



People with Disability Australia (PWDA)

NSW Statutory Review of the Victims Rights and Support Act 2013 No 37

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Endorsed by Domestic Violence NSW

Contact details:

Dr Jessica Cadwallader

Advocacy Project Manager, Violence Prevention
People with Disability Australia Incorporated
PO Box 666 Strawberry Hills NSW 2012
Tel: 02 9370 3100
Fax: 02 9318 1372
jessc@pwd.org.au

With assistance from:

Ms Meredith Lea
Project Support Officer, Violence Prevention

About People with Disability Australia

People with Disability Australia (PWDA) is a NSW and national peak disability rights and advocacy organisation. Our primary membership is made up of people with disability and organisations primarily constituted by people with disability. We also have a large associate membership of other individuals and organisations committed to the disability rights movement. Founded in 1981, The International Year of Disabled Persons, PWDA seeks to provide people with disability with a voice of their own. We are a cross disability organisation representing the interests of people with all kinds of disability. We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

Expertise

PWDA has extensive expertise in the area of violence prevention and response. This includes individual advocates who directly support people with disability and their associates who are, or at risk of being in, situations of domestic and family violence from offices across Queensland and NSW thus providing us with grassroots expertise and ability to engage with local communities. We have completed many projects and numerous research projects in this area.¹ We provide violence prevention and response expertise in the area of people with disability to the Australian Government including Royal Commissions, various state and territory governments, key non-government bodies such as ANROWS and Our Watch, and to disability support providers, amongst others.

Introduction

People with disability are overrepresented as victims of violent crime, yet responses rarely take account of this population.² Estimates show that children with disability experience violence at around 3 times the rate of other children³ (Robinson). Recent analysis of Australian Bureau of Statistics Personal Safety Survey demonstrates that, even with the discriminatory methodology and sampling methods used for this research, adults with disability experience approximately twice the violence of the rest of the population.⁴

The situation in NSW may be even worse; 43% of women who experience personal violence in 2011 were found to have disability or a long-term health condition by the Personal Safety Survey, even as

¹ For example: [Stop the Violence Project; Women with Disability and Domestic and Family Violence: A Guide to Policy and Practice; Disability Support for the Royal Commission; Women with Intellectual Disability and Domestic Violence Project](#); National Disability Abuse and Neglect Hotline; and [Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment](#).

² AM Kavanagh, S Robinson and J Cadwallader, 'We count what matters, and violence against people with disability matters,' in *The Conversation*, 26th Nov 2015, at: <https://theconversation.com/we-count-what-matters-and-violence-against-people-with-disability-matters-51320>

³ Sally Robinson (2012), 'Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability,' Children with Disability Australia.

⁴ L Krnjacki; E Emerson; G Llewellyn and Anne M Kavanagh, (2016) 'Prevalence and risk of population violence against people with and without disabilities: Findings from an Australian population-based study' in *Australian and New Zealand Journal of Public Health* 40(1).

it excludes some of the settings recognised to result in high levels of domestic violence against people with disability (Women NSW). This is 7% higher than the national average.⁵

In relation to supported accommodation, the NSW Ombudsman's new powers under the 3C Reportable Incidents scheme has received over 600 reports in its first year of operation.⁶ This reflects a very high rate of violence against people with disability, much of which falls within the Crimes (Domestic and Personal Violence) Act 2007 definition of domestic violence.

It is also important to acknowledge that for a variety of reasons, criminal justice responses to violence against people with disability are often less than ideal. These aspects of the response to people with disability who have experienced violent crime are only relevant to this inquiry insofar as they may limit the full recognition of violence, and curtail the provision of services to people with disability. In this context, it is essential that the Victims Support Scheme Act is developed in such a way as to support the full inclusion of people with disability in the scheme.

In general, the Victims Rights and Support Act 2013 lacks recognition of the human rights of people with disability as detailed in the UN Convention on the Rights of Persons with Disabilities, ratified by Australia. It lacks the disability-neutral but disability-responsive approach for which PWDA advocates. The following is a list of the problematic elements of the Act, and our recommendations regarding amendment.

Section 6

s.6 currently does not contain reference to victims' rights to supports to enable their participation in the various elements of the justice system. Access to justice is impeded for people with disability at a number of different points throughout the system, which fails to realise Article 13 of the UN Convention on the Rights of Persons with Disabilities, which states:

Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

These are routinely denied to people with disability seeking to access justice, and leads to victims with disability frequently being denied access to the protections and response the rest of the community takes for granted. Fulfilling these rights would assist in addressing the impediments to justice that people with disability face. For a fuller discussion of these impediments, see the Australian Human Rights Commission's publication, *Equal Before the Law*⁷ (2013).

PWDA recommends that the Victims Rights Charter include the provision of appropriate accommodations and supports – psychological, communication, and disability-specific – to all victims during police investigation, prosecutorial decision-making, trials and hearings, and other justice-related elements to ensure equal access to justice for people with disability.

⁵ Analysis of Personal Safety Survey data undertaken by Women NSW, published in Women NSW (2014) 'Women in NSW 2014,' Department of Family and Community Services, The Government of NSW.

⁶ [NSW Ombudsman Forum 2016 on Reportable Conduct.](#)

⁷ Australian Human Rights Commission (2014), [Equal Before the Law: Towards Disability Justice Strategies](#)

S6.1 as currently formulated does not reference human rights, to which all victims are entitled, and which should be embedded through all justice processes and procedures.

PWDA recommends including reference in the Charter to the human rights of victims, including the various rights elaborated within UN instruments to which Australia is a party, to make explicit that victims' rights include human rights.

S6.3 does not reference the forms of services that would fulfil the support needs of people with disability. These are frequently essential to victims' participation in the justice system.

PWDA recommends referencing access to a series of other forms of assistance, including: individual advocacy, disability support services, and communications supports including Auslan interpreters, speech pathologists and other communication professionals.

Section 19

It is appropriate that this continue to reflect the appropriate definition of domestic violence as elaborated in the Crimes (Domestic and Personal Violence) Act.

PWDA recommends the continued inclusion of S. 19 (8)(h), and specifically (v) and (vi) which refer specifically to relationships and forms of residence in which people with disability experience disproportionate violence.

Division 3

PWDA believes that current victim support payments do not adequately address the situation of people with disability experiencing domestic violence. Victim Supports funding is currently very limited and does not reflect the cost of disability support provision, particularly attendant care. This produces difficulties for people with disability seeking to escape domestic violence, as the 'immediate needs' funding is designed to cover all immediate needs, including clothing and furniture for people who have had to leave their homes. This may leave people with disability with the choice between purchasing clothes and other immediate needs, and their disability support needs. This is completely inappropriate.

If people with disability aren't supported to gain access to these disability supports, they may be unable to leave situations of domestic and family violence because to do so may put their life at severe risk. Domestic and family violence shelters and refuges are unable to provide attendant care or other supports to people with disability, so they are often turned away from services. In our individual advocacy, we have found that this turning away has occurred through DVLine, the government-run first-response telephone service.

As NSW has the most disability-inclusive definition of domestic and family violence – including forms of violence to which people with disability are higher risk of experiencing, such as violence perpetrated by formal or informal support workers and co-residents in institutional settings – the Victims Support scheme should recognise this and enable the person with disability to access the same supports as any other person in the community.

The National Disability Insurance Scheme, which is ordinarily responsible for ensuring disability services are provided to those that need them, has been declared not to be a crisis response service. It will not be in a position, with respect to victims of DFV, to a) swiftly assess eligibility b) develop a plan with a victim or c) put in place a plan that adequately considers and addressing safety with funding attached in a timely enough fashion to enable that victim to leave violence safely. Indeed, it

is unclear how quickly a new applicant to the NDIS would be processed at full scheme roll-out; currently, it can take over 6 months to pass eligibility and have a plan drawn up and implemented.

PWDA recommends that the Act be amended to include the addition of a new victims support payment (in addition to 'Immediate Needs,' 'Economic Loss' and 'Recognition' payments) called the Disability and Domestic and Family Violence Crisis payment.

This payment should be separate from the 'Immediate Needs,' 'Economic Loss' and 'Recognition' payments so that people with disability are not forced to choose between their needs; and their specific needs are also met. It should be modelled on the Victorian Family and Domestic Violence Crisis Response Initiative⁸ with the following provisions:

- \$9000 (max) over 12 weeks, with a second period of 3 months available if required (that is, if alternative arrangements such as through the NDIS have not been able to be put in place prior to the end of the first 3 months)
- Available for people with disability and/or people whose child/ren have disability (however, this should be guided by self-identification of disability in collaboration with an DFV service provider, in line with WHO definition (<http://www.who.int/topics/disabilities/en/>))
- Covers the standard array of disability supports, including: personal care, Auslan or sign language interpretation, communication supports, assistance providing care for children, assistance with meal preparation, shopping, etc

Such a scheme would enable DFV services to support people with disability and access relevant disability expertise as required to support their clients, including interpreters, speech pathologists and others. It would also support the de-siloing of disability and family and domestic violence services in NSW, which constitutes a major impediment to people with disability accessing DFV services. It would also ensure that victims with disability, or parent-victims of children with disability, can access adequate funding to make it possible for them to leave violence.

Section 44

Many of the legislated reasons for not approving the giving of victims support or for reducing the amount of financial support or recognition payments do not take adequate account of the experiences of violence for people with disability, nor of the impediments they face seeking access to services and to justice.

PWDA recommends that ss.1 be fully reformulated to ensure that victims are not held responsible in any way for systemic failures.

ss. 1(a) explicitly allows that a person's condition – including, one must presume, an impairment of any kind – may 'contribute' to the injury or death sustained by the victim. This is discriminatory, and should be removed from the Act. People with disability experience higher levels of violence than the rest of the population; whilst this vulnerability is often attributed to their disability, it is in fact the result of systemic failures which make them reliant on those who may be perpetrators. Holding them responsible for these failures is highly problematic.

This concern also applies to ss.99(a).

⁸ Detailed Guidelines governing the Victorian Family and Domestic Violence Crisis Response Initiative can be found [here](#).

ss.1(b) and (c) require that an act of violence must be reported to a police officer within a reasonable time, or to a relevant health professional or practitioner, or a relevant agency. However, these sub-sections fail to recognise that there are numerous impediments for people with disability seeking to report crime. Many people with disability experiencing violence from a formal or informal carer or partner, may be unable to access a private telephone or a police station independently. They may be accompanied to every appointment they have in the community, leaving them no private moment to disclose violence to a health professional. Many health professionals require that a support person also attend an appointment.

Additionally, police stations may be inaccessible, or may not provide adequate support to make a report, including support with communication. In many circumstances, people with disability are turned away from police stations without being able to make a report, for a variety of reasons, including a lack of police training in communicating with people with disability, or where a police officer makes an on-the-spot assessment of the likelihood of a positive investigation and prosecution.

In Victoria, the recent *Beyond Doubt: The Experiences of People with Disability Reporting Crime* report demonstrated widespread problems with the encounter between a victim with disability and police.⁹ NSW has not, as yet, undertaken any similar research, but our individual advocacy experience would suggest that the situation is not markedly different between the two states. In a context where the problems with people with disability accessing justice have not yet been addressed, it is highly inappropriate to hold them responsible for the failures of other agencies including police and health.

ss.1(d) requires consideration of whether the victim could in any way be understood to have encouraged, assisted or participated in the commission of the crime. Perpetrators of violence against people with disability frequently take advantage of the community's tendency to think that people with disability are lying. This is a particular risk in relation to sexual violence against people with disability, where perpetrators may have, for example, led them to believe they were in a relationship (against their will) and that the sexual violence is therefore not violence. This could unfairly disadvantage people with disability in relation to this sub-section.

ss.1(e) requires consideration of whether the assistance that a victim provided to investigators was reasonable. People with disability may be disproportionately disadvantaged by this section, especially where investigators lack experience in gathering evidence from people with disability. People with disability may be treated as recalcitrant or unhelpful if communication supports are not made available to them during this period. They may not understand the questions being asked of them, not necessarily because of the content, but because of the way the question is put to them. This sub-section, then, disproportionately impacts on people with disability whose capacity to assist with an investigation is conditional on the provision of adequate supports.

ss.1(f) suggests that a victim must take 'reasonable steps to mitigate the extent of the injury sustained by the victim.' However, similarly with sub-sections 1(b) and (c), there are numerous impediments that people with disability may face in seeking medical advice or treatment. These impediments are not the responsibility of the person with disability, but of a frequently inaccessible medical system.

⁹ Victorian Equal Opportunity and Human Rights Commission (2014) [Beyond Doubt: The Experiences of People with Disabilities Reporting Crime](#), State of Victoria; see also *Equal Before the Law*, n. 7.

Part 8 and Schedule 1

As this submission demonstrates, the impact of Victims Rights and Supports on people with disability has not been adequately considered or explored.

PWDA recommends that the Victims Advisory Board include representative expertise regarding people with disability (i.e., a person with disability or a person from a representative organisation or peak body) be included on the VAB to ensure adequate responses to this cohort which experiences a higher rate of violent crime.

Conclusion

We are pleased to support the work of the NSW Government and particularly the Department of Attorney-General and Justice in ensuring that victims with disability are fully included in NSW legislation. Please do not hesitate to contact us if you have any queries or follow-up concerns.