



Violence Against Women and Girls with Disabilities

ALHR POSITION STATEMENT

Disability Rights



INTRODUCTION

Australian Lawyers for Human Rights (ALHR) is deeply concerned about the pervasive and widespread violence and abuse committed against women and girls with disabilities across a range of settings in Australia. Women and girls with disabilities are at a heightened risk of violence, exploitation and abuse compared to women and girls without disabilities.[1]

Enjoyment of the right to freedom from exploitation, violence and abuse can be hindered by damaging stereotypes that heighten the risk of women and girls with disabilities experiencing violence.[2] Harmful stereotypes that infantilise women and girls with disabilities and call into question their ability to make judgments prevent women and girls with disabilities from exercising their fundamental freedoms and internationally recognised human rights.[3]

In ALHR's view, violence and abuse against any person, including any woman or girl with disabilities, is unacceptable under any circumstances. ALHR calls for immediate, fully funded, evidence-based measures initiated by all levels of government in Australia to address violence against women and girls with disabilities.

ALHR is alarmed by the disproportionately high rates of violence and abuse experienced by women and girls with disabilities. While definitive statistics are not available – which is partly attributable to the fact that many cases of violence and abuse are not detected or reported – the rate of violence and abuse experienced by women and girls with disabilities is significantly higher than that experienced by persons without disabilities. [4] In the view of ALHR, even the most conservative figures are cause for significant alarm. Rates of abuse experienced by women and girls with an intellectual or cognitive disability, including sexual abuse and assault, are particularly high.[5]

A recent Senate Inquiry into Violence, Abuse and Neglect Against Persons with Disabilities documented the alarming levels of violence, abuse and neglect experienced by women and girls with disabilities in institutional and residential settings in Australia.[6] ALHR considers these findings warrant an urgent Royal Commission investigating violence against persons with disabilities.

Further, ALHR is alarmed by the latest findings reported by Australia's National Research Organisation for Women Safety (ANROWS) in its Women, disability and violence: Barriers to accessing justice report. The types of violence and abuse reported by ANROWS, including sexual and physical assaults and forced or coerced sterilisation,[7] violate international human rights laws, including the right to liberty and security of person,[8] the right to freedom from torture or cruel, inhuman or degrading treatment or punishment,[9] and the right to freedom from exploitation, violence and abuse.[10]

The women with disabilities interviewed in the ANROWS report expressed their desire for everyday security, economic stability and effective support.[11] However, the reality of their experience is that they are subject to denials or diminishment of their legal capacity, compromised reproductive and sexual autonomy and disrespect of treatment decisions.[12]

This is a stark violation of their rights under both the UN Convention on the Rights of Persons with Disabilities (CRPD) and the UN Convention on the Elimination of All Forms of Discrimination against Women and Girls (CEDAW).[13]

The ANROWS report recommends that women with disabilities have access to specialised violence services.[14] However, it is apparent that despite numerous reports and inquiries, there has been no meaningful action on existing recommendations to ensure the everyday security and safety of women and girls with disabilities.





INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

General Comment No. 3, issued by the Committee on the Rights of Persons with Disabilities (the Committee) focuses on the rights of women and girls with disabilities as recognised by Article 6 of the CRPD. Article 6 recognises that women and girls with disabilities are subject to multiple forms of discrimination that warrant specific protection.[15] It requires the advancement and empowerment of women and girls with disabilities so that they may enjoy and exercise the human rights and fundamental freedoms set out in the CRPD.[16]

In General Comment No. 3, the Committee recognised that there are three main areas of concern in relation to the protection of the rights of women and girls with disabilities, these are: violence, sexual and reproductive health and rights, and discrimination.[17] Further, the Committee noted the prevalence and persistence of violence against women and girls with disabilities including “sexual violence and abuse; forced sterilization; female genital mutilation; sexual and economic exploitation; institutionalization; the lack of or insufficient participation of women with disabilities in decision-making processes in public and political life; the lack of inclusion of a gender perspective in disability policies; the lack of a disability-rights perspective in policies promoting gender equality; and the lack of or insufficient number of specific

measures to promote the education and employment of women with disabilities.”[18]

ALHR is particularly alarmed by the observation of the Committee that women and girls with disabilities may face barriers when reporting incidences of violence committed against them, such as disbelief by police, prosecutors and courts.[19] Women and girls with intellectual and mental health disabilities face direct discrimination and are treated less favourably than others by having their testimonies dismissed on the basis of a lack of legal capacity, thus denying these women and girls access to justice and effective remedies.[20]

Under the CRPD, States, including Australia, are obliged to protect, respect and fulfil the rights of women and girls with disabilities.[21] The obligation to protect “includes the duty to exercise due diligence by preventing violence or violations of human rights, protecting victims and witnesses from violations, investigating, prosecuting and punishing those responsible, including private actors, and providing access to redress and reparations where human rights violations occur.”[22]

ALHR is alarmed that girls with disabilities are at great risk of violence from family members and caregivers.[24] Girls with disabilities are also at risk of harmful practices, which are justified by invoking sociocultural and religious customs and values, such as genital mutilation and infanticide. [25]

People with disabilities already experience disproportionate hardship and are denied equitable opportunities in all spheres of life. The devaluing of the lives and status of people with disabilities is the root cause of much of the violence and abuse against women and girls with disabilities. The Senate Inquiry into Violence, Abuse and Neglect Against Persons with Disabilities reported:

The committee is convinced that violence, abuse and neglect against people with disability is widespread and is occurring across all Australian communities. At the heart of this mistreatment are questions as to how our society views people with disability.[26]



VIOLENCE AGAINST WOMEN AND GIRLS WITH DISABILITIES

Women and girls with disabilities experience violence and abuse in a variety of situations, support arrangements and living circumstances.

Many women and girls with disabilities are subjected to violence and abuse by those in positions of authority and/or trust, who are charged with responsibility for their care and protection. There has been a tendency to dehumanise people with profound disabilities and to deny them choice and control over where and with whom they live.

Vulnerability and disempowerment are directly linked to violence and abuse. At a systemic level, abuse is more likely in institutional settings with a strong power imbalance open to exploitation.[27] Australia has a history of torture and inhumane and degrading treatment of persons with disabilities in institutional settings, including hospitals and large and small congregate residential facilities.[28]

Violence and abuse against women and girls with disabilities can take many forms. It can be overt or subtle; random and isolated or recurrent; physical or verbal. Abusive practices can become embedded if they are not immediately addressed. People who are systematically abused can normalise this behaviour and unwittingly perpetuate the abuse upon others.

ALHR strongly supports the need for domestic law reform in all jurisdictions within Australia, as well as international measures consistent with the CRPD, to protect the human rights of all people with disabilities to be free from violence and abuse. In particular, ALHR calls for the introduction of specific measures aimed at protecting women and children with disabilities from violence and abuse.

Restrictive practices, including restraint and seclusion, along with treatment practices, which sanction involuntary treatment, such as involuntary inpatient mental health treatment orders, can constitute government-sanctioned violence and abuse. The existence of permissive legislation that allows the imposition of restrictive practices implicitly condones the use of violence and abuse as a means of relating to a person with disabilities by a service provider as part of their day-to-day interaction. This has significant implications for the culture of institutional and residential settings where people with disabilities live, and for the societal perception of the value of the lives of people with disabilities.

RECOMMENDATIONS



RECOMMENDATIONS

In order to prevent human rights violations and protect all Australians with disabilities from violence and abuse, ALHR calls on the Federal and State and Territory Governments to:

1. Introduce measures to raise awareness of the basic human rights, including the right to equality, of all people with disabilities and the value and worth of people with disabilities.
2. Increase awareness and introduce safeguards to ensure that instances of abuse are reported via the appropriate channels and properly responded to, including by the introduction of a proactive, rather than reactive, investigative model.
3. Amend legislation, including by widening the scope of domestic and family violence legislation, to address violence in institutional and congregate settings and to eliminate the use of restrictive practices.
4. Adopt appropriate laws, policies and actions to ensure that the rights of women and girls with disabilities are included in all policies, especially in policies related to women and girls in general and policies on disability.
5. Support women and girls who require positive behaviour support to gain autonomy and self-direct their supports and services, returning respect and control to people as a means to reduce and eliminate the use of restrictive practices.

RECOMMENDATIONS

6. Fund individual and systemic advocacy that is accessible and provided at a local, national and international level, to ensure that women and girls with disabilities will not be unheard or alone in their struggle against abuse or neglect.
7. Recognise and implement the requirements of the CRPD that promote freedom from torture or cruel, inhuman or degrading treatment or punishment, and freedom from exploitation, violence and abuse in state and federal legislation.
8. Amend relevant legislation and policies to reflect a supported decision-making approach, to hear and empower the voices of women and girls with disabilities.
9. Establish a Royal Commission into violence, abuse and neglect of people with disabilities in institutional and residential settings.



ABOUT ALHR

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia.

ALHR has active and engaged National, State and Territory committees as well as specialist national thematic committees. ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international human rights law in Australia in order to:

- Promote and support lawyers' practice of human rights law in Australia;
- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Engage internationally to promote human rights and the rule of law.

Through the provision of training, education, publications, CLE courses, conferences, seminars and mentoring, ALHR assists members to continue to develop their knowledge of human rights law and incorporate human rights principles into their areas of legal practice in Australia.

REFERENCES

- [1] General Comment No. 3 [29].
- [2] General Comment No. 3 [30].
- [3] General Comment No. 3 [30].
- [4] Senate Standing Committee on Community Affairs, Parliament of Australia. Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, 2015.
- [5] People with intellectual disability are 10 times more likely to experience abuse than people without disability: National Police Research Unit, Flinders University, cited in Senate Standing Committee on Community Affairs, Parliament of Australia. Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, 2015, 12.
- [6] Senate Standing Committee on Community Affairs, Parliament of Australia. Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, 2015, 54.
- [7] ANROWS, 'Women, Disability and Violence' (2018) Horizons 7.
- [8] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 14.
- [9] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 15.
- [10] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 16.
- [11] ANROWS, 'Women, Disability and Violence' (2018) Horizons 7.
- [12] ANROWS, 'Women, Disability and Violence' (2018) Horizons 8.
- [13] For example, Article 12 of the Convention on the Rights of Persons with Disabilities requires the recognition of the legal capacity of persons with disabilities. This means that persons with disabilities should be supported to make their own treatment decisions and should not be subject to substitute decision-making nor forced interventions such as sterilisation. Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 12.
- [14] ANROWS, 'Women, Disability and Violence' (2018) Horizons 11.
- [15] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 6(1).

REFERENCES

- [16] Convention of the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Art 6(2).
- [17] General Comment No. 3 [10].
- [18] General Comment No. 3 [10].
- [19] General Comment No. 3 [17(e)].
- [20] General Comment No. 3 [17(a)].
- [21] General Comment No. 3 [24].
- [22] General Comment No. 3 [26].
- [23] General Comment No. 3 [35].
- [24] General Comment No. 3 [35].
- [25] General Comment No. 3 [36].
- [26] Senate Standing Committee on Community Affairs, Parliament of Australia. Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, 2015, 54.
- [27] Robinson, S. 2015. "Preventing Abuse of Children and Young People with Disability under the National Disability Insurance Scheme: A Brave New World?" Australian Social Work 68 (4): 469-482.
- [28] Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities. August 2012; The Hon W.J Carter. Challenging Behaviour and Disability: A Targeted Response. July 2006.



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