



people with disability

ABN 98 879 981 198

Women NSW
Locked Bag 961
North Sydney NSW 2059

5 February 2016

Dear Women NSW,

Re: A Blueprint for Family and Domestic Violence Response in NSW

We thank the NSW Government for the opportunity to provide guidance in relation to the development of the Blueprint. We believe this Blueprint will be a major intervention in the epidemic of domestic and family violence in this state. We are pleased to provide the following policy advice and recommendations to assist in ensuring that people with disability are fully included in these processes. We would welcome any follow-up to assist in ensuring the Blueprint takes full account of people with disability, who experience such disproportionate levels of domestic and family violence.

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. www.pwd.org.au

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-

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](#).

government bodies such as ANROWS and Our Watch, and to disability support providers, amongst others.

Background:

People with disability in NSW are routinely failed by violence prevention policy efforts, family and domestic violence response services, disability services, and other ‘mainstream’ services such as police. They are excluded from prevention efforts when they are run in schools, and accessible education in respectful relationships is denied to them. (Love Bytes is being run across many NSW schools, but children with disability are routinely excluded unless they are fully integrated into mainstream classes). People with disability experience much higher levels of domestic and family violence, yet are routinely left out of violence response protocols and policies.²

PWDA recommends that the NSW Government fund a Disability and Domestic and Family Violence Council to participate in the Blueprint development process, ensuring the full inclusion of people with disability in the stronger domestic and family violence prevention and response strategies it produces.

The Personal Safety Survey administered by the Australian Bureau of Statistics excludes many people with disability who are known to be at higher risk of violence, such as people with intellectual disability, people who need communication support, and people living in institutional settings.³ Nonetheless, it found that in NSW, 43% of the women who experienced personal violence in 2011 had disability or a long-term health condition. This is 7% higher than the national average, demonstrating that women with disability are at higher risk in NSW than in all other states and territories.

PWDA recommends that the NSW Government contribute funds to the ABS specifically to increase the representation of people with disability via its sampling, recruitment and methods so that it is possible to assess the success of the Blueprint for people with disability.

1. Defining Domestic and Family Violence

The current definition of domestic violence in the Crimes (Domestic and Personal Violence) Act 2007 includes violence that occurs within institutional settings, and at the hands of paid support workers or carers. This is the leading definition of domestic violence in Australian law, as it reflects the experiences of domestic violence for people with disability. Unfortunately, this disability-inclusive definition is not reflected in violence prevention efforts or in violence response systems.

PWDA recommends that the Blueprint use a definition of Domestic and Family Violence that includes all legally recognised forms of domestic and family violence in NSW, in order to ensure that people with disability and the domestic violence that they experience is fully reflected in it.

2. Prevention

Prevention efforts are rarely inclusive of people with disability. This has led to the situation where violence against people with disability is typically taken less seriously than violence against people with disability. When perpetrators of violence against people with disability are carers or support

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 Krnjacki, L; Emerson, E; Llewellyn, G 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).

workers, the assumption of 'carer sacrifice' can be seen to mitigate the crime. The recent killing of Kim Hunt, and the media response and even the Coroner's Report on this case, all demonstrate that victims with disability tend to be blamed for the crimes perpetrated against them.⁴

This demonstrates that prevention efforts, to be effective for the safety of people with disability, must be fully inclusive. *Change the Story*, the National Framework for the Prevention of Violence against Women and their Children is obviously a key document, but its exclusion of the intersection of disability with gender from the main document is disappointing. Thus we recommend that if this document is used, full consideration of the Framework Foundation documents is included.

PWDA recommends that any use of Change the Story be thoroughly informed by the 'Framework Foundation' and robust consultation with people with disability and their representative organisations to ensure a fully intersectional prevention program.

Funding for preventative education with people with disability is limited or non-existent. School-based education programs should be required to include disability-specific information, and be fully accessible to all children with disability. These education programs should not be run as part of the physical education stream, from which some children with disability may be exempted. They should include *all students* in them, including those children with disability in segregated classes.

PWDA recommends that school-based education and prevention programs funded to provide training in schools be examined and selected based on their accessibility for and inclusion of children with disability.

PWDA further recommends that prevention programs be required to demonstrate substantial engagement with disability rights and representative organisations.

There is limited prevention education for adults, and we encourage the Government to explore more possibilities in this space. Disability rights organisations are best situated to provide this training. In many circumstances, sex and relationships education is increasingly provided by disability support services, who do not have the expertise, and/or whose violence response protocols are themselves inadequate.

It is also important that this training is provided by someone independent of the recipient organisation in case participants disclose violence. In our experience, numerous disclosures occur in these forms of training, as people with disability discover that their own experiences have included violence.

PWDA recommends that the NSW Government fund Sexuality and Respectful Relationships training, as developed and run by People with Disability Australia, for people with disability across the state.

3. Problems and Solutions in Police Responses for people with disability

Statistics requested from BOCSAR demonstrate that violence that occurs in residential institutional settings such as aged care facilities, psychiatric facilities and those administered by Ageing, Disability and Home Care, is frequently not identified as domestic violence. Of the approximately 521 violent

⁴ See, for example: Young, S, 'Disability and murder: Victim blaming at its very worst' on ABC Ramp Up. 16th Sep 2016, at <http://www.abc.net.au/news/2014-09-16/young-victim-blaming-at-its-very-worst/5745346>; and the NSW Coroner, (2015) Inquest into the Deaths of Geoffrey Francis Hunt... accessible at: <http://www.coroners.justice.nsw.gov.au/Documents/Hunt%20Family%20Inquest%20Findingsv2.pdf>

incidents reported as happening in these settings in the past year (including physical assaults, sexual assaults and harassment), only 79 were identified as domestic violence related incidents.⁵ This means that overall statistics regarding domestic violence are likely to be lower than they ought to be.

It also means that people with disability experiencing violence in these settings, whether at the hands of co-residents or support workers, are not given the same kinds of support as other domestic violence victims. Indeed, there are circumstances where this violence is not recognised as a police matter, but as a 'service incident.' This is inappropriate, and leads to a double standard in accessing justice for family and domestic violence: one for people with disability, and another for the rest of the community.

It may also mean that people with disability are being denied domestic violence-specific processes, such as the video collection of evidence in Domestic Violence Evidence in Chief or the Domestic Violence Forensic Unit collection of physical evidence. This is in spite of the fact that physical evidence may matter even more in cases where people with disability are excluded from participation in court proceedings due to inadequate supports being provided, or because of the inadmissibility of certain kinds of evidence provided by them (in some cases including evidence given through Auslan interpreters).

In addition, the ongoing problems for people with disability seeking to report crime must be addressed. In many circumstances, people with disability are denied support people when seeking to report or in interviews, both when they are perpetrators and when they are victims. This is despite the NSW Police Code being clear that a support person should be permitted. Additionally, police may decline to take reports from people with disability due to difficulties in understanding them.

PWDA recommends that police be fully trained and receive regular refresher training in how to engage with people with disability, in accessible interviewing techniques, and particularly how to recognise where a disability may be present.

PWDA recommends that police training in relation to family and domestic violence be robustly upgraded to fully reflect the definition offered by the Crimes (Domestic and Personal Violence) Act 2007.

PWDA recommends that all definitions of domestic and family violence across NSW services and government agencies be amended to reflect the legal definition in the Crimes (Domestic and Personal Violence) Act 2007, or to otherwise ensure the inclusion of people with disability and the locations and relationships in which they experience domestic violence.

4. Problems and solutions in the FDV sector for people with disability.

Many of the problems that people with disability face are related to limitations on services and funding. The demands on family and domestic violence services mean that they struggle to even deliver services to those people who can and do access their services. Making those services accessible to people with disability, or to other marginalised cohorts such as LGBTIQ people, people from diverse cultural and linguistic backgrounds and Aboriginal and Torres Strait Islander people requires planning, funding and extra capacity.

⁵ Information from Bureau of Crimes Statistics and Research, sr15-13438

This would enable family and domestic violence response services to participate in interagency meetings across sectors, collaborate with disability advocacy organisations and other, and to seek to innovate in ensuring the accessibility of their services.

PWDA recommends that the NSW Government fully fund an adequate number of fully accessible domestic and family violence response services, including Specialist Homelessness Services shelters and refuges, and recognise that expertise in gendered violence and trauma-informed responses is an essential part of providing adequate services in this area.

PWDA recommends that the Government include meaningful assessment of the accessibility of family and domestic violence response services and Specialist Homelessness Services and add discrete funding to family and domestic violence and homelessness response service contracts to progressively increase their accessibility, in line with DVNSW and PWDA's *Women with Disability and Family and Domestic Violence Services: A Guide for Policy and Practice*.⁶

Unfortunately, the family and domestic violence sector does not consistently recognise the full breadth of the legal definition of family and domestic violence in NSW, and the specific inclusions regarding the sites and relationships in which people with disability may experience violence. Additionally, there seems a prevailing assumption that 'someone else' provides violence response services to people with disability. This is inaccurate. As members of the NSW community, people with disability have the same rights to access violence response services as any other resident of NSW.

There are a number of difficulties for people with disability accessing family and domestic violence services. There is no register of the accessibility of domestic and family violence support services in NSW. This means that even if a victim accesses DVLine, they are unlikely to be able to be given information about whether a particular location is accessible. Despite the Going Home Staying Home reforms and service contracts allegedly requiring increased accessibility of shelters for people with disability, there is no information publically available about this. Indeed, it is not clear how the accessibility of shelters is audited or examined, if at all.

PWDA recommends that the NSW Government fund PWDA and DVNSW to roll out *Women with Disability and Domestic and Family Violence: A Guide for Policy and Practice* across the state. This would include:

- **accessibility audits of all domestic and family violence services in the state be performed, including shelters and refuges**
- **Information about outcomes of these audits to be provided on websites of all family and domestic violence services, and provided to DVLine and Local Coordination Points of Safer Pathway, to form part of their databases**
- **Accessibility audit information to be performed annually as part of the contract requirements of family and domestic violence services**
- **Funding to be made available to services to progressively increase their accessibility, in line with the guidance provided in the above document.**

Family and domestic violence workers do not consistently recognise people with disability experiencing violence as part of their core business, and so people with disability may simply be turned away. Additionally, family and domestic violence workers do not have protocols in place to support people with disability in institutional settings, meaning that the violence response to this

⁶ A copy of these resources may be found here: <http://pwd.org.au/issues/policy-and-practice-guide.html>

cohort is usually provided by people not skilled in this area. This means the response is usually from disability services and/or Ageing, Disability and Home Care, and is ad-hoc, not appropriate, not trauma-informed, and lacking even a rudimentary understanding of violence or trauma. In many circumstances, this puts people with disability at far greater risk.

Recognising the work that Women NSW has put into developing disability-specific content for family and domestic violence workers, PWDA recommends that this content is re-developed in proper consultation with people with disability and their representative organisations.

PWDA recommends that disability support services be provided with guidelines for and training in responding to violence which are developed in consultation with family and domestic violence services. It should include elements such as: how to ensure client safety (developing safety plans), a client-centred approach to responding to violence, allowing clients to drive decision-making, the impacts of trauma and how to respond to them non-punitively, and what services a victim-survivor of violence can and should be able to access.

In PWDA's experience, DVLine workers also suggest that family and domestic violence services are not equipped to support people with disability. This occurs without the worker seeking to understand what the disability may involve, or how to resolve the problem of inaccessible facilities or staff limitations. They do not, for example, facilitate a cooperative model of support that may involve both family and domestic violence services and disability support services using funds from Victims Services, which can be used to access attendant care for those requiring it.

PWDA recommends that DVLine workers, and other frontline workers such as those involved in *It Stops Here* receive annual training regarding the provision of domestic and family violence responses to people with disability.

Victim Services funding is, of course, very strictly limited and does not reflect the cost of disability support provision. Additionally, these funds are supposed to cover all of a victim's immediate needs, including items such as clothing and/or furniture for those who have had to leave their home. That people with disability are forced to choose between these immediate needs and disability support needs is inappropriate and discriminatory. It also forces people with disability to remain in violent homes to access the support they need, putting them at far greater risk of violence and death.

PWDA recommends that discrete funding be allocated to provide disability support for women with disability who need it upon leaving violence, based on the Victorian Disability and Family Violence Crisis Responses Initiative.

There are assumptions frequently made about the NDIS providing all services to all people with disability. However, the processes involved in amending a plan for an existing participant, or bringing someone into the scheme are lengthy, and are likely to remain so. For this reason, the NDIA has clarified that it is not a crisis response service, and should not be understood as a violence response for people with disability. Additionally, people with disability in NSW must be able to access the *universal state-provided* services of mainstream domestic and family violence support services, on an equal basis with all other residents of NSW.

4. Problems with *It Stops Here*

The development of the *It Stops Here* reforms included representatives from a range of government agencies, including most of Family and Community Services. However, it excluded Ageing, Disability and Home Care, and this is reflected in the problematic understanding of people with disability in the document.

a) definition

The definition of domestic and family violence in the *It Stops Here* reforms does not reflect the legislative definition of domestic and family violence in NSW. This essentially means that people with disability who experience domestic violence in institutional settings or at the hands of a paid or unpaid carer are not factored in to any of the responses developed through *It Stops Here*. In other words, *It Stops Here* is designed to reform the violence response sector in ways which continue to exclude some of the most marginalised and underserved populations experiencing domestic and family violence in NSW. This means that people with disability are subject to systemic discrimination, built into all of the changes arising from these reforms.

PWDA recommends that the definition of domestic and family violence be amended in *It Stops Here* to fully include all legally recognised forms of domestic and family violence, specifically including those forms predominantly experienced by people with disability.

Despite the *It Stops Here* reform agenda highlighting people with disability as a cohort that requires particular attention, only one element of the whole plan is specific to people with disability. That element is training for family and domestic violence services about how to provide services to people with disability. An initial draft of this training was provided to PWDA for comment. Despite substantial concerns being expressed about this document prior to its roll-out, we have not been provided with a completed version.

PWDA recommends that this training be redrafted with adequate consultation with people with disability and their representative organisations to ensure its relevance and accuracy.

b) vulnerability and marginalisation

People with disability are named as a 'vulnerable group' in *It Stops Here*. This language is avoided by the disability rights sector because it locates the vulnerability within the person, rather than acknowledging that vulnerability is a product of the context. For example, if a person with disability is required to use a telephone to access a service, but the telephone is managed by a group home manager who is also the perpetrator, their 'vulnerability' in this instance is not a result of their impairment, but a result of the inaccessibility of the service and the lack of power they have in the group home. The language of 'vulnerable' disempowers people with disability, and increases the likelihood of paternalistic intervention.

PWDA recommends that all reforms to domestic and family violence service systems and provision avoid characterising people with disability as 'vulnerable,' but instead as 'marginalised.'

c) Domestic Violence Safety Assessment Tool (DVSAT)

PWDA has provided substantial expertise during the development of the DVSAT. The DVSAT is designed to provide a cross-sectoral, common understanding of safety and risks for people experiencing domestic violence. Part A, which is filled in most often by police officers attending a scene, includes no mention of disability, and presumes intimate partner violence. This means that police are not prompted to consider the full breadth of the legal definition of domestic and family violence and whether it applies in these circumstances.

It also means that police are not prompted to consider disability – and thus they may not recognise that a victim has, for example, low-level intellectual disability or an acquired brain injury. They are also not prompted to consider how the relationship between the perpetrator and the victim may be characterised by atypical forms of dependence which places them at higher risk. Situations where the victim is dependent upon a perpetrator for disability support places them at higher risk. They may be denied medication they need, or overmedicated; their mobility aids may be removed from

them so they cannot leave the bed or the house; they may be denied access to the telephone or to the community; and/or they may be denied food and water.

Although Part B of the DVSAT may include some of this detail, it is only filled in if the LCP is contacted, if they can contact the victim, and if the victim self-identifies as a person with disability. This leaves people with disability underrecognised and undersupported.

PWDA recommends that the DVSAT Part A be amended to include a question: “Does the perpetrator support or assist you with everyday activities? E.g. disability support, medication, food, transport, access to the telephone.”

d) Safer Pathway

The Safer Pathway model has been demonstrated to be a positive intervention in the domestic and family violence service system for many people, but less so for people with disability.

The model involves the Local Coordination Point (LCP) calling the victim on the telephone a maximum of 3 times. We have received reports from LCPs of victims living in institutional settings, and when they call them on the telephone, it is answered by a staff member. These staff members either refuse to allow access to the client, or say that the telephone call would be confusing for the victim.

This means that victims of domestic violence residing in institutional settings are effectively excluded from the entire Safer Pathway apparatus – including from Safety Action Meetings (SAMs) and Safety Action Plans (SAPs) - and in most circumstances continue to live in violent situations.

This is particularly problematic because the SAMs and SAPs are designed to provide victims with wrap-around services that assist them in leaving violence, because it includes representatives from Health NSW, Housing NSW, domestic and family violence services and so on. These are precisely the services that people with disability, especially those experiencing domestic violence in institutional settings, need access to.

One of the greatest difficulties for people with disability seeking to escape violence in institutional settings is finding housing. Within the disability sector, it is assumed that they can only move into another institutional setting. This often means victims are forced to continue living with the perpetrator, who may also go on to perpetrate against other residents.

Many of the most successful moves for victims of domestic violence in institutional settings have been where either the perpetrator is moved into their own residence, keeping all people in group homes safe, or where the victim has moved into their own house in the community. This means that the potential of the SAMs and SAPs to ensure the safety of people with disability is denied to them simply because the Safer Pathway model fails to take them into account.

PWDA recommends that the Safer Pathway model is amended in the following ways:

- **Other modes of communication, including face-to-face discussion, must be enabled**
- **Disability advocacy organisations should be funded to provide support in engaging with victims with disability living in institutional settings**
- **Institutional settings must be legally required to provide access to LCPs and disability advocacy organisations providing this function**
- **SAMs to include representatives from disability advocacy organisations, Ageing, Disability and Home Care, and/or the NDIS (as it rolls out)**

- **SAMs to also consider perpetrator intervention, especially in institutional settings, to keep other residents safe**
- **SAPs to include the provision of disability support to people with disability (whether in institutional settings or living in the community).**

We appreciate the opportunity to provide our expertise and experience to the Blueprint consultation process. Please do not hesitate to contact us for further guidance.

Sincerely,

A handwritten signature in black ink that reads "Jess Cadwallader". The signature is written in a cursive, flowing style.

Dr Jess Cadwallader
ADVOCACY PROJECTS MANAGER, VIOLENCE PREVENTION

This letter was prepared with the assistance of Ms Meredith Lea, Advocacy Projects Officer, Violence Prevention.