



Catholic Women's League Australia Inc.

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**'Open our ears to hear God's word by entrusting ourselves
fully to Him and to believe in His love'**

Submission from the Catholic Women's League Australia Inc.

**(The endorsement given by Catholic Women's League Australia do not reflect the views of
the Catholic Women's League of Victoria and Wagga Wagga)**

to the

Senate Standing Committees on Community Affairs

**Violence, abuse and neglect against people with disability in institutional and residential settings
including the gender and aged related dimensions, and the particular situation of Aboriginal and
Torres Strait Islander people with disability, culturally and linguistically diverse people with
disability**

May 2015

1. Introduction

Catholic Women's League Australia Inc. (CWLA) is the national peak body representing the League's six member organisations located throughout Australia. We are a Non-Government Organisation and have consultative (roster) status with the Economic and Social Council of the United Nations (ECOSOC). We are also a member of the World Union of Catholic Women's Organisations.

One of CWLA's four principle aims is to influence legislative and administrative bodies at all levels of government in order to preserve the dignity of the human person. We recognise that the protection of the human rights of people with disabilities including from abuse in institutional and residential settings is an urgent issue requiring immediate redress, and thus are grateful for the opportunity to contribute to this important inquiry.

"But if anyone has the world's goods and sees his brother in need, yet closes his heart against him,
how does God's love abide in him?" 1 John 3:17



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2. Catholic Social Teaching Principles

Catholic social teaching is the body of doctrine that has been developed by the Catholic Church on various social justice matters including the role of the state, social organisation, economics and poverty. As a Catholic organisation we firmly believe that the teachings can provide guidance with regards to how we can best navigate challenges that confront us on a daily basis. The two principles that are most relevant to the current issue of people with disability suffering abuse in institutions and residential settings are detailed below:

(a) Dignity of the Human Person

We believe that as every human being is created in the image and likeness of God then every person holds inherent dignity. No human being should have their dignity or freedom compromised.

On this ground, in ensuring that people with disability are kept safe, we must respect their inherent dignity as human beings who have the right to live in environments which are safe, beneficial to them, and free from danger; and

(b) Subsidiarity and Participation

Every person has the right to participate in decisions that affect their lives. Thus, this principle strives to ensure that people affected by relevant issues and concerns of the community are able to make decisions that will affect the outcome.

In attempting to find a solution to the ongoing problem of people with disability suffering from abuse in institutions and residential settings, it is imperative that those affected are able to provide their input and participate in creating solutions with a view to protecting them from the abuse they have suffered or may potentially suffer in the future.



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3. International Human Rights Framework

The Convention on the Rights of Persons with Disabilities, 2006, was ratified by Australia on 17 July 2008. It contains a number of important provisions relating to the protection of people with disabilities from violence, abuse and neglect. The relevant provisions to the issue being discussed are outlined below:

Article 16

Freedom from Exploitation, Violence and Abuse

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.



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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.

The human rights framework makes it clear: that there are clear obligations on governments to protect people with disabilities living in institutional and residential settings from abuse. And yet, the evidence before us suggests that such abuse is being suffered by people with disabilities on a daily basis in Australia and that action needs to be taken immediately to ensure that such abuse does not continue in the future.

4. The Abuse of People with Disability in Institutions and Residential Settings in Australia

The statistics relating to people with disability in Australia are alarming and point to a dismal situation that needs to be urgently addressed:

- Almost twenty percent, i.e. 18.5% or 4 million Australians report having a disability¹;
- Adults with intellectual disabilities, psychiatric disabilities or complex communication disabilities are highly vulnerable to sexual assault²;
- There is no standard national data collection that includes the experiences of sexual violence amongst adults with a disability³;
- Women with intellectual disability are 50 to 90% more likely to be subjected to some form of sexual assault compared with women in the general population⁴;
- Victoria Police data from 2007 relating to people who had suffered a sexual assault showed that just over a quarter of all victims were identified as having a disability. 130 or 15.6% of this group had psychiatric disability or a mental health issue and 49 or 5.9% had intellectual disability⁵; and

¹ Australian Bureau of Statistics, 2009.

² Sexual Assault and Adults with a Disability: Enabling Disclosure, and a Just Response, Issues 9, 1 – 19, (2008).

³ Ibid. p.3.

⁴ Howe, K. (2000). *Violence Against Women With Disabilities - An overview of the literature*. Rosney Park, Tasmania: Women With Disabilities Australia (WWDA). Retrieved from <www.wwda.org.au/keran.htm>.

⁵ Heenan, M., & Murrary, S. (2006). *Study of reported rapes in Victoria 2000-2003: Summary research report*. Melbourne: Office of Women's Policy, Department for Victorian Communities.



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- Staff in residential care facilities or disability support services represent a frequently identified perpetrator group for the abuse of people with disabilities.⁶

Although perpetrators of the abuse of people with disabilities may commit a heinous crime they frequently manage to escape any penalty for their crimes. Speaking at the 2nd National Ageing & Disability Conference, Lauren Kelly and Julie Blyth of the Northern Sydney Sexual Assault Service provided the following observation based on their work:

Offenders will often move from facility to facility. When suspicions arise in one place, they move on. We were contacted recently about an offender who has now sexually assaulted in at least three different facilities. However because he hasn't been formally charged he is still working with an agency, which provides locums to disability and aged care services. He always targets clients with little or no verbal communication.⁷

The situation of people with disability in institutions and residential settings in Australia came to the attention of the Australian public in 2014 where the disability services provider Yooralla was found to have employed staff who had been involved in the sexual assault, harassment and other improper behaviour of carers and nevertheless continued to employ the carers despite receiving numerous warnings that the carers were assaulting clients. The statistics outlined above suggest that the Yooralla case is just the tip of the iceberg, that the abuse of people with disability is more widespread and not limited to this single case.

⁶ Sobsey, D. (1994). *Violence and abuse in the lives of people with disabilities: The end of silent acceptance?* Baltimore: Paul H. Brooks.

⁷ Kelly, L., & Blyth, J. (2005). Responding to sexual assault in aged and disability care settings. Northern Sydney sexual assault service. Paper presented at *Power, Passion, Practice, 2nd National Ageing and Disability Conference*, 18-20 July 2005, Hobart, p.2.



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5. Particular Challenges Faced by People with Disability from Culturally and Linguistically Diverse Backgrounds

People with disability who derive from culturally and linguistically diverse (CALD) backgrounds often face even more complex difficulties in accessing protection from abuse and the support they may need to be able to report abuse. Language difficulties often render it challenging to communicate any abuse that a person from a CALD background may be facing, and interpretation or translation services are often difficult and expensive to access. Cultural beliefs or practices may make it difficult to protect the rights of a person with a disability. For example, in some cultures people with disabilities are devalued and considered a source of shame for the family. This may make it even more problematic for some people from CALD backgrounds to accept their own inherent value including their right to complain about any abuse they may be suffering. Carers or family members from a CALD background may discourage their family members from lodging a complaint regarding any abuse they have suffered because of the vicarious source of shame and stigmatisation that knowledge in the community of abuse may have on the whole family⁸.

For these reasons it is imperative that when supporting people with a disability from CALD backgrounds in complaining about abuse that interpreters are identified and accessed who can not only speak the same language as the person but who are independent and not previously known or related to the survivor of the abuse. It is furthermore important to acquire an understanding of the culture of the survivor of the abuse and knowledge relating to any culturally specific stigma or discrimination that he or she may possibly suffer as a result of lodging a complaint, to ensure that they receive the best possible support available.

⁸ Ethnic Disability Advocacy Centre, *National Disability Strategy Focusing on CALD People with Disabilities*, <<http://www.edac.org.au/pubattach/08decnds.doc>> at p. 3.



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6. Particular Challenges Faced by People with Disability from Aboriginal and Torres Strait Islander Backgrounds

There are some 19,500 Indigenous Australians who require assistance with a core activity⁹, representing 4.6 percent of the total Indigenous population, being higher than the rate of 4.4 per cent of the non-Indigenous population¹⁰. Many indigenous people, due to past, negative experiences, may experience a distrust of authority, a sense of social exclusion and the feeling that services are for white people and not for them, and thus an unwillingness to divulge to any person in authority any abuse that they may have experienced. Many Australians who identify as Aboriginal or Torres Strait Islander may have difficulty understanding or being able to communicate with non-Indigenous Australians. They may be reluctant to seek support to complain about abuse due to a lack of knowledge regarding complaint mechanisms that are available, or a lack of confidence or understanding of their rights and entitlements. Some Indigenous Australians, particularly those living in remote Australia or older people, may speak indigenous languages and find it difficult to communicate in English.

All of the above factors need to be taken into consideration when devising means whereby people with disability from Aboriginal and Torres Strait Islander backgrounds can effectively be supported and assisted when they seek to make a complaint of having suffered abuse. It is imperative that people from such backgrounds are able to access and work with people from similar backgrounds, people who can speak their indigenous languages and people who are trained to be culturally sensitive when working with indigenous people. Resources must be made available to provide information and education to people with disability from indigenous backgrounds with regards to their rights and complaint mechanisms that are available to them. In this way, we can ensure that everyone who requires assistance is able to access the support that they may require.

⁹ Census, 2006.

¹⁰ Productivity Commission (2011) *Disability care and support: draft report [vol 1 & 2]*. Canberra: Productivity Commission (section 9), <<http://www.healthinfonet.ecu.edu.au/related-issues/disability/reviews/disability-within-the-indigenous-community>>.



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7. Particular Challenges Faced by Older People with Disabilities

Older people often face their own challenges that arise specifically as a consequence of their advanced age. Many older people may experience a decline in their physical health or even cognitive impairment. As a person ages they may outlive many friends and relatives and thereby experience a degree of social isolation. When psychological, physical and social challenges arise as a person ages, this may make life living with a disability even more complicated and challenging. The situation is exacerbated when such a person suffers abuse in an institutional or residential setting.

The biggest challenge that can arise relates to the ability of the person being able to communicate the abuse they have suffered to others. Cognitive impairment may make it difficult for a person to effectively communicate to another or lodge a complaint about abuse. In instances when such a complaint is lodged the presence of cognitive impairment may result in the person who has suffered abuse not being believed or charges not being pursued by the police due to the lack of evidence that is able to effectively stand up in court. Being isolated in a residential setting such as in a residential aged care facility may make it challenging for the older person to access a support network of friends or family who can encourage and support the person to lodge a complaint of abuse.

Thus, it is imperative that systems be developed and strengthened to ensure that older people are firstly properly protected from potential abuse from occurring in the first place, and secondly ensuring that when abuse does occur that they can access the support they may need so that they can articulate the nature of the abuse they have suffered. The Aged Care Complaints Scheme is one mechanism whereby people living in residential aged care facilities can access an outlet for lodging a complaint of abuse. However, the powers of the scheme are limited and it is important to ensure that in instances where a resident complains that abuse has occurred, that proper follow up is put in place as well as protection mechanisms to ensure that the abuse does not reoccur.



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8. Women with Disability

Women with intellectual disability are 50 – 90% more likely to be subjected to a sexual assault than women in the general population¹¹. Women with disabilities have been shown to experience violence, in particular family violence and violence in institutions, more often than men with a disability¹²

For this reason, it is imperative that women with disabilities who are in contact with residential or institutional settings are supported with a view to ensuring that those who are entrusted with caring and supporting them are carefully vetted and are not provided with opportunities whereby such women can be abused. The statistics indicate that a woman with a disability, by their very gender, automatically faces an increased risk of abuse and thus requires an increased level of protection.

9. Advocacy Support

There are means whereby a person with a disability can be supported so that they may be able to communicate having suffered abuse. One way is via the use of an advocate. An advocate can provide a vulnerable person with a voice that can help them to access their rights and report any abuse they may have suffered. The use of official visitors is another way of providing people with disabilities with a means to articulate the abuse they have suffered. An official visitor is a person appointed by a government agency to visit institutions and provide advocacy for residents as well as safeguard standards of treatment and care being received by residents of particular institutions. By providing more funding so as to increase the presence of independent advocates and official visitors in institutional and residential facilities caring for people with disabilities, there will be an increase in the level of protection for people with disabilities making use of such institutions.

¹¹ The Nature and Extent of Sexual Abuse in Australia, Cindy Tarczon and Antonia Quadara, <<http://www.aifs.gov.au/acssa/pubs/sheets/rs5/>>.

¹² Women With Disabilities Australia (WWDA) (2007b) *'Forgotten Sisters – A global review of violence against women with disabilities'*. WWDA Resource Manual on Violence Against Women With Disabilities. Published by WWDA, Tasmania, Australia; [6] Meekosha, H. (2004) *Gender and Disability*. Entry for the Sage Encyclopaedia of Disability. Available on line at: <http://wwda.org.au/gendis2001>



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10. Recommendations

In light of the above discussion the CWLA recommends the following:

Recommendation 1: That a comprehensive research study be conducted on a nation-wide scale relating to the issue of violence, abuse and neglect against people with disability in institutional and residential settings so that a greater understanding of this issue may be acquired and any subsequent actions to rectify the situation be evidence based;

Recommendation 2: That tougher criminal penalties be enacted for people who have been found guilty of having abused people with disability in institutional and residential settings;

Recommendation 3: That tougher criminal penalties be enacted for people who manage or work in institutional and residential settings, who have become aware of abuse being perpetrated by other staff members against people with disability living in the institutional or residential settings and who fail to take action to notify the relevant authorities of the abuse;

Recommendation 4: That stronger, regular, more frequent and independent audits be conducted of institutional and residential settings that accommodate people with disabilities and avenues be created whereby people with disabilities and/or their carers who have suffered abuse are supported to be able to articulate the abuse they have suffered to the relevant authorities;

Recommendation 5: That greater education, information and training programs be implemented in institutional and residential settings that accommodate people with disability that properly address what constitutes abuse, how they can help prevent it and stop it from happening and the obligations to report the abuse. That such education and information be extended to people with disabilities so that awareness is raised as to what constitutes abuse and how they can access support to protect themselves from abuse;



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Recommendation 6: That a national action plan be formulated in an effort to find a workable solution to this issue. The action plan should be formulated by various relevant stakeholders such as government agencies, community support organisations, organisations that accommodate people with disability in residential and institutional settings, carers and families etc. However, in guiding and driving forward the national action plan, it is imperative that people with disability sit in the driver's seat, and are able to provide the most important input into the direction that the plan should take as well as the substantive content of the plan;

Recommendation 7: That particular sensitivity and consideration be afforded to people with disability from culturally and linguistic backgrounds, Aboriginal and Torres Strait Islander backgrounds, older people and women to ensure that they are they are able to access the same support as offered to all people with disabilities, and that their respective backgrounds or current conditions do not create a barrier to accessing the support they may wish to access.

Recommendation 8: That any person with disability who suffers from abuse in institutional or residential settings may be provided with the physical, cognitive and psychological recovery, rehabilitation and social reintegration that they may require. Such support should extend to the provision of protection services;

Recommendation 9: That people with disability in every state and territory are provided with knowledge with regards to how they can access an advocate or official visitor and are assisted to access an advocate or the official visitor should the need arise;

Recommendation 10: That, given the research available relating to the increased risk of women with disabilities being vulnerable to abuse as a consequence of their gender, women with disabilities are provided with gender specific care and support as well as increased protection in residential and institutional settings; and



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Recommendation 11: That an increase of funding and support be committed to ensuring an increase in the presence of independent advocates and official visitors in residential and institutional settings.

Thank you, again, for the opportunity to contribute to this important and timely inquiry. CWLA wishes the Committee well in its deliberations.

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