

# SUBMISSION

## Access to Justice in the Criminal Justice System for People With Disabilities – August 2013

**Women With Disabilities WA Inc**

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Women With Disabilities WA Inc (WDDWA Inc) is an unfunded non-profit organization for women with disabilities in Perth, Western Australia. We are run and managed entirely by women with disabilities. We work to promote the participation of women with disabilities in Western Australia in all aspects of social, economic, political and cultural life.

Women with disabilities experience particular difficulties when dealing with the criminal justice system in Australia, because of their disabilities and their gender. There is still the assumption among many professionals that women are 'hysterical' or are vindictive and exaggerate, resulting in our experiences not being taken seriously. There are also many assumptions about disabilities and people with particular disabilities such as intellectual disabilities, acquired brain injuries and 'invisible' disabilities – for example: mental illnesses, fibromyalgia, lupus, Crohns disease, and others that can affect energy levels and comprehension/communication abilities are often ignored or dismissed because of the effects of those conditions.

Information in this submission comes from experiences of individual women with disabilities in Western Australia, as well as current research on this matter.

Some of the issues for women with disabilities accessing the criminal justice system:

### **The lack of understanding of disabilities among police and staff in legal services**

In particular, the lack of understanding of 'invisible disabilities', intellectual disabilities, acquired brain injuries and mental illnesses, and how this affects women with disabilities ability to communicate. This also includes unquestioned prejudices and assumptions about the value of the lives and and experiences of women with disabilities.

*Service workers were also concerned about ignorance on the part of police. A health worker provided an example of a woman with an intellectual disability who contacted the police to report a man stalking her and asked for assistance: She was not believed and the police treated her as paranoid. This worker said that charges were often not proceeded with because the police do not see a woman with an intellectual disability as a credible witness.*

A woman with speech impairment and physical disability describes a common experience for

those with communication issues *“When I called the call centre the police told me that the receptionist had told them that it sounded like I was drunk. They said that if they hadn't have known me from a previous occasion they wouldn't have hurried.”* - “Silent Voices : Women With Disabilities and Family and Domestic Violence By Judith Cockram, PhD. A joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University. Copyright 2003. <http://www.wdda.org.au/silent1.htm>

People with mental illnesses are seen as more likely to commit crimes but are statistically more likely to be victims. - “Fight Stigma Stamping Out the Stigma of Mental Illness” The Mental Health Foundation of Australia (Victoria) <http://www.mentalhealthvic.org.au/index.php?id=112> This happens in the community and in mental health system. For example, women with mental illnesses are at a high risk of being abused by staff and other patients on psychiatric wards.

### **Lack of physical access to police stations and courts for people with disabilities**

This affects not only people with disabilities who are victims or perpetrators of crimes, but any members of their support system – personal or professional - who have disabilities. It also prevents people with disabilities from exercising their rights and responsibilities as citizens by making it difficult or impossible to serve on juries.

### **Women with disabilities are often coerced/bullied into criminal activities by partners, family members and friends**

WWDWA Inc has been made aware of a woman with epilepsy and a possible cognitive disability, who has been on remand for a year waiting for psychological testing, she was coerced into crime by ex-boyfriend, friends of this woman suspect that the community lawyer she has access to is not making all efforts to assist this woman.

It is common for women with intellectual disabilities in particular, to be `encouraged' into prostitution, theft and drug-related offences by those closest to them. The emotional vulnerability of these women, who often come from abusive families and desire to be liked and fit in, as well as lack of appropriate support from disability and community services mean that the women often prefer to be dependent on their partners/boyfriends, as they feel they have more control over their lives in those circumstances.

### **Difficulties in accessing community law services and the legal system**

We have had a number of members with severe health conditions and invisible disabilities who report being treated dismissively by staff at community law services, having their disability status doubted or denied, because they are not visibly disabled. Women with disabilities are often unable to get timely appointments or assistance to get to appointments, something that could be mitigated with home visits. Clients with communication issues need longer time in scheduled appointments but is often not possible because of the lack of resources and staff at community law services. There needs to be more access to home visits for people with

disabilities, particularly those who are single parents.

Women and girls with disabilities in residential care who are victims of crime are often denied access to the mainstream criminal justice system due to accusations of abuse and criminal activities against them being dealt with 'in house' rather than staff contacting the police.

*The law works to the detriment of women who experience family and domestic violence through its imposition of a narrow 'legal' definition of violence to domestic violence. Women however, experience domestic violence as a range of both physical and non-physical acts. By extension, law's narrow definition of domestic violence disqualifies experiences of women that fall outside physical violence. Non-legal knowledge such as everyday experiences of non-physical domestic violence are considered suspect and/or secondary and of little interest to law. Personal experiences of violence must be translated into a legal form in order to become 'legal' issues: ongoing domestic violence, for example, needs to be represented as a series of seemingly unrelated individual assaults to 'fit' the legal paradigm. Subjugating women's knowledge, therefore, calls into question law's most fundamental claims to fairness and impartiality. Of course this is the case for all women, but it can be particularly so for women with disabilities.* - "Silent Voices : Women With Disabilities and Family and Domestic Violence

By Judith Cockram, PhD. A joint project of People with Disabilities (WA) Inc., the Ethnic Disability Advocacy Centre and the Centre for Social Research, Edith Cowan University. Copyright 2003. <http://www.wwda.org.au/silent1.htm>

### **Women with disabilities often lack an understanding of their rights, as well as knowledge about the criminal justice system.**

*Despite considerable reform in the family violence justice response in recent years, women with disabilities still face negative community attitudes from the judiciary, lawyers and court officials and a failure to consider their safety (and that of their children) ahead of [Family Court] access matters.*

*The combination of information, education and training is a key strategy in preventing violence against women and girls with disabilities. Information, education and training will assist these groups to protect themselves against all forms of violence, and seek effective recourse to justice.*

*Critical for the effective use of the law is women's knowledge of the law and the protection and remedies it offers, and women's capacity to claim these rights effectively. However, women with disabilities are one of the groups least well served by the justice system. It is widely acknowledged that violence against women with disabilities often goes unreported and even when it is reported, very few cases are prosecuted. There continues to be an acute lack of awareness and understanding among professionals, including lawyers and decision-makers, about family violence and women with disabilities.* <sup>7</sup> Submission to the Australian Government Consultation Paper: Family Violence – Improving Legal

Frameworks, Carolyn Fromader, June 2010 <http://www.wwda.org.au/viol2006.htm>

### **Feedback on the how the Inquiry has been set up**

The Issues Paper released by the HRC, 'Access to justice in the criminal justice system for people with disability', states:

*The Australia Human Rights Commission is concerned that many people with disability who need communication supports or who have complex and multiple support needs are not*

*having their rights protected, and are not being treated equally, in the criminal justice system.*

Women with Disabilities WA Inc would like to draw attention to difficulties inherent in this paragraph, particularly concerning:

- A narrow focus on people with disability in the justice system ie those who need communication supports and other undefined support needs. Other questions of access are not raised, such as the constraints of poverty, the availability of advisors and lawyers, accessibility of buildings, and information about the justice system (particularly human rights). The ability of people carrying an impairment or chronic illness to slot in to the rigid demands of the legal system is also important to communication. Many suffer from exhaustion as a matter of routine, and cannot fit into the timetable of the court. This means a cultural shift for the courts, so that the precedence is on good communication
- An implied definition of ‘communication’ as a simple bridge between able-bodied and disabled bodies, so that disabled people can ‘walk’ over to the other side and all will be well, ie communication supports, and support needs. We ask, would it be questionable that abled lawyers would walk over to the other side. However, Women With Disabilities WA Inc would like to see something of this occurring, so that deeper questions of communication can be raised, to understand the experience of disability as an outcome of unjust, abusive, and oppressive social structures – not as a result of carrying an impairment. And to give opportunity for disabled people to challenge any of these broader social impositions that are carried into the legal system. The strict authoritarian culture of the legal system at present – and a predominantly formalist approach - does not allow this to happen. Those who challenge processes are labeled non-compliant, as if this is a personal flaw, disrespectful, or a mental health issue. Those who persist may well end up with further charges.
- An assumed definition of the criminal justice system as police, prisons, and the law. However Centrelink routinely scans and investigates clients for fraud – and every client is tarred with this brush. Centrelink has an investigations unit for the purpose of policing criminal activity, which means that disabled people are inevitably investigated and certainly some will be charged. There are no statistics on this, an issue that needs to be addressed. For this reason, the presumed parameter of the Inquiry and Issues paper need to be reconsidered. Whatever the legal system says of itself, it is not so separate from the rest of society, and treating lawyers, prisons, the courts, and police as a discrete system is creating a silo effect that is impeding understanding of the problems foisted on disabled people. Until the those people administering and performing in the systems of justice in Australia have a better understanding of themselves, impairment will continue to be criminalised. In the short term, Centrelink needs to be considered as part of the criminal justice system. Reference: [http://www.anao.gov.au/uploads/documents/2010-11\\_Audit\\_Report\\_No\\_10.pdf](http://www.anao.gov.au/uploads/documents/2010-11_Audit_Report_No_10.pdf)

**Assumptions around the practices employed in running the public meetings.**

- In the Perth forum, representatives of the police and legal centres were present. This is entirely inappropriate. Anyone wanting to talk about their personal experiences with the police and legal centres could not do so in these circumstances. The forums were advertised as meeting with Disability Discrimination Commissioner, Graeme Innes and Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda.

**Assumptions around the processes employed in setting up the public meetings, particularly involving the needs of women.**

- Women who wanted to raise their experiences of dealing with the criminal justice system because of their experience of sexual assault, neglect and abuse by family and the system, or violence were left out of the equation. Women With Disabilities WA Inc was not consulted on the setting up and running of these forums, and so the opportunity to input into the process was lost. WWDWA Inc has considerable experience and knowledge in this area, and works with a strong network of women's organisations who have been left out of the process. Had we been asked for input, we would have strongly asserted that meetings with the Commissioners be organised so as to provide privacy, personal support, and recognition of the strength of character those women who would be willing to come forward. We have women on our management committee who are knowledgeable and experienced in this important work. In particular, we would have expected women with experience in abuse counseling to be on hand to listen and record the stories, using appropriate methodologies.

**The status of disabled people responding to the inquiry.**

- While collecting stories from disabled people who have been in contact with the criminal justice system is useful, we would not like to see these participants be presented as passive victims. Raising the status of disabled people is crucial, and more time needs to be spent with those who have lived through the system, to find solutions through their knowledge and their insights. Now is the time to recognise people of diverse abilities, and to restore agency to these individuals and their communities. Taking the issue back to the legal profession will reinstate people with disabilities to the bottom rung. If communication practices within the criminal justice system are to be reformed, then good practices need to be implemented throughout the different stages of this inquiry

**The need for a Charter of Human Rights need to address family, social, political, and institutional abuse directed towards people living with an impairment,**

Too many people living with an impairment are being disabled by punitive structures they are forced to engage with in order to survive. This means that to live - meaning so as not to die - many must engage with outrageous abuses and systems of violence that cause life long trauma. Even then, surviving is often extremely difficult because basic human needs are limited so that homelessness, hunger, lack of health care, social isolation and cruel exclusion have to be endured . One of the worst abuses faced by people with impairments is the

constant attention to changing the person to measure up to very narrow dominant models of what it is to be human. This happens through the medical system, social welfare system, job networks and Centrelink.

With regards to Centrelink, there is no doubt that people with chronic illness and disability are punished through the system of breaching and stringent demands of being required to fit in to a work system that they are just not able to fit into. Many people are refused disability support, and are on Newstart. Failure to meet the requirements of this benefit, or to follow the directions of Centrelink staff, meets with withdrawal of benefits. Evidence shows that at least eleven percent of people who are breached resort to prostitution or theft. (please see attached the ANOU Response to Federal Labor's Industrial Relations policy platform) There are no statistics on how many of these people have illness or impairment, and this needs to be addressed.

This is a system forcing people into crime. There is a direct link between the policies imposed through the so-called department of human services, and Centrelink, and this must be addressed.

So, it is certain that too many disabled people are criminalised because they cannot be changed to fit the dominant system. Through trying to survive, they are then subject to more punitive behaviour through the criminal justice system, and it is through these processes that it becomes clear that violence and abuse is still violence and abuse if it is meted out by the law. And imposing punitive conditions on a person who is in the court because they could not meet unreasonable demands in the first place, will not change them to become part of that dominant model of acceptability. Rather, it is grinding them down into trauma and emotional damage

The criminal justice systems needs reform, and the focus should change from discipline and punishment to that of ensuring that the human rights and personal agency of people with disabilities are enabled.

Solutions involve removing the oppressive structures routinely applied to many disabled people.

- There is clear evidence that in societies with more inequality there is more crime. - The Spirit Level: Why More Equal Societies Almost Always Do Better, by Richard G. Wilkinson and Kate Pickett, 2009. A Charter of Human Rights for Australia is the only way to mediate this, because at the moment there is nothing to refer to when dealing with disability ideologues. An overarching document that can easily be read and referred to at the grassroots will enable many people currently disabled to address the issues when they encounter them. So that people can point to the Charter and say, 'You Can't Do That To Me'.
- The cycle of abuse, punishment and discipline that is causing and exacerbating the trauma that is then dealt with by the criminal justice system, needs to be broken. Please see attached documents of trauma healing

## **Recommendations from WWDWA Inc members**

What I would say to the people in the justice system:-

I'm not a child, I'm a person with a brain who can think, has emotions and can make decisions.

Don't be aggressive and take control and tell me what is "good" for me!

Be patient and effectively listen to me and be clever enough to read between the lines of what I'm saying.

Don't rush me, don't interrupt me, don't presume that you know me and please treat me with the respect that I am treating you with.

There need to be separate units for people with disabilities in prisons with staff trained in disability issues.

### **A final note, as we were finishing the preparation of this submission.**

Kyla Pulhe was a 27 year old woman with multiple disabilities failed by the justice system in South Australia. Yesterday, 22 August 2013, one of her murderers – her mother – was set free on a suspended sentence for the severe and profound neglect that led to Kyla's death. The judge – and the media - spoke of the `suffering' and `emotional problems' of the mother. There was no mention of the suffering of this extremely vulnerable young woman who starved to death and was left isolated and alone for months before that death. In essence the mother walks free for a terrible crime simply because the victim had disabilities, and the judge privileged the perceived distress of the able-bodied mother over the extreme distress and slow and painful death of her disabled daughter.

This is only one of many examples of the justice system in Australia failing people with disabilities, but it is one of the most extreme examples. There have been many such cases over the years. A society that does not value our lives cannot provide justice to us.