



**Australian
Human Rights
Commission**

**AUSTRALIAN HUMAN RIGHTS COMMISSION
RESPONSE TO THE OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS
QUESTIONNAIRE FOR THE PREPARATION OF THE
ANALYTICAL STUDY ON VIOLENCE AGAINST
WOMEN AND GIRLS AND DISABILITY
(A/HRC/RES/17/11)**

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1 Introduction

The Australian Human Rights Commission makes this contribution to the Office of the High Commissioner for Human Rights for the preparation of the analytical study on violence against women and girls and disability. Due to limited resources and time constraints, unfortunately, the Commission is unable to provide a comprehensive response to this questionnaire. However, where possible, the Commission provides links and references to further information and is happy to provide additional information on request if this would be of assistance.

2 Data/Statistics

2.1 ***Have studies/research been conducted on the prevalence, nature, causes and impact of violence against women and girls with disabilities in different settings (family/home, work-place, medical institutions, schools, etc.?). What forms of disability and violence do they cover?***

There is a lack of research and robust data on violence against women and girls with disabilities in Australia. The available research is limited to violence against women with intellectual disability, which is based on primarily qualitative data.¹ The Australian Bureau of Statistics (ABS), which is Australia's official statistical organisation², does not currently collect or report data specifically on violence against women and girls with disabilities. For example, the ABS Gender Indicators, Australia, provide no disaggregated data on violence against women with disabilities.³

However, some information about violence against women is available from the ABS's 1996 *Women's Safety Survey*⁴ and 2005 *Personal Safety Survey*⁵. The *Women's Safety Survey* collected information about women's experiences of physical and sexual violence, stalking and harassment while the *Personal Safety Survey* collected information about men's and women's experiences of violence. The ABS is exploring the possibility of undertaking the next *Personal Safety Survey* in 2012 to build on the 2005 survey although this has not been confirmed⁶. The ABS

¹ K Heran, *Against Women with Disabilities—An Overview of the Literature*, (2000) p 3. At <http://www.wvda.org.au/keran.htm>

² See: <http://www.abs.gov.au/>

³ Australian Bureau of Statistics, *4125.0 Gender Indicators, Australia* (2011). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4125.0>

⁴ Australian Bureau of Statistics, *Women Safety Survey* (1996). At <http://www.abs.gov.au/Ausstats/abs@.nsf/lookupMF/46EA7C5B824D2940CA256BD0002840DF> (viewed 20 December 2011)

⁵ Australian Bureau of Statistics, *Personal Safety Survey* (2005). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0> (viewed 20 December 2011)

⁶ Australian Bureau of Statistics Survey Advisory Group, *Proposed Personal Safety Survey 2012 Meeting Minutes* (16 July 2010) <http://www.abs.gov.au/websitedbs/d3310114.nsf/home/disclosure+log> (viewed 20 December 2011)

has proposed specific questions about disability for the 2012 survey⁷. The 2005 *Personal Safety Survey* did not contain disaggregated data on the experience of violence by women with disabilities. While the ABS has not collected specific data about violence against women with disability, smaller studies have been conducted which shed some light on the situation. Women with Disability Victoria summarised the information as follows:⁸

One of the largest Australian studies of violence of all types against women with disabilities was undertaken by Cockram (2003) in Western Australia and is worth reporting on at length although it did not involve a comparison with women without disabilities or include women with disabilities living in institutionalised settings.

Cockram analysed questionnaire responses gathered from 107 agencies from which an estimated 709 women with disabilities experiencing domestic violence had sought help in the two years preceding the research. Of these, 145 or 20% of the women were from a culturally and linguistically diverse background and 201 or 28% were Indigenous. She found that 270 or 38% had disabilities that were a consequence of family violence used against them (Cockram 2003: 3).

The agencies reported that women with disabilities, like women without, typically experienced more than one type of violence. The most common was emotional, (experienced by 513 or 72% of the women) followed by: controlling behaviours involving restricting access to family, friends, phone calls and removing or controlling communication aids (395 women or 55%); sexual violence, including rape and sexual harassment (360 women or 58%); physical violence (355 women or 50%); stalking (275 women or 39%); threats to third parties such as children (230 women or 32%); threats to withdraw care (205 women or 29%); discriminatory practices, including withholding or forcing medicine, removing or disabling a wheelchair, criticisms relating directly to a disability (190 women or 27%); and spiritual deprivation (70 women or 9%).

Cockram's study, along with others, show that women with disabilities experience the same kinds of violence as non-disabled women, with the same consequences, but are also at risk of experiencing types of violence that are specifically related to their disabilities, such as: withholding orthotic equipment (wheelchairs, braces) and medications; forced and involuntary sterilisation or termination of pregnancy; withholding transportation, or essential assistance with personal tasks such as dressing or getting out of bed (Curry et al 2001; Nosek et al 2001; WWDA 2007b; Frohmader 2005; Howe & Frohmader 2001; Dowse & Frohmader 2001).⁹ In one study, participants with disabilities were more likely to identify restraint and control as abusive in comparison to those without disabilities (Gilson et al 2001a).

⁷ Australian Bureau of Statistics Survey Advisory Group, Discussion Point 5, para 60-63 (pages 9-10) [http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/e787db884fec6fe5ca25788700151ce0/\\$FILE/FOI_7October2011.pdf](http://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/e787db884fec6fe5ca25788700151ce0/$FILE/FOI_7October2011.pdf)

⁸ Lucy Healey, Keran Howe, Cathy Humphreys, Chris Jennings and Felicity Julian (2008). *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria*. Page 34. Available at <http://www.wdv.org.au/documents/BTE%20Final%20Report.doc>. Citing Cockram, Judith (2003) *Silent Voices: Women with Disabilities and family and domestic violence*, Women With Disabilities Australia; available at www.wwda.org.au/silent1.htm

⁹ See Appendix 1 for an information sheet about the nature of violence experienced by women with disabilities developed from Frohmader (2005) for use during this project.

In May 2008, the Australian Government established a National Council to Reduce Violence against Women and their Children (the Council) and charged it with the role of drafting a national plan to reduce violence against women and their children. In May 2009, the Council released its report, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*¹⁰. *Time for Action* recognised that data relating to violence against women and their children in Australia is poor, and more specifically, that data on services provided to women experiencing violence is not readily available and information reported is generally inconsistent¹¹. As a result, one of the key strategies identified in *Time for Action* is to build the evidence base.

In February 2011, the Australian Government released the *National Plan to Reduce Violence against Women and their Children 2010-2022*¹². In the First Action Plan (2010 -2013) of the Plan are two immediate national strategies focused on women with disabilities, which are to:

- support better service delivery for children, Indigenous women and women with disabilities through the development of new evidence based approaches where existing policy and service responses have proved to be inadequate; and
- investigate and promote ways to improve access and responses to services for women with disabilities.

Further, in February 2009, the Australian Government commissioned a report on community attitudes to violence against women. Similar to *Time for Action*, the *National Community Attitudes towards Violence against Women Survey 2009*¹³ noted that there is little data or research to assess the nature and scope of violence against women with disabilities although it is clear that women with physical and cognitive disabilities experience higher rates of intimate partner violence than those without disabilities and those with cognitive disabilities are particularly vulnerable¹⁴.

The results from the survey found that the general community were mostly unaware about the greater vulnerability of violence against women with disabilities. For example, findings from the survey showed that only nine per cent of respondents in

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http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Pages/default.aspx

¹¹ National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009 - 2021* (2009), p 47. At

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Pages/default.aspx (viewed 20 December 2011)

¹² National Plan to Reduce Violence against Women and their Children 2010-2022. At <http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx> (viewed 20 December 2011)

¹³ VicHealth, *National Community Attitudes towards Violence against Women Survey 2009* (2010). At <http://www.vichealth.vic.gov.au/Publications/Freedom-from-violence/National-Community-Attitudes-towards-Violence-Against-Women-Survey-2009.aspx> (viewed 21 December 2011)

¹⁴ VicHealth, note 9.

the general community agreed that ‘women with intellectual disabilities are more likely to experience violence than other women’ while 69 per cent disagreed. The next *National Community Attitudes towards Violence against Women Survey* is scheduled to commence in 2014.

The Committee on the Elimination of Discrimination against Women (CEDAW) issued statement general recommendation on women with disabilities in 1991. The CEDAW Committee in its concluding comments on Australia in 2010, called on State Parties to undertake a “comprehensive assessment of the situation of women with disabilities in Australia”.¹⁵ To date, the Australian Government has not undertaken this assessment.

The Australian Human Rights Commission and civil society organisations have called on the Australian Government to undertake a comprehensive assessment of the situation of women with disabilities, including their experiences of violence. The national non-government organisation representing women and girls with disabilities in Australia, Women with Disabilities Australia (WWDA), has urged the Government to “immediately commission and adequately resource a comprehensive assessment and analysis of the situation of women and girls with disabilities in Australia”.¹⁶ Currently NGOs such as WWDA rely on international studies to inform these issues.

2.2 Please provide the available data on the number of women and girls with disabilities who have accessed services and programmes to prevent and address violence in the past year? Is this information disaggregated by disability, as well as by sex, age, socio-economic and ethnic backgrounds?

The Commission is unaware of any available data on the number of women and girls with disabilities who have accessed services and programmes to prevent and address violence in the past year.

However, the Commission notes with concern the findings by the Australian Institute of Health and Welfare that indicate that while the number of people using disability support services generally increased by 47% between 2004-2005 and 2009-2010, of disability service users, men (59%) made up a greater proportion than women (41%).¹⁷ As noted below, 18.9 % of women reported having a disability compared with 18.1% of men.¹⁸

The *Time for Action* report noted that it is difficult to quantify how under resourced services are for women experiencing violence, although some of the key indicators that are apparent across the service system include:

¹⁵ CEDAW Committee: *Concluding Observations Australia* (2010), UN Doc CEDAW/C/AUL/CO/7 para 43. At <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

¹⁶ C Frohmader for Women With Disabilities Australia, ‘Assessing the situation of women with disabilities in Australia: A human rights approach: A Policy Paper by (WWDA) (June 2011)

¹⁷ <http://www.aihw.gov.au/publication-detail/?id=10737420186> and associated media release <http://www.aihw.gov.au/media-release-detail/?id=10737420216>

¹⁸ *Disability, Ageing and Carers: Summary of Findings, Australia, 2009* (cat. no. 4430.0). <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

- inability of many services to demonstrate shared or cultural competencies for delivering high-quality services to specific population groups of women;
- inability of emergency accommodation facilities to meet basic physical standards for disability access, or accommodate women with complex needs such as those with an intellectual disability, mental health issues and problems with substance abuse;
- inability of women seeking emergency accommodation or telephone counselling to access specialist support, particularly in rural and remote areas; and
- difficulty for women, particularly in rural and remote areas, in accessing legal advice and representation for domestic and family violence applications and associated family law and child protection matters.

Of clients accessing SAAP (Supported Accommodation Assistance Program) services in 2003-04, 33 per cent or 32,700 clients were women escaping domestic violence. Fifty per cent of women who approached a SAAP agency in 2005-06 were turned away because of lack of capacity within the sector to meet demands.¹⁹ Most of these women approached SAAP services because of the inadequacy (number and suitability) of their accommodation.²⁰ This information is not disaggregated for women with disabilities.

2.3 Please provide available data on the number of households in which persons with disabilities reside. How many of these are women-headed households?

There is limited information available on the number of households in which persons with disabilities reside (and of how many of these women-headed households). In Australia, data on disability is difficult to obtain and the current census does not include disability as a demographic field.

However, the *Survey of Disability, Ageing and Carers* (SDAC) conducted by the Australian Bureau of Statistics provides some information about people with a disability in Australian households. The most recent SDAC survey was completed in 2009.²¹ The aims of that survey were to measure the prevalence of disability in Australia and provide a demographic and socio-economic profile of people with disabilities compared with the general population. Some findings from the 2009 SDAC report include:

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http://www.facs.gov.au/sa/women/pubs/violence/synthesis_report08/Pages/dom_fam_violrel_homeles_s.aspx#5

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http://www.facs.gov.au/sa/women/pubs/violence/synthesis_report08/Pages/dom_fam_violrel_homeles_s.aspx

²¹ *Disability, Ageing and Carers: Summary of Findings, Australia, 2009* (cat. no. 4430.0).

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

- Four million people (18.5 %) in Australia reported having a disability in 2009, with 18.9 per cent of women reporting a disability compared with 18.1 per cent of men;
- Of those with a reported disability, 87% had a specific limitation or restriction; that is, an impairment restricting their ability to perform communication, mobility or self-care activities, or a restriction associated with schooling or employment; and
- The disability rate increases steadily with age, with younger people less likely to report a disability than older people. Of those aged four years and under, 3.4% were affected by disability, compared with 40% of those aged between 65 and 69 and 88% of those aged 90 years and over.

With regard to living arrangements, the ABS reported the following:²²

- Not everyone with a disability needs assistance, and of those who do, most have sufficient support to continue living at home. In 2009, the majority of people with disabilities lived in private dwellings (94%). This proportion was comprised of 74% of people living with other people and 20% living alone.
- The remainder of people with disabilities (6%) lived in non-private dwellings such as boarding houses and hostels, with nearly two-thirds of these (4%) living in cared accommodation.
- Almost half (45%) of the people living in other non-private dwellings (e.g. boarding houses and hotels) have a disability, more than twice the prevalence of people living in private dwellings (18%).
- Living arrangements varied according to disability status. Those with profound core activity limitations have a lower incidence of living alone (14%) than other people with disabilities, but a higher incidence than people without disabilities (7%).
- People with disabilities were more likely to own their own home outright (24%) or be renting a dwelling from a state or territory housing authority (7%) than people without disabilities (16% and 1% respectively). The high rate of people with disabilities owning their homes outright will be associated with the increasing prevalence of disability with age. The higher rates of public housing tenancy among people with disabilities will be due to lower incomes.
- There are also differences in the housing tenures of people with disabilities depending on the severity of their disability. People with profound core activity limitations were more likely to report living rent free (18%) or being a boarder (12%), which is twice the incidence of these tenure arrangements reported by other groups.

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<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4446.0Main%20Features132009?opendocument&tabname=Summary&prodno=4446.0&issue=2009&num=&view=>

This data was not disaggregated by gender but this information may be available on a fee for service basis from the Australian Bureau of Statistics.

The SDAC surveys can be viewed on the ABS website²³.

2.4 Please provide any statistics, information or studies on disability/ies resulting from violence against women and girls?

There is limited information available on disability resulting from violence against women and girls.

Some information about disabilities resulting from violence against women and girls is available from a 2004 Victorian health study²⁴, which investigated the health costs of violence caused by intimate partner violence. For example, the report found that in women under the age of 45 years, intimate partner violence is responsible for an estimated nine per cent of the total disease burden with the greatest proportion of the disease burden associated with mental health problems (60 per cent).

The Time for Action report also noted that the cost of violence against women to the economy was \$8.1 billion and that domestic and family violence has severe effects on women's physical and mental health²⁵.

3 Legislation and Policies

3.1 Is there a legal framework addressing violence against women and girls with disability in different contexts (within the family, at the community and in the workplace, and in State and non-State institutions such as medical, education and other service providing institutions)?

The protection of women and girls is predominantly dealt with under Australian state and territory family and domestic violence laws and child protection laws.

State and territory family and domestic violence laws vary across jurisdictions²⁶ although generally the different Acts provide coverage of the type of conduct that

²³ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4446.0> and <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

²⁴ VicHealth, *The Health costs of violence: Measuring the burden of disease caused by intimate partner violence. A summary of finding (2004)*. At www.health.vic.gov.au/healthpromotion/.../violence_healthcosts.pdf (viewed 21 December 2011). See also, VicHealth, *Preventing Violence against Women in Australia Research Summary (2011)*. At http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/PVAW/VH_VAW%20Research%20Summary_Nov2011.ashx (viewed 21 December 2011)

²⁵ The National Council to Reduce Violence against Women and their Children, note 8, p 77

²⁶ See for example, *New South Wales: Crimes (Domestic and Personal Violence) Act 2007 (NSW)*; *Queensland: Domestic and Family Violence Protection Act 1989 (Qld)*; *South Australia: Domestic Violence Act 1994 (SA)*; *Tasmania: Family Violence Act 2004 (Tas)*; *Victoria: Family Violence Protection Act 2008 (Vic)*; *Western Australia: Restraining Orders Act 1997 (WA)*; [Australian Capital](#)

may constitute domestic or family violence, the types of orders a court can make in the domestic or family violence context and the effect of contravening a domestic violence protection order. Detailed information on Australia's state and territory domestic violence laws, including a consideration of specific issues relating to state and territory legislation is available at:

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/domestic_violence_laws/Documents/default.htm.

Similarly, state and territory governments are responsible for the administration and operation of child protection services. Legislation pertaining to child protection services vary across jurisdictions but legislation in all jurisdictions identify the principle of the 'best interest of the child' as being of paramount importance²⁷.

Further information about child protection services in Australia is available on the Australian Institute of Family Studies²⁸ website at: www.aifs.gov.au. More specifically, information about state and territory legislation pertaining to child protection services is available here:

<http://www.aifs.gov.au/nch/pubs/sheets/rs14/rs14.html>

At the national level there is also the *National Framework for Protecting Australia's Children 2009-2020*.

The *Family Law Act 1975* (Cth) provides the framework for dealing with family law matters in Australia. The Act includes provisions relating to family dispute resolution, divorce, children, and parental responsibility. Recent changes were made to the Family Law Act²⁹ to better protect children who are caught up in family law matters from family violence and child abuse. These changes include³⁰:

- removing disincentives for victims of violence and abuse to disclose this to the courts;
- reflecting a more contemporary understanding of what family violence and abuse is by clearly setting out what behaviour is unacceptable, including physical and emotional abuse and the exposure of children to family violence; and
- streamlining the provisions relating to the reporting of family violence and child abuse to make reporting family violence simpler.

[Territory: Domestic Violence and Protection Orders Act 2008 \(ACT\); Northern Territory: Domestic and Family Violence Act 2007 \(NT\)](#)

²⁷ See for example, *Children and Young People Act 2008 (ACT)*; *Children and Young Persons (Care and Protection) Act 1998 (NSW)*; *Care and Protection of Children Act 2007 (NT)*; *Child Protection Act 199 (Qld)*; *Children's Protection Act 1993 (SA)*; *Children, Young Persons and their Families Act 1997 (Tas)*; *Children, Youth and families Act 2005 (Vic)*; *Children and Community Services Act 2001 (WA)*

²⁸ The Australian Institute of Family Services also has a clearinghouse which deals specifically with child protection matters called the National Child Protection Clearinghouse. Further information about this clearinghouse is available at: <http://www.aifs.gov.au/nch/>

²⁹ The Australian Parliament passed the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 on 24 November 2011.

³⁰ Attorney-General, 'Family violence reforms passed by Parliament', (Media Release, 24 November 2011). At <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2011/Fourth%20Quarter/24-November-2011---Family-violence-reforms-passed-by-Parliament.aspx> (viewed 2 December 2011)

Guardianship laws in each Australian state and territory sets up the administrative framework for protecting the rights of young people, people with a disability, and the elderly in Australia³¹. Australia has eight different guardianship regimes, which sets up tribunals or board in each state and territory jurisdiction empowered to determine guardianship matters, including the making of guardianship orders. Although the role of each Guardianship Tribunal or Board can vary, issues usually dealt with by the Tribunal/Board relate to the making of financial management orders and the determination of consent for medical and dental treatment. Each state and territory also has an independent public advocate who acts to promote the rights of people with a decision making impairment. For example, in NSW, the Public Guardian exists to promote the rights and interests of people with disabilities through the practice of guardianship, advocacy and education³². Links to further information about guardianship authorities and organisations is available via this link: <http://www.austguardianshiplaw.org/useful-links.html>.

Sexual assault and rape is a criminal offence in each state and territory jurisdiction in Australia. These offences are defined differently in each jurisdiction with maximum penalties ranging from 10 years to life imprisonment. Further information about sexual assault offences is available from the Australian Centre for the Study of Sexual Assault³³. There are also a range of other offences, such as sexual servitude and slavery under Australia's *Criminal Code Act 1995 (Cth)*³⁴.

The National Council to Reduce Violence Against Women and Children, established in May 2008, found that the 'legal response remains inadequate for many women and children'.³⁵ WWDA has also found that current laws "do not contain definitions which specifically encompass the range of domestic/family settings in which women with disabilities may live (such as group or nursing homes), nor do they contain definitions which capture and encompass the various forms of violence as experienced by women with disabilities."³⁶

In 2010, the Australian Law Reform Commission undertook an inquiry to identify the complex interaction between state and territory family and domestic violence and child protection laws and the *Family Law Act 1975 (Cth)*. However, this inquiry did not specifically address violence against women and girls with disabilities. <http://www.alrc.gov.au/inquiries/family-violence>

31 See for example, *Guardianship and Management of Property Act 1991 (Act)*; *Guardianship Act 1987 (NSW)*; *Adult Guardianship Act (NT)*; *Guardianship and Administration Act 1993 (SA)*; *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*; *Guardianship and Administration Act 1995 (Tas)*; *Guardianship and Administration Act 1986 (Vic)*; *Guardianship and Administration Act 1990 (WA)*

32 More information about the NSW Public Guardian is available at: <http://www.lawlink.nsw.gov.au/opg>

33 See: <http://www.aifs.gov.au/acssa/>

34 The *Criminal Code Act 1996 (Cth)* can be viewed here:

<http://www.comlaw.gov.au/Details/C2011C00590/Download>

35 The National Council to Reduce Violence against Women and their Children, note 8, p 95

36 Women With Disabilities Australia, *Submission to the Australian Government Consultation Paper: Family Violence – Improving Legal Frameworks* (June 2010)

The Australian Government as part of Australia's Human Rights Framework³⁷ is consolidating Australia's anti-discrimination law¹⁴ into a single comprehensive Act to reduce complexity and clarify protections under anti-discrimination law. As part of the consolidation project, the Australian Government is considering whether victims of domestic violence should be protected from unlawful discrimination, across all areas including employment and accommodation.

3.2 Are practices such as 1) forced psychiatric intervention, 2) forced institutionalization, 3) solitary confinement and restraint in institutions, 4) forced drug and electroshock treatment, 5) forced abortion 6) forced sterilization and 7) harmful practices, prohibited by law?

Due to the complexity of responses required for each area listed, limited resources and time constraints, unfortunately, the Commission is unable to provide a comprehensive response to this question. The Commission however provides a brief response in relation to forced sterilisation including links and references to further information.

Forced sterilization

The legal framework regulating sterilisation of children in Australia was set out by the High Court of Australia in the case of *Secretary of the Department of Health and Community Services v JWB and SMB* in 1992 (Marion's Case). It was held in that case that:

- court or tribunal authority is required before any child can lawfully be sterilised unless the sterilisation occurs as a by-product of surgery appropriately carried out to treat some malfunction or disease; and
- authorisation may be given only if sterilisation is in the child's best interests after alternative and less invasive procedures have all failed or it is certain that no other procedure or treatment will work.

Each state and territory in Australia has different laws about who is authorised to make decisions as per Marion's case. In some jurisdictions the Family Court of Australia and the Federal Magistrates Court have exclusive jurisdictions to decide on sterilisation matters while in other jurisdictions, the respective guardianship tribunal or board also has jurisdiction to determine sterilisation matters³⁸.

³⁷ Commonwealth anti-discrimination law is currently contained in four separate pieces of legislation, namely the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*. A fifth, the *Australian Human Rights Commission Act 1986*, establishes the Australian Human Rights Commission and provides mechanisms for resolving complaints of unlawful discrimination

³⁸ In Western Australia, Victoria, and the Northern Territory, the Family Court and Federal Magistrates Service have exclusive jurisdiction to decide on sterilisation matters. In addition, New South Wales, South Australia, Queensland and Tasmania have conferred concurrent jurisdiction with regard to

The Australian Guardianship and Administration Council has produced a protocol³⁹ to assist various Australian guardianship tribunals in exercising power regarding sterilisation, and to promote consistency across the jurisdictions when dealing with an application for the sterilisation of a person. According to this protocol, the Tribunal hearing a sterilisation matter must follow principles based on human rights, maximum participation, minimal limitations, the expressed wishes of the person to be considered, encouragement of self-reliance and self management, the least restrictive alternatives, maintenance of existing supportive relationships, and the maintenance of cultural environment and values.

However, there is anecdotal evidence to suggest that mechanisms are not working adequately to protect women and girls with disability from forced non-therapeutic and unlawful sterilisations continue within Australia⁴⁰.

In an attempt to address some concerns with sterilisation and develop a nationally consistent approach to the issue, the Australian Government developed a draft Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006⁴¹. One of the objectives of the Bill was to protect children with intellectual disabilities from unauthorised sterilisation procedures being carried out on them. Given the limited scope of the Bill in addressing issues relating to sterilisation, for example, it only addressed sterilisation of children with intellectual disabilities, some organisations were not in support of the Bill⁴². In any event, the Australian Government discontinued the work on the draft sterilisation bill in 2008. Although, the Australian Government (though the Standing Committee of Attorneys-Generals) did agree in 2008 to review current arrangements to ensure that all bodies with the power to make orders concerning the sterilisation of minors with an intellectual disability are required to be satisfied that all appropriate alternatives to sterilisation have been fully explored and/or tried before such an order is made. There is no evidence to date that these reviews have been conducted.⁴³

Key advocates continue to call on the Australian Government to take all necessary steps to stop forced non-therapeutic sterilisation. This position has been recommended and endorsed through the 2008 Australia NGO Submission to the UN Committee on Economic, Social and Cultural Rights.⁴⁴ Similarly, the Committee on

sterilisation decisions on their respective Guardianship Tribunal, Guardianship Board, Guardianship and Administration Tribunal and Guardianship and Administration Board.

³⁹ Australian Guardianship and Administration Council, *Protocol for Special Medical Procedures (Sterilisation)* (2009). At <http://www.agac.org.au/agac-publications> (viewed 5 December 2011)

⁴⁰ See for example, S Brady and Dr S Grover, *The Sterilisation of Girls and Young Women in Australia: a legal, medical and social context* (1997). At

http://www.hreoc.gov.au/disability_rights/hr_disab/sterilization/sterilization.html (viewed 5 December 2011) and Women with Disabilities Australia, *Sterilisation of Women and Girls with Disabilities - An update on the issue in Australia* (2011). At

www2.ohchr.org/english/.../WomenwithDisabilitiesAustralia.pdf (viewed 5 December 2011)

⁴¹ Available at < <http://www.wvda.org.au/steriladv07.htm#scag1>>

⁴² See for example, Women with Disabilities Australia, note 31, p 3.

⁴³ Women with Disabilities Australia, note 31, p 3

⁴⁴ Women with Disabilities Australia, note 31, p 3

the Rights of the Child (CRC) has criticised the Australian Government for its regulation of the practice of sterilisation as a breach of children’s human rights.⁴⁵

Australia has also been urged to enact national legislation to prohibit sterilisation though:

- The CEDAW Committee in July 2010 expressed its concern at the on-going practice of non-therapeutic, forced sterilisation in Australia and made strong recommendations regarding the need for urgent action.

The Committee recommends that the State party address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation. The Committee further recommends that the State party adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets, in accordance with article 4, paragraph 1 of the Convention and the Committee’s general recommendation No. 25. The Committee recommends that the State party enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.⁴⁶

- The Universal Periodic Review (UPR) process in January 2011, where recommendation 39 (put forward by Denmark, the United Kingdom, Belgium and Germany) specifically dealt with the issue of sterilisation of girls and women with disabilities.⁴⁷

The Australian Government has in its response to the Universal Periodic Review recommendations on sterilisation committed to initiate further discussions with its State and Territory counterparts.

3.3 What specific policies/programmes are in place to prevent and address violence against women and girls with disabilities and/or to address harmful practices that can result into disabilities? How do general policies and plans/programmes on violence against women ensure the inclusion of and accessibility by women and girls with disabilities?

There is a lack of specific policies and programmes to prevent and address violence against women and girls with disabilities and/or to address harmful practices that can result into disabilities.

⁴⁵ WWDA, *Sterilisation of Woman and girls with Disabilities, An Update on the Issue in Australia*, March 2011 p.3

⁴⁶ CEDAW Committee: *Concluding Observations Australia* (2010), UN Doc CEDAW/C/AUL/CO/7 para 43. At <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

⁴⁷ Women with Disabilities Australia, note 31, p 6

The Australian Government recently collaborated with the Australian State and Territory Governments to develop *The National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan). The National Plan targets two main types of violence: domestic and family violence and sexual assault. The plan is available here:

http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/Pages/default.aspx

While the National Plan recognises that women with disability are especially vulnerable to violence and that specific and targeted measures are required to protect their human rights, given the paucity of services and protections available very few actions are included throughout the plan to address the significant needs of women and girls with disability who are experiencing, have experienced or are at risk of experiencing violence.⁴⁸

The plan proposes:

- Investigating and promoting ways to improve access and responses to domestic violence sexual assault services for women with disabilities.
- Supporting better service delivery for women and children with disabilities through the development of new evidence based approaches, where existing policy and service responses have been inadequate.
- Improving access to justice for women and children with disabilities who have been victims of violence.
- Providing grants for primary prevention programs to organisations who work with women with disabilities.
- Fostering respectful relationships in a range of settings, including targeting vulnerable young people with intellectual disability.

The Australian Government also recently launched *the National Disability Strategy 2010-2020* (NDS). This is a ten year plan that aims to improve life for Australians with disability, their families and carers. This is available here:

<http://www.facs.gov.au/sa/disability/progserv/govtint/Pages/nds.aspx>

The NDS is divided into six key areas for action, with key area two focused on 'Rights, Protection, Justice and Legislation'. One of the policy directions for this key area concerns people with disability being safe from violence, exploitation and neglect. The NDS proposes that strategies be developed to reduce violence, abuse and neglect of people with disability. While the NDS does not specify actions to tackle violence against women and girls with disabilities, the Strategy does recognise that women with disabilities are more likely to report experiencing some form of intimate partner violence than women without disability. The first implementation plan for the strategy is due for release early 2012. It is not yet known whether there

⁴⁸ *National Plan to Reduce Violence against Women and their Children 2010-2022*, note 9, p.37

will be specific actions addressing violence against women and girls with disability in the implementation plan. The *National Framework for Protecting Australia's Children 2009-2020* includes enhanced support for children and parents with disability to protect their rights, particularly the right to a safe, healthy childhood free from abuse and neglect. The *National Standards for Out of Home Care* is an initiative of the framework that will develop best practice national standards for out of home care, including children with disability.⁴⁹

3.4 How has the participation of women with disabilities in the development of such laws, programmes/policies been ensured?

The participation of women with disabilities in the development of such laws, programmes/policies has not been sufficiently addressed to date.

In its concluding comments on Australia in 2010 the CEDAW Committee made recommendations for the Australian government to ensure the equal participation and representation of women with disabilities in public and political life; and adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets.⁵⁰

Women with disabilities were not represented on National Council to Reduce Violence against Women and Children, which was established in May 2008 and was responsible for developing the *National Plan to Reduce Violence against Women and Children*. However, the Council states that they consulted with more than 2,000 Australians in the development of the plan—which included women with disabilities.

WWDA and the Australian Human Rights Commission had urged the Australian Government to ensure women with disabilities were represented in the membership of this advisory structure, stressing that “such inclusion is critical in ensuring a national voice to a human rights issue that to date, has been largely ignored in efforts to address gender based violence.”⁵¹

The Violence Against Women Advisory Group that was subsequently created to inform the implementation of the Government's National Plan to Reduce Violence against Women and their Children, included a representative of women with disabilities. The Australian Human Rights Commission has urged the Government to consider the appointment of women with disability on the Implementation Panel associated with the National Plan to Reduce Violence against Women and Girls. The Government is yet to announce the final membership of this Panel.

⁴⁹ 'National Disability Strategy 2010-2020', p 37

⁵⁰ CEDAW Committee: *Concluding Observations Australia* (2010), UN Doc CEDAW/C/AUL/CO/7 para 35 and 43. At <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

⁵¹ 'We're women too!' - Women With Disabilities Australia (WWDA) Response to the Australian Government's Consultation on the National Plan to Reduce Violence against Women and Children at <http://www.wwda.org.au/wwdasubNAP08.htm#abt>

Currently, women with disabilities remain largely excluded from violence prevention legislation, policies, services and supports.⁵² It is hoped that commitments and actions under the National Disability Strategy, in implementing obligations under CRPD to consult with people with disability through their representative, including through representation on the Implementation Panel in relation to the national Plan to reduce Violence and Against Women and their Children and associated working groups and programs, will see changes in this situation.

4 Prevention and Protection

4.1 What measures/initiatives are in place to combat negative perceptions, stereotyping and prejudices of women and girls with disabilities in the public and private spheres?

The *Disability Discrimination Act 1992 (Cth)* provides protection for everyone in Australia against discrimination based on disability. Disability discrimination happens when people with a disability are treated less fairly than people without a disability. Disability discrimination also occurs when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability. The Act also makes harassment on the basis of disability against the law.

It is unlawful to discriminate against a person with a disability in the following areas of life :

- Employment. For example, when someone is trying to get a job, equal pay or promotion.
- Education. For example, when enrolling in a school, TAFE, university or other colleges.
- Access to premises used by the public. For example, using libraries, places of worship, government offices, hospitals, restaurants, shops, or other premises used by the public.
- Provision of goods, services and facilities. For example, when a person wants goods or services from shops, pubs and places of entertainment, cafes, video shops, banks, lawyers, government departments, doctors, hospitals and so on.
- Accommodation. For example, when renting or trying to rent a room in a boarding house, a flat, unit or house.
- Buying land. For example, buying a house, a place for a group of people, or drop-in centre.
- Activities of clubs and associations. For example, wanting to enter or join a registered club, (such as a sports club, RSL or fitness centre), or when a person is already a member.

⁵² Gender and Disability: An Overview of the Status of Women With Disabilities in Australia (<http://www.wvda.org.au/snapshot.htm>)

- Sport. For example, when wanting to play, or playing a sport.
- Administration of Commonwealth Government laws and programs. For example, when seeking information on government entitlements, trying to access government programs, wanting to use voting facilities.

The Australian Human Rights Commission can investigate complaints of discrimination and harassment based on a person's disability. Complaints to the Commission are resolved through conciliation where the people involved in a complaint talk through the issues with the help of someone impartial and settle the matter on their own terms. Complaint outcomes can include an apology, reinstatement to a job, compensation for lost wages, changes to a policy or developing and promoting anti-discrimination policies. If a complaint is unsuccessfully conciliated and terminated by the Commission, a complainant may make an application to the Federal Magistrates Court or the Federal Court of Australia for the court to hear the allegations in the complaint.

In addition to complaints, the Commission provides education and raising public awareness about human rights as one of its key responsibilities. The Commission does this by:

- developing publications, resources and education programs for schools, workplaces and the community;
- working with the media to raise public awareness about discrimination and other human rights issues; and
- supporting community organisations and business on how to protect and promote human rights

Under the Australia's Human Rights Framework⁵³, which was announced by the Australian Government in April 2009, the Commission received funding over four years (2010-2014) to expand its community education and engagement role. The Commission's initial priorities in this regard include:

- Engaging the community: The Commission is developing a strategy to encourage human rights debate and action in the broad Australian community; and
- Human rights education in the national school curriculum: A national school curriculum is currently being drafted. It will outline the content that all students in Australia should be taught. The Commission is participating in consultations on the draft curriculum and recommending ways in which the human rights content in the curriculum can be strengthened.

⁵³ Further information about Australia's Human Rights Framework is available at: <http://www.ag.gov.au/humanrightsframework>

- Human rights education materials – RightsED: The Commission’s human rights education resources for teachers – rightsED - aims to help students develop a critical understanding of human rights and responsibilities, as well as developing the attitudes, behaviours and skills to apply them in everyday life.

Further information about the Disability Discrimination Act, the Commission’s complaints process and the Commission’s work on education and awareness raising of human rights is available on the Commission’s website at: www.hreoc.gov.au.

As part of the Australia’s Human Rights Framework, the Australian Government is providing small education grants to community organisations to deliver grassroots human rights education projects. For example, the Australian Government has recently provided a small education grant to the following organisations for the following projects:

- Advocacy for Inclusion: Self-advocacy training packages in human rights for people with disability, supporters and the broader community;
- Information on Disability & Education Awareness Services (IDEAS): A 12-week course for Assyrian people with disability and their carers to develop awareness raising, self-help and advocacy skills;
- Australian Centre for Capacity, Ethics and Protection from Exploitation of People with Disabilities: Interactive workshops and tailored resources on the legalities and practicalities of decision-making capacity as recognised in the Convention on the Rights of Persons with Disabilities.

4.2 *What initiatives exist to inform women and girls with disabilities about their rights, including sexual and reproductive health issues? To what extent do these initiatives address also women in institutions?*

Each state and territory in Australia has different family planning services available. Links to the different services provided in each jurisdiction is available on the Sexual Health and Family Planning Australia (SHFPA) website:

<http://www.shfpa.org.au/about-us>. SHFPA is the national voice of sexual health and family planning organisations around the Australia and represents these organisations on sexual and reproductive health issues at national and international levels. SHFPA advocate that people with disabilities must have access to information and resources to make informed choices about their sexual and reproductive health⁵⁴.

In relation to education initiatives for people with disability in relation to human rights, no initiatives exist specifically to educate women and girls with disability about their rights. Broader community initiatives exist however under the Australian Government’s *Human Rights Framework*, including the *Human Rights Framework*

⁵⁴ A copy of the Sexual Health and Family Planning Australia position statement is available on this page at: <http://www.shfpa.org.au/national-program/publications>

Education Grants which provides small grants to a wide range of community organisations to deliver practical, grassroots human rights education projects for the community and vulnerable groups.⁵⁵ Some recent grants were provided to disability advocacy organisations and community legal centres about disability rights awareness and empowering people with disability, but none were specific to women or girls with disability.

4.3 What programmes/initiatives have been developed to train women with disabilities to develop skills and abilities for economic autonomy and participation in society and to use technological and other aid that lead to greater independence?

Recent statistics released by the Australian Bureau of Statistics indicate that people with disability are not gaining the same education and employment opportunities as people without disability:⁵⁶

While there have been significant improvements to support those with a disability in many parts of their lives, little improvement has been made in key areas of everyday life over the last six years:

- labour force participation remained low at around 54%, compared to 83% for people without disabilities; and
- Year 12 attainment was around 25% for people with disabilities, compared to just over 50% for people without disabilities.

More specifically, women with disabilities were particularly affected, with a participation rate of 49%, which was well below the 60% participation rate of males with disabilities and the 77% participation rate of females without disabilities.⁵⁷

The Australian government offers free government-funded services to assist people with disability to secure and maintain work. These services are offered by both disability specific and generic government funded employment service providers. These services are also demand driven (that is, uncapped, no waiting lists). While there is a difference in labour force participation rate between men and women with disability, there are no programmes or initiatives specifically targeted or designed for women with disability.

Disability Employment Services provide individually tailored assistance to participants, including capacity building, training, work experience and other interventions to help participants obtain suitable employment. Once in open

⁵⁵ http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_AustraliasHumanRightsFramework_AustraliasHumanRightsFrameworkeducationgrants

⁵⁶ See <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4446.0Media%20Release12009?opendocument&tabname=Summary&prodno=4446.0&issue=2009&num=&view=> and <http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyReleaseDate/F2728D36E12DFA86CA2578A3001148FA?OpenDocument>

⁵⁷ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4446.0Main%20Features92009?opendocument&tabname=Summary&prodno=4446.0&issue=2009&num=&view=>

employment, some participants are eligible for on-going support in the workplace. Further information about these services can be found on the Australian Government's JobAccess website.⁵⁸

As an indication of the broader services available, the JobAccess website lists the following information for jobseekers with disability:

Whether you are looking for a job or are already in employment, finding the services and support you need is easy with JobAccess. Call the JobAccess Advisers on 1800 464 800 for free, confidential advice or browse our web site for:

Free expert help with employment

There are free services to help you find a job, keep a job or manage a return to work after accident or injury. Many of these services offer ongoing support for people with disability.

Help from Centrelink

Centrelink offers a range of services delivered on behalf of the Australian Government. Centrelink is set up so that you can get more of the help you need in one place.

Financial help and wage information

Did you know that there is help to pay for the cost of workplace modifications or Auslan interpreting and training services for eligible employees with disability? There are also programmes that can help your employer with wages or provide options if you cannot work at full wage rates.

Help with your own business

Starting your own business may offer you the flexibility you need to start work or return to work.

Help outside of work

Sometimes the pathway to employment is related to things outside of work such as your ability to live independently or participate in community life.

Access to support in the workplace however is restricted to people who find and secure a job through a government-funded service and assessed as requiring irregular, occasional, regular or on-going support.

4.4 What measures exist to ensure access by women and girls with disabilities to social protection programmes and poverty reduction programmes?

People with disability who are residents of Australia are eligible for income support and the type of allowance and level of payment is determined by the degree of impairment and capacity to work. Income tests may also be involved. For a summary

⁵⁸ http://jobaccess.gov.au/Services/A-Z_list/Pages/DisabilityEmploymentServices.aspx

please see http://www.centrelink.gov.au/internet/internet.nsf/individuals/iid_index.htm and http://jobaccess.gov.au/Jobseekers/Help_available/Help_from_Centrelink/Pages/Centrelink_payments.aspx

There are no specific measures for women and girls with disability.

Of concern however is a finding in a recent report by Price Waterhouse Coopers that approximately 45% of people with disability in Australia are living either near or below the poverty line.⁵⁹

4.5 Please provide information on other measures (legislative, administrative, juridical or other) aimed at the development, advancement and empowerment of women with disabilities.

The Australian Government recently launched The Leaders for Tomorrow Program which provides up to 12 months leadership support to 200 people with disability to June 2014.⁶⁰

The Leaders for Tomorrow program is an individual leadership program which is committed to developing 200 people with disability to be more skilled, confident and active in leadership roles in business, community, government or their chosen area of interest.

Through mentoring and leadership development opportunities, Leaders for Tomorrow participants will become better equipped to contribute as leaders in Australia's future.

This program is not specifically targeted at women with disabilities.

The CEDW Committee in its concluding comments on Australia in 2010 recommended that the Australian Government adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25.⁶¹

4.6 Are there provisions for regular home visits and inspections of medical institutions where women and girls with disabilities are living/receiving treatment? How do these work?

There is no comprehensive scheme across Australia and no specific schemes for women and girls with disabilities. However, in some State and Territories community

⁵⁹ <http://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>

⁶⁰ <http://www.leadersfortomorrow.com.au/> . See also http://www.facs.gov.au/sa/disability/progserv/people/Pages/leaders_4_tomorrow.aspx

⁶¹ CEDAW Committee: *Concluding Observations Australia* (2010), UN Doc CEDAW/C/AUL/CO/7 para 43. At <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

visitor schemes exist to visit people with disability, including children with disability, in certain settings although their roles and functions vary.

For example, in Victoria the program is managed by the Office of the Public Advocate:⁶²

Appointed by the Victorian Governor in Council, Community Visitors are created under three Acts of Parliament: the *Mental Health Act 1986*, the *Health Services Act 1988*, and the *Disability Act 2006*.

Community Visitors are volunteers empowered by law to visit Victorian accommodation facilities for people with a disability or mental illness at any time, unannounced. They monitor and report on the adequacy of services provided, in the interests of residents and patients.

Community Visitors in Victoria visit: community residential units for people with intellectual and/or physical disabilities; supported residential services and mental health facilities with 24-hour nursing care.

In Queensland, there is a Child Guardian which includes a Community Visitor Program:⁶³

The Child Guardian is the independent, external monitor of the child safety system's ability to provide services which meet the needs of children and young people. The Child Guardian also works to ensure effective youth justice systems for children and young people in Queensland.

The Child Guardian role involves monitoring, investigating, complaints resolution, advocacy about laws, policies and procedures, and visits to children and young people in out-of-home care by Community Visitors.

The Community Visitors Program makes regular visits to children and young people in alternative care.⁶⁴

They provide help and support and listen to any concerns they may have.

Community Visitors can help you solve your problems if you live in:

- a youth detention centre
- out-of-home residential care, such as a youth shelter or a mental health facility
- supported accommodation
- respite care, or
- foster care.

Other schemes operate in New South Wales⁶⁵ and South Australia.⁶⁶

⁶² <http://www.publicadvocate.vic.gov.au/services/107/>

⁶³ <http://www.ccypcg.qld.gov.au/support/index.html>

⁶⁴ <http://www.ccypcg.qld.gov.au/support/community/cvProgram.html>

4.7 What measures have been adopted to provide information and education to women and girls with disability and their families, caregivers and health providers on how to avoid, recognize and report instances of exploitation, violence and abuse?

The National Disability Abuse and Neglect Hotline is an Australia wide telephone hotline for reporting abuse and neglect of people with disability. The hotline is a government funded service, which works with callers to find appropriate ways of dealing with reports of abuse and neglect of people with disability. For example, the hotline can refer a caller to the relevant agency or service best placed to assist the caller. Further information about the hotline is available at:

<http://www.disabilityhotline.org/further-help.html> .

The Government funds a national sexual assault, domestic and family violence counselling service (1800 RESPECT). The aims of the service are to provide a best practice, professional 24/7 telephone and online, crisis and trauma counselling service to anyone whose life has been impacted by sexual assault, domestic or family violence; and to assist people affected by sexual assault, domestic or family violence to achieve recovery. This is an initiative under the National Plan to Reduce Violence Against Women and their Children. For more information see:

<http://www.1800respect.org.au/>)

The National Plan to Reduce Violence Against Women and their children has a strong prevention focus under which the Government has funded the Respectful Relationships Program, The Line (a campaign primarily aimed at young people to encourage and promote respectful relationships) community action grants for civil society organisations to deliver education and awareness raising projects on violence against women. However, sometimes the generic programs may not be sufficiently tailored to address the needs and issues of women with disabilities. Hence further support and funding for specific programs for women with disabilities are necessary. For example in 2011, People with Disability received funding of \$147,720 for three years to develop and roll out a domestic violence abuse and neglect training package focused on women with intellectual disability, staff and service providers.

4.8 What are the means to report violence against women and girls with disabilities in different settings, including medical centres and institutions? To what extent are these known and accessible?

As indicated in previous responses, limited mechanisms exist for women and girls with disability to report violence and abuse in different settings and in different states and territories across Australia. This is further complicated by the fact that women and girls with disability often do not know about the services that do exist and the services are inaccessible and ineffective, at either an individual or systemic level.

⁶⁵ <http://www.ombo.nsw.gov.au/aboutus/coordnteeoffcommvstrprog.html>

⁶⁶ <http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/about+us/community+visitor+scheme>

There is a legal requirement in Australia to report suspected cases of child abuse and neglect. All jurisdictions possess mandatory reporting requirements although the people required to report and the types of abuse mandated to be reported varies across Australian states and territories.

Further information about mandatory reporting of child abuse and neglect is available on the Australian Institute of Family Studies website. More specifically, a factsheet on mandatory reporting is available at:

<http://www.aifs.gov.au/nch/pubs/sheets/rs3/rs3.html>

4.9 To what extent are public institutions, such as police stations and hospitals, accessible to women and girls with disabilities?

The Australian Government has introduced new *Disability (Access to Premises – Buildings) Standards 2010* to improve access to buildings for people with disability. The Standards came into effect on 1 May 2011 and clarify how to ensure buildings are accessible to people with disability and meet the requirements of discrimination law. These Standards will ensure that over time buildings in Australia become more accessible for people with a disability.

Further information about the Standards, including the Commission's guidelines on the Standards is available on the Commission's website:

http://www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html

5 Prosecution and Punishment

5.1 Are there disaggregated statistics on crimes against persons with disabilities?

While it is acknowledged that “people with disability are more likely than others to be victims of interpersonal violence and less likely than others to receive proper assistance to deal with it and prevent its reoccurrence”⁶⁷ data is not collected nationally which enables people with disability to be identified as either victims of crime or enable people with disability to report experiences of crime.

The Australian Institute of Criminology website lists a small number of research papers and reports on violence and hate crimes against minority groups, including people with disability.⁶⁸

⁶⁷ Office of the Public Advocate Victoria (2010) *Violence against people with cognitive impairments*. http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence_and_disability_report_August2010.pdf

⁶⁸ http://www.aic.gov.au/crime_community/crimeprevention/resources/groups.aspx

5.2 Please provide information on the total amount of registered complaints for violence against women and girls with disabilities? Of the total amount how many were dismissed? What were the main reasons for dismissal? Of the cases that were prosecuted, how many resulted in convictions?

The Commission does not have information available about the number of registered complaints for violence against women and girls with disability. However, the Commission notes the following serious issues of concern for women and girls with disability who have experienced, are experiencing or at risk of experiencing violence in relation to reporting and prosecution:⁶⁹

- few cases are reported
- of those that are reported few are adequately investigated
- of those that are reported few are prosecuted
- of those that are prosecuted sentences do not match the severity of the crime
- insufficient or no weight is given to evidence given by women and girls with disability.

Following the recent dismissal of a case involving alleged sexual abuse of seven children with intellectual disability, the Australian Disability Discrimination Commissioner has recently called for urgent legal reform so that courts can no longer discriminate against people with disability and offer people with disability the same protection as other members in society if abuse occurs:⁷⁰

People with disabilities, whether they're children or adults, need to be confident that they will have the same protection if some form of abuse occurs, as other members in society.

⁶⁹ See for example: Office of the Public Advocate Victoria (2010) *Violence against people with cognitive impairments*. http://www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence_and_disability_report_August2010.pdf Women with Disabilities Australia (2007): A resource manual on violence against women with disabilities - *Forgotten Sisters – A global review of violence against women with disabilities*. <http://www.wwda.org.au/vrm2007.htm> ; Lucy Healey, Keran Howe, Cathy Humphreys, Chris Jennings and Felicity Julian (2008). *Building the Evidence: A report on the status of policy and practice in responding to violence against women with disabilities in Victoria*. Available at <http://www.wdv.org.au/documents/BTE%20Final%20Report.doc>; Phillip French et al (2009) *Rights denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*. http://www.google.com/url?q=http://www.pwd.org.au/documents/pubs/RightsDenied2010.doc&sa=U&ei=C6z-TpOyEMLLmAXSyciTCg&ved=0CAQQFjAA&client=internal-uds-cse&usg=AFQjCNHjyc4F-R_LiXPIZadDWR5-15goow ; Phillip French (2007), *Disabled Justice: The barriers to justice for persons with disability in Queensland*, http://www.gai.org.au/images/stories/docs/1987-2007/doc_199.pdf

⁷⁰ <http://www.abc.net.au/news/2011-12-21/urgent-reform-needed-so-courts-dont-discriminate/3742636> and <http://www.australiannews.com.au/story?cityid=d1de82e1-fce9-4f45-9541-79d83e888155&storyid=4fb66f3a-2016-47fa-a0f2-826fdcde2af4>

But if the people who carry out this sort of abuse are aware that the evidence of people with disability is not going to carry weight then that makes people with a disability far more vulnerable.

5.3 What system is in place to ensure legal aid for women and girls with disabilities who have been victims of violence?

In Australia:⁷¹

Legal aid is a system of public funding to enable people who would otherwise not be able to afford legal services to obtain those services. Legal aid is not provided for every type of legal problem. The focus is on persons at serious personal risk, for example, persons charged with serious criminal offences or matters where children are involved.

The Australian Government, through the Attorney-General's Department, funds legal aid commissions in each State and Territory to provide legal assistance to disadvantaged persons in matters arising under the Commonwealth law. Similarly, State and Territory Governments fund legal aid commissions to provide legal assistance in matters arising under their own laws.

There are eight independent Legal Aid Commissions, one in each of the states and territories which are funded by the federal government and state and territory governments.⁷²

The Community Legal Services Program⁷³ is also funded by the Federal Attorney-General's Department. While there is no specific program for women and girls with disability, The Community Legal Services Program includes services which could assist women and girls with disability experiencing violence including: Community Legal Centres, Disability Discrimination Act Legal Services, Women's Legal Services, Indigenous Women's Outreach Project, Rural Women's Outreach Lawyer Services and Youth Legal Services.

5.4 What special measures have been envisaged in legislation and practice for victims and witnesses with disabilities?

As indicated in the response to Question 5.4, the Australian Disability Discrimination Commissioner has recently called for urgent legal reform in relation to evidence given

⁷¹ http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_LegalAidProgram

⁷² <http://www.nla.aust.net.au/category.php?id=1>

⁷³ http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_CommunityLegalServicesProgram_TheCommunityLegalServicesProgram

by people with disability, in particular to ensure people with disability who are victims of violence are ensured the same protections as other members of the community.⁷⁴

As noted in the response in relation to forced sterilisation (Question 3.2) the Australian Government has in its response to the Universal Periodic Review recommendations on sterilisation committed to initiate further discussions with its State and Territory counterparts. Recommendation 39 stated:⁷⁵

Comply with the recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women concerning the sterilization of women and girls with disabilities (Denmark); Enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability without their informed and free consent (United Kingdom); Repeal all legal provisions allowing sterilization of persons with disabilities without their consent and for non-therapeutic reasons (Belgium); Abolish non-therapeutic sterilization of women and girls with disabilities (Germany);

Other measures may be developed and adopted under areas for future action listed under the National Disability Strategy including:⁷⁶

2.1 Promote awareness and acceptance of the rights of people with disability.

2.3 Develop strategies to reduce violence, abuse and neglect of people with disability.

2.4 Review restrictive legislation and practices from a human rights perspective.

2.7 Provide greater support for people with disability with heightened vulnerabilities to participate in legal processes on an equal basis with others.

2.11 Support independent advocacy to protect the rights of people with disability.

2.12 Ensure supported decision-making safeguards for those people who need them are in place, including accountability of guardianship and substitute decision-makers.

⁷⁴ <http://www.abc.net.au/news/2011-12-21/urgent-reform-needed-so-courts-dont-discriminate/3742636> and <http://www.australiannews.com.au/story?cityid=d1de82e1-fce9-4f45-9541-79d83e888155&storyid=4fb66f3a-2016-47fa-a0f2-826fdcde2af4>

⁷⁵ (see para 86.39)

[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(3A6790B96C927794AF1031D9395C5C20\)-OIL+-+UPR+-+Australia+-+outcomes+report.doc/\\$file/OIL+-+UPR+-+Australia+-+outcomes+report.doc](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)-OIL+-+UPR+-+Australia+-+outcomes+report.doc/$file/OIL+-+UPR+-+Australia+-+outcomes+report.doc)

⁷⁶

http://www.facs.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Documents/nds_2010_2020_std.rtf

Further information about how the NDS, under each of these areas, will be implemented will be available in early 2012.

5.5 What specific training is conducted for law enforcement and legal personnel on the rights of women and girls with disabilities and effective ways to communicate with them?

There is no national or systematic program to train law enforcement and legal personnel on the rights of women and girls with disability and effective ways to communicate with them.

Australia's National Disability Strategy has identified that ensuring effective access to justice for people with disability on an equal basis with others requires greater awareness by the judiciary, court staff and legal professionals of disability issues. This includes promoting appropriate training for those working in the field of administration of justice, including police and prison staff. Further information about how the NDS will be implemented will be available in early 2012.

Some training that currently exists for law enforcement and legal personnel on the rights of people with disability include work by the Intellectual Disability Rights Service (IDRS) in New South Wales. The IDRS is a specialist legal advocacy service for people with intellectual disability, which works with and for people with intellectual disability to exercise and advance their rights. The IDRS provides as part of its training, for example, fact sheets and training resources to law enforcement and legal personnel on ways to work effectively with people with intellectual disability:⁷⁷

Disability Awareness Training for local court staff; Sheriff's Officers; Transit Officers; Special Constables and Police.

The aim of this training is to provide:

- a better understanding of intellectual disability
- information on how to make adjustments to work more effectively with people with intellectual disability.

This training does not focus exclusively on the rights of women and girls with disability. Further information about the work of the IDRS is available on their website: <http://www.idrs.org.au>

⁷⁷ http://www.idrs.org.au/education/for_police.html

6 Recovery, Rehabilitation and Social Reintegration

6.1 ***What measures (legislative, administrative, social, educational or other) are in place to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of women and girls with disabilities who have been victim of any form of exploitation, violence or abuse?***

As indicated in previous responses, there is no national framework to ensure women and girls with disabilities have access to the necessary supports and services to either prevent or respond to experiences of violence, including the necessary supports and services to promote physical, cognitive and psychological recovery, rehabilitation and social integration.

In addition to activities under the National Plan to Reduce Violence against Women and their Children and the National Disability Strategy aimed at preventing violence and improving access to the necessary supports and services for women and girls experiencing or escaping violence, the Australian Government is currently examining the feasibility of a National Disability Insurance Scheme:⁷⁸

A National Disability Insurance Scheme is about supporting people with disability to fulfil their potential.

It's about ensuring people get the individualised care and support they need over the course of their lifetime, so they can exercise more choice and control in their lives.

In February 2010, the Australian Government asked the Productivity Commission to look at the costs, cost effectiveness, benefits and feasibility of replacing the current arrangements with a properly funded and managed long-term disability scheme. After conducting a national inquiry, in July 2011, the Productivity Commission released a final report which outlined the Productivity Commission's ideas for a new way of meeting the care and support needs of people with a disability.⁷⁹ The Productivity Commission found:⁸⁰

The current disability support system is underfunded, unfair, fragmented, and inefficient. It gives people with a disability little choice, no certainty of access to appropriate supports and little scope to participate in the community. People with disabilities, their carers, service providers, workers in the industry and governments all want change.

This scheme may enable women and girls with disability who have been victim of any form of exploitation, violence or abuse to have access to the necessary supports and

⁷⁸ <http://www.ndis.gov.au/>.

⁷⁹ <http://www.pc.gov.au/projects/inquiry/disability-support/report>

⁸⁰ Productivity Commission (2011), *Disability Care and Support, Productivity Commission Inquiry Report No. 54, 31 July 2011*, Executive Summary, page 3.

http://www.pc.gov.au/_data/assets/pdf_file/0011/111404/disability-support-executive-summary.pdf

services to promote physical, cognitive and psychological recovery, rehabilitation and social integration.