chosen to respond to this ALRC Inquiry into Family Violence and Commonwealth Laws because the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has urged Australia to address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation.⁹ Institutions and supported accommodation are often a destination for women and girls with disabilities fleeing family violence and abuse: often a permanent solution. Together we need to break this perpetual cycle. We are grateful for the opportunity provided to make our views known. Our voices need to be heard.

⁹ UN Doc. CEDAW/C/AUL:/Co/7 at para 42 Concluding Observations of the Committee on the Elimination of Discrimination against Women Australia (30 July 2010) at para 42.